

## EN BANC

[ G.R. No. 207264, June 25, 2013 ]

### REGINA ONGSIAKO REYES, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSEPH SOCORRO B. TAN, RESPONDENTS.

#### R E S O L U T I O N

**PEREZ, J.:**

Before the Court is a Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Preliminary Injunction and/or Status *Quo Ante* Order dated 7 June 2013 filed by petitioner Regina Ongsiako Reyes, assailing the Resolutions dated 27 March 2013 and 14 May 2013 issued by public respondent Commission on Elections (COMELEC) in SPA No. 13-053. The assailed Resolutions ordered the cancellation of the Certificate of Candidacy of petitioner for the position of Representative of the lone district of Marinduque.

On 31 October 2012, respondent Joseph Socorro Tan, a registered voter and resident of the Municipality of Torrijos, Marinduque, filed before the COMELEC an Amended Petition to Deny Due Course or to Cancel the Certificate of Candidacy (COC) of petitioner on the ground that it contained material misrepresentations, specifically: (1) that she is single when she is married to Congressman Herminaldo I. Mandanas of Batangas;<sup>[1]</sup> (2) that she is a resident of Brgy. Lupac, Boac, Marinduque when she is a resident of Bauan, Batangas which is the residence of her husband, and at the same time, when she is also a resident of 135 J.P. Rizal, Brgy. Milagrosa, Quezon City as admitted in the Directory of Congressional Spouses of the House of Representatives;<sup>[2]</sup> (3) that her date of birth is 3 July 1964 when other documents show that her birthdate is either 8 July 1959 or 3 July 1960;<sup>[3]</sup> (4) that she is not a permanent resident of another country when she is a permanent resident or an immigrant<sup>[4]</sup> of the United States of America;<sup>[5]</sup> and (5) that she is a Filipino citizen when she is, in fact, an American citizen.<sup>[6]</sup>

In her Answer, petitioner countered that, while she is publicly known to be the wife of Congressman Herminaldo I. Mandanas (Congressman Mandanas), there is no valid and binding marriage between them. According to petitioner, although her marriage with Congressman Mandanas was solemnized in a religious rite, it did not comply with certain formal requirements prescribed by the Family Code, rendering it void *ab initio*.<sup>[7]</sup> Consequently, petitioner argues that as she is not duty-bound to live with Congressman Mandanas, then his residence cannot be attributed to her.<sup>[8]</sup> As to her date of birth, the Certificate of Live Birth issued by the National Statistics Office shows that it was on 3 July 1964.<sup>[9]</sup> Lastly, petitioner notes that the allegation that she is a permanent resident and/or a citizen of the United States of America is not supported by evidence.<sup>[10]</sup>

During the course of the proceedings, on 8 February 2013, respondent filed a

"Manifestation with Motion to Admit Newly Discovered Evidence and Amended List of Exhibits"<sup>[11]</sup> consisting of, among others: (1) a copy of an article published on the internet on 8 January 2013 entitled "Seeking and Finding the Truth about Regina O. Reyes" with an Affidavit of Identification and Authenticity of Document executed by its author Eliseo J. Obligacion, which provides a database record of the Bureau of Immigration indicating that petitioner is an American citizen and a holder of a U.S. passport; (2) a Certification of Travel Records of petitioner, issued by Simeon Sanchez, Acting Chief, Verification and Certification Unit of the Bureau of Immigration which indicates that petitioner used a U.S. Passport in her various travels abroad.

On 27 March 2013, the COMELEC First Division issued a Resolution<sup>[12]</sup> cancelling petitioner's COC, to wit:

**WHEREFORE**, in view of the foregoing, the instant Petition is **GRANTED**. Accordingly, the Certificate of Candidacy of respondent REGINA ONGSIAKO REYES is hereby **CANCELLED**.

The COMELEC First Division found that, contrary to the declarations that she made in her COC, petitioner is not a citizen of the Philippines because of her failure to comply with the requirements of Republic Act (R.A.) No. 9225 or the *Citizenship Retention and Re-acquisition Act of 2003*, namely: (1) to take an oath of allegiance to the Republic of the Philippines; and (2) to make a personal and sworn renunciation of her American citizenship before any public officer authorized to administer an oath. In addition, the COMELEC First Division ruled that she did not have the one-year residency requirement under Section 6, Article VI of the 1987 Constitution.<sup>[13]</sup> Thus, she is ineligible to run for the position of Representative for the lone district of Marinduque.

Not agreeing with the Resolution of the COMELEC First Division, petitioner filed a Motion for Reconsideration<sup>[14]</sup> on 8 April 2013 claiming that she is a natural-born Filipino citizen and that she has not lost such status by simply obtaining and using an American passport. Additionally, petitioner surmised that the COMELEC First Division relied on the fact of her marriage to an American citizen in concluding that she is a naturalized American citizen. Petitioner averred, however, that such marriage only resulted into dual citizenship, thus there is no need for her to fulfill the twin requirements under R.A. No. 9225. Still, petitioner attached an Affidavit of Renunciation of Foreign Citizenship sworn to before a Notary Public on 24 September 2012. As to her alleged lack of the one-year residency requirement prescribed by the Constitution, she averred that, as she never became a naturalized citizen, she never lost her domicile of origin, which is Boac, Marinduque.

On 14 May 2013, the COMELEC *En Banc*, promulgated a Resolution<sup>[15]</sup> denying petitioner's Motion for Reconsideration for lack of merit.

Four days thereafter or on 18 May 2013, petitioner was proclaimed winner of the 13 May 2013 Elections.

On 5 June 2013, the COMELEC *En Banc* issued a Certificate of Finality<sup>[16]</sup> declaring

the 14 May 2013 Resolution of the COMELEC *En Banc* final and executory, considering that more than twenty-one (21) days have elapsed from the date of promulgation with no order issued by this Court restraining its execution.<sup>[17]</sup>

On same day, petitioner took her oath of office<sup>[18]</sup> before Feliciano R. Belmonte Jr., Speaker of the House of Representatives.

Petitioner has yet to assume office, the term of which officially starts at noon of 30 June 2013.

In the present Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Preliminary Injunction and/or Status *Quo Ante* Order, petitioner raises the following issues:<sup>[19]</sup>

31) Whether or not Respondent Comelec is without jurisdiction over Petitioner who is a duly proclaimed winner and who has already taken her oath of office for the position of Member of the House of Representatives for the lone congressional district of Marinduque.

32) Whether or not Respondent Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction when it took cognizance of Respondent Tan's alleged "newly-discovered evidence" without the same having been testified on and offered and admitted in evidence which became the basis for its Resolution of the case without giving the petitioner the opportunity to question and present controverting evidence, in violation of Petitioner's right to due process of law.

33) Whether or not Respondent Comelec committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Petitioner is not a Filipino citizen and did not meet the residency requirement for the position of Member of the House of Representatives.

34) Whether or not Respondent Commission on Elections committed grave abuse of discretion amounting to lack or excess of jurisdiction when, by enforcing the provisions of Republic Act No. 9225, it imposed additional qualifications to the qualifications of a Member of the House of Representatives as enumerated in Section 6 of Article VI of the 1987 Constitution of the Philippines.

The petition must fail.

At the outset, it is observed that the issue of jurisdiction of respondent COMELEC *vis-a-vis* that of House of Representatives Electoral Tribunal (HRET) appears to be a non-issue. Petitioner is taking an inconsistent, if not confusing, stance for while she seeks remedy before this Court, she is asserting that it is the HRET which has jurisdiction over her. Thus, she posits that the issue on her eligibility and qualifications to be a Member of the House of Representatives is best discussed in another tribunal of competent jurisdiction. It appears then that petitioner's recourse to this Court was made only in an attempt to enjoin the COMELEC from

implementing its final and executory judgment in SPA No. 13-053.

Nevertheless, we pay due regard to the petition, and consider each of the issues raised by petitioner. The need to do so, and at once, was highlighted during the discussion *En Banc* on 25 June 2013 where and when it was emphasized that the term of office of the Members of the House of Representatives begins on the thirtieth day of June next following their election.

According to petitioner, the COMELEC was ousted of its jurisdiction when she was duly proclaimed<sup>[20]</sup> because pursuant to Section 17, Article VI of the 1987 Constitution, the HRET has the exclusive jurisdiction to be the “sole judge of all contests relating to the election, returns and qualifications” of the Members of the House of Representatives.

Contrary to petitioner’s claim, however, the COMELEC retains jurisdiction for the following reasons:

*First*, the HRET does not acquire jurisdiction over the issue of petitioner’s qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.

*Second*, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members**.  
x x x

As held in *Marcos v. COMELEC*,<sup>[21]</sup> the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, to wit:

As to the House of Representatives Electoral Tribunal’s supposed assumption of jurisdiction over the issue of petitioner’s qualifications after the May 8, 1995 elections, suffice it to say that HRET’s jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

The next inquiry, then, is when is a candidate considered a Member of the House of Representatives?

In *Vinzons-Chato v. COMELEC*,<sup>[22]</sup> citing *Aggabao v. COMELEC*<sup>[23]</sup> and *Guerrero v.*

COMELEC,<sup>[24]</sup> the Court ruled that:

The Court has invariably held that once a winning candidate has **been proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This pronouncement was reiterated in the case of *Limkaichong v. COMELEC*,<sup>[25]</sup> wherein the Court, referring to the jurisdiction of the COMELEC vis-a-vis the HRET, held that:

The Court has invariably held that once a winning candidate has **been proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This was again affirmed in *Gonzalez v. COMELEC*,<sup>[26]</sup> to wit:

After **proclamation, taking of oath** and **assumption** of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. (Emphasis supplied.)

From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.

Indeed, in some cases, this Court has made the pronouncement that once a proclamation has been made, COMELEC's jurisdiction is already lost and, thus, its jurisdiction over contests relating to elections, returns, and qualifications ends, and the HRET's own jurisdiction begins. However, it must be noted that in these cases, the doctrinal pronouncement was made in the context of a proclaimed candidate who had not only taken an oath of office, but who had also assumed office.

For instance, in the case of *Dimaporo v. COMELEC*,<sup>[27]</sup> the Court upheld the jurisdiction of the HRET against that of the COMELEC *only after* the candidate had been proclaimed, taken his oath of office before the Speaker of the House, and assumed the duties of a Congressman on 26 September 2007, or after the start of his term on 30 June 2007, *to wit*:

On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the *status quo ante* order of the Court, he had