

EN BANC

[G.R. No. 209286, September 23, 2014]

LINA DELA PEÑA JALOVER, GEORGIE A. HUISO AND VELVET BARQUIN ZAMORA, PETITIONERS, VS. JOHN HENRY R. OSMEÑA AND COMMISSION ON ELECTIONS (COMELEC), RESPONDENTS.

D E C I S I O N

BRION, J.:

The minimum requirement under our Constitution^[1] and election laws^[2] for the candidates' residency in the political unit they seek to represent has never been intended to be an empty formalistic condition; it carries with it a very specific purpose: to prevent "stranger[s] or newcomer[s] unacquainted with the conditions and needs of a community" from seeking elective offices in that community.^[3]

The requirement is rooted in the recognition that officials of districts or localities should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents - their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare.^[4] Familiarity or the opportunity to be familiar with these circumstances can only come with residency in the constituency to be represented.^[5]

The Case

Before us is the Petition for *Certiorari*^[6] under Rule 64 in relation with Rule 65 of the Rules of Court, seeking to annul the Resolutions dated April 3, 2013,^[7] and August 8, 2013,^[8] of the Commission on Elections (COMELEC) in SPA No. 13-079. The COMELEC resolutions denied the petitioners' Petition to Cancel Certificate of Candidacy of the private respondent John Henry R. Osmeña.

This review, based on the nature of the petition and the petitioners' objective, is based on a very limited ground - the jurisdictional issue of whether the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[9]

Factual Antecedents

On October 3, 2012, Osmeña filed his Certificate of Candidacy (COC) for the position of mayor, Toledo City, Cebu.^[10] In his COC, Osmeña indicated that he had been a resident of Toledo City for fifteen (15) years prior to the May 2013 elections. Before running for the mayoralty position, Osmeña also served as the representative of the 3rd Congressional District of the Province of Cebu from 1995-1998, which

incidentally includes the City of Toledo.^[11]

Soon thereafter, the petitioners filed before the COMELEC a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualification,"^[12] docketed as SPA No. 13-079.

The Parties' Claims and Evidence

Citing Section 78^[13] in relation with Section 74^[14] of the Omnibus Election Code, the petitioners alleged before the COMELEC that Osmeña made material misrepresentations of fact in the latter's COC and likewise failed to comply with the residency requirement under Section 39 of the Local Government Code.^[15] In particular, the petitioners claimed that Osmeña falsely declared under oath in his COC that he had already been a resident of Toledo City fifteen (15) years prior to the scheduled May 13, 2013 local elections.^[16]

In support of their petition, the petitioners submitted the following: a) a certification from the Toledo City Assessor's Office, dated October 5, 2012, showing that Osmeña does not own any real property in Toledo City;^[17] b) a tax declaration of Osmeña's alleged residence at Ibo, Toledo City showing that it is owned by Osmeña's son;^[18] c) photographs of Osmeña's alleged dilapidated residence in *Barangay Ibo*, Toledo City, which the petitioners claim is not in keeping with Osmeña's prominence, wealth and stature in society;^[19] d) a certification from the Business Permit and Licensing Office, that Osmeña never applied nor has he been issued any business permit by Toledo City;^[20] and e) several affidavits,^[21] including that of the *barangay* captain of Ibo, Toledo City,^[22] attesting that Osmeña was never a resident of Toledo City and that he has only been **seen** in the city in September 2012 to conduct political meetings.

Osmeña denied the petitioners' allegations. In his defense, Osmeña argued that even prior to his actual transfer of residence to Ibo, Toledo City, in 2004, he had been able to establish ties with Toledo City in view of his family's business interests and his political linkages.^[23] According to Osmeña, in 1995, he bought a piece of land in Ibo, Toledo City, where he built two (2) houses from 1998 to 2002^[24] and became a permanent resident thereof in 2004.^[25] Osmeña further averred that he became a registered voter of Toledo City in 2006^[26] and that he leased at least two (2) properties in Toledo City for his headquarters.^[27] In addition, he claimed that in December 2011, he bought a five (5) hectare parcel of land in Das, Toledo City.^[28]

In support of his allegations, Osmeña submitted the following pieces of evidence: a) certification from the House of Representatives that Osmeña was the duly elected representative of the 3rd District of Cebu in the 10th Congress from 1995 to 1998;^[29] b) Tax Declaration No. 2001-149019-01028^[30] and Deed of Absolute Sale between Dr. James Gaité and Osmeña's son concerning the Ibo, Toledo City property;^[31] c) photographs of the exterior and interior of the Ibo, Toledo City property;^[32] d) application for transfer of voter's registration record, dated April 24, 2006;^[33] e) a certification from Mantuhac Construction stating that it was Osmeña who paid for the construction of the Ibo, Toledo City property;^[34] f) utility bills to

prove that the house in Ibo, Toledo City, has continually been occupied by Osmeña; [35] g) Contract of Lease covering a house and lot in Poblacion, Toledo City; [36] h) a Deed of Extrajudicial Settlement with Sale covering the 5 hectare property in Das, Toledo City; [37] and i) several affidavits attesting to the fact that Osmeña actually resides [38] and has profound socio-civic and political linkages in Toledo City. [39]

The Ruling of the COMELEC's Second Division

The COMELEC Second Division dismissed the petition on the ground that Osmeña did not commit any material misrepresentation in his COC. [40] Citing *Velasco v. COMELEC*, [41] the Second Division found that Osmeña was able to explain why he indicated in his COC that the period of his residence in Toledo City prior to the May 23, 2013 elections is 15 years. [42] This was his belief, as according to him, he has ties with Toledo City since childhood and that even as a Senator, he continued to bring projects to Toledo City. [43] The Second Division further found that Osmeña complied with the residency requirement. [44]

The petitioners timely moved for a reconsideration of the April 3, 2013 Resolution of the COMELEC. [45] Before the COMELEC resolved the motion, however, the Board of Canvassers of Toledo City proclaimed Osmeña as the winning candidate for the mayoralty seat. [46]

The COMELEC En Banc Ruling

The COMELEC *en banc* subsequently denied the petitioners' motion for reconsideration. [47] Citing *Sabili v. COMELEC and Librea*, [48] the COMELEC *en banc* stated that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. [49] It is enough that he should live in the locality even in a rented house or that of a friend or a relative. [50]

The Petition and Comments

The petition is based on the following grounds/arguments: [51]

- 1. The August 8, 2013 Resolution of the COMELEC *en banc*, which affirmed its Second Division's Resolution finding that Osmeña had not committed any false material representation in his COC, is null and void since Osmeña is not a resident of Toledo City, contrary to what he stated in his COC;**
- 2. Osmeña has not established by substantial evidence that he is a resident of Barangay Ibo of Toledo City and thus, should not be allowed to serve as Mayor of Toledo City;**
- 3. Osmeña's Certificate of Candidacy should have been cancelled and it is as if there was no one who challenged the candidacy of then incumbent Toledo City Mayor Aurelio P. Espinosa;**

- 4. The fact that Osmeña prevailed during the May 13, 2013 elections does not make him eligible for the position. To rule in favor of the apparent will of the people would ultimately create greater prejudice to democratic institutions and juristic traditions of the Constitution;**
- 5. The petitioner's evidence of Osmeña's lack of residence is not inconclusive. The purpose of the election law would be thwarted by upholding Osmeña's right to the office;**
- 6. The COMELEC showed partiality to Osmeña by admitting his belatedly filed Answer to the Petition, and his Amended Memorandum and Supplemental Amended Memorandum.**

In his Comment, Osmeña asserts that: 1) the COMELEC's findings of fact are supported by substantial evidence, and as such, are final and non-reviewable; 2) there was no material misrepresentation in his COC; 3) there was no deliberate attempt to mislead, misinform or hide a fact on the part of Osmeña; 4) the purpose of the minimum residency requirement is served because Osmeña has a significant relationship with, and intimate knowledge of, the City of Toledo; and 5) Osmeña has the mandate of the City of Toledo.^[52]

The Office of the Solicitor General (OSG) likewise filed a Comment on behalf of the COMELEC. The OSG argues that the COMELEC did not commit any grave abuse of discretion since Osmeña was able to adduce substantial evidence to prove that he was a resident of Toledo City at least one (1) year before the May 2013 elections.

The Court's Ruling

We dismiss the petition for lack of merit.

Limited Review in Certiorari Petitions

"Grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;" the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[53] Mere abuse of discretion is not enough; it must be grave.^[54] We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.^[55]

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable*. Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion.^[56] In light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene.^[57] When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction.^[58]

Nature of the Case Subject of the Petition

The present petition arose from a ***petition to deny due course or to cancel Osmeña's COC.***

Section 74, in relation with Section 78 of the Omnibus Election Code governs the cancellation of, and grant or denial of due course to, the COCs. The combined application of these sections requires that the facts stated in the COC by the would-be candidate be true, as any false representation of a material fact is a ground for the COC's cancellation or the withholding of due course. To quote these provisions:

SEC. 74. ***Contents of certificate of candidacy.*** - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation assumed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and **that the facts stated in the certificate of candidacy are true to the best of his knowledge.** (Emphasis ours)

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SEC. 78. ***Petition to deny due course to or cancel a certificate of candidacy.*** - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

The false representation that these provisions mention pertains to a material fact, not to a mere innocuous mistake.^[59] This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws.^[60] Obviously, these facts are those that refer to a