

EN BANC

[G.R. No. 180088, January 19, 2009]

MANUEL B. JAPZON, PETITIONER, VS. COMMISSION ON ELECTIONS AND JAIME S. TY, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rules 64^[1] and 65^[2] of the Revised Rules of Court seeking to annul and set aside the Resolution^[3] dated 31 July 2007 of the First Division of public respondent Commission on Elections (COMELEC) and the Resolution^[4] dated 28 September 2007 of COMELEC *en banc*, in SPA No. 07-568, for having been rendered with grave abuse of discretion, amounting to lack or excess of jurisdiction.

Both petitioner Manuel B. Japzon (Japzon) and private respondent Jaime S. Ty (Ty) were candidates for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, in the local elections held on 14 May 2007.

On 15 June 2007, Japzon instituted SPA No. 07-568 by filing before the COMELEC a Petition^[5] to disqualify and/or cancel Ty's Certificate of Candidacy on the ground of material misrepresentation. Japzon averred in his Petition that Ty was a former natural-born Filipino, having been born on 9 October 1943 in what was then Pambujan Sur, Hernani Eastern Samar (now the Municipality of General Macarthur, Easter Samar) to spouses Ang Chim Ty (a Chinese) and Crisanta Aranas Sumiguin (a Filipino). Ty eventually migrated to the United States of America (USA) and became a citizen thereof. Ty had been residing in the USA for the last 25 years. When Ty filed his Certificate of Candidacy on 28 March 2007, he falsely represented therein that he was a resident of *Barangay 6*, Poblacion, General Macarthur, Eastern Samar, for one year before 14 May 2007, and was not a permanent resident or immigrant of any foreign country. While Ty may have applied for the reacquisition of his Philippine citizenship, he never actually resided in *Barangay 6*, Poblacion, General Macarthur, Eastern Samar, for a period of one year immediately preceding the date of election as required under Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991. In fact, even after filing his application for reacquisition of his Philippine citizenship, Ty continued to make trips to the USA, the most recent of which was on 31 October 2006 lasting until 20 January 2007. Moreover, although Ty already took his Oath of Allegiance to the Republic of the Philippines, he continued to comport himself as an American citizen as proven by his travel records. He had also failed to renounce his foreign citizenship as required by Republic Act No. 9225, otherwise known as the Citizenship Retention and Reacquisition Act of 2003, or related laws. Hence, Japzon prayed for in his Petition that the COMELEC order the disqualification of Ty from running for public office and the cancellation of the latter's Certificate of Candidacy.

In his Answer^[6] to Japzon's Petition in SPA No. 07-568, Ty admitted that he was a natural-born Filipino who went to the USA to work and subsequently became a naturalized American citizen. Ty claimed, however, that prior to filing his Certificate of Candidacy for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, on 28 March 2007, he already performed the following acts: (1) with the enactment of Republic Act No. 9225, granting dual citizenship to natural-born Filipinos, Ty filed with the Philippine Consulate General in Los Angeles, California, USA, an application for the reacquisition of his Philippine citizenship; (2) on 2 October 2005, Ty executed an Oath of Allegiance to the Republic of the Philippines before Noemi T. Diaz, Vice Consul of the Philippine Consulate General in Los Angeles, California, USA; (3) Ty applied for a Philippine passport indicating in his application that his residence in the Philippines was at A. Mabini St., *Barangay 6*, Poblacion, General Macarthur, Eastern Samar. Ty's application was approved and he was issued on 26 October 2005 a Philippine passport; (4) on 8 March 2006, Ty personally secured and signed his Community Tax Certificate (CTC) from the Municipality of General Macarthur, in which he stated that his address was at *Barangay 6*, Poblacion, General Macarthur, Eastern Samar; (5) thereafter, on 17 July 2006, Ty was registered as a voter in Precinct 0013A, *Barangay 6*, Poblacion, General Macarthur, Eastern Samar; (6) Ty secured another CTC dated 4 January 2007 again stating therein his address as *Barangay 6*, Poblacion, General Macarthur, Eastern Samar; and (7) finally, Ty executed on 19 March 2007 a duly notarized Renunciation of Foreign Citizenship. Given the aforementioned facts, Ty argued that he had reacquired his Philippine citizenship and renounced his American citizenship, and he had been a resident of the Municipality of General Macarthur, Eastern Samar, for more than one year prior to the 14 May 2007 elections. Therefore, Ty sought the dismissal of Japzon's Petition in SPA No. 07-568.

Pending the submission by the parties of their respective Position Papers in SPA No. 07-568, the 14 May 2007 elections were already held. Ty acquired the highest number of votes and was declared Mayor of the Municipality of General Macarthur, Eastern Samar, by the Municipal Board of Canvassers on 15 May 2007.^[7]

Following the submission of the Position Papers of both parties, the COMELEC First Division rendered its Resolution^[8] dated 31 July 2007 in favor of Ty.

The COMELEC First Division found that Ty complied with the requirements of Sections 3 and 5 of Republic Act No. 9225 and reacquired his Philippine citizenship, to wit:

Philippine citizenship is an indispensable requirement for holding an elective public office, and the purpose of the citizenship qualification is none other than to ensure that no alien, *i.e.*, no person owing allegiance to another nation, shall govern our people and our country or a unit of territory thereof. Evidences revealed that [Ty] executed an **Oath of Allegiance** before Noemi T. Diaz, Vice Consul of the Philippine Consulate General, Los Angeles, California, U.S.A. on October 2, 2005 and executed a **Renunciation of Foreign Citizenship** on March 19, 2007 in compliance with R.A. [No.] 9225. Moreover, neither is [Ty] a candidate for or occupying public office nor is in active service as commissioned or non-commissioned officer in the armed forces in the country of which he was naturalized citizen.^[9]

The COMELEC First Division also held that Ty did not commit material misrepresentation in stating in his Certificate of Candidacy that he was a resident of *Barangay 6, Poblacion, General Macarthur, Eastern Samar*, for at least one year before the elections on 14 May 2007. It reasoned that:

Although [Ty] has lost his domicile in [the] Philippines when he was naturalized as U.S. citizen in 1969, the reacquisition of his Philippine citizenship and subsequent acts thereof proved that he has been a resident of *Barangay 6, Poblacion, General Macarthur, Eastern Samar* for at least one (1) year before the elections held on 14 May 2007 as he represented in his certificate of candidacy[.]

As held in *Coquilla vs. Comelec*:

"The term 'residence' is to be understood not in its common acceptation as referring to 'dwelling' or 'habitation,' but rather to 'domicile' or legal residence, that is, 'the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (animus manendi).' A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice).

In the case at bar, petitioner lost his domicile of origin in Oras by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on and until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien.

Indeed, residence in the United States is a requirement for naturalization as a U.S. citizen. Title 8, §1427(a) of the United States Code provides:

Requirements of naturalization: Residence

(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) year immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3)

during all period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (Emphasis added)

In *Caasi v. Court of Appeals*, this Court ruled that **immigration to the United States by virtue of a 'greencard,' which entitles one to reside permanently in that country, constitutes abandonment of domicile in the Philippines. With more reason than does naturalization in a foreign country result in an abandonment of domicile in the Philippines.**

Records showed that after taking an Oath of Allegiance before the Vice Consul of the Philippine Consulate General on October 2, 2005, [Ty] applied and was issued a Philippine passport on October 26, 2005; and secured a community tax certificate from the Municipality of General Macarthur on March 8, 2006. Evidently, [Ty] was already a resident of Barangay 6, Poblacion, General Macarthur, Eastern Samar for more than one (1) year before the elections on May 14, 2007.^[10] (Emphasis ours.)

The dispositive portion of the 31 July 2007 Resolution of the COMELEC First Division, thus, reads:

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.^[11]

Japzon filed a Motion for Reconsideration of the foregoing Resolution of the COMELEC First Division. On 28 September 2007, the COMELEC *en banc* issued its Resolution^[12] denying Japzon's Motion for Reconsideration and affirming the assailed Resolution of the COMELEC First Division, on the basis of the following ratiocination:

We have held that a Natural born Filipino who obtains foreign citizenship, and subsequently spurns the same, is by clear acts of repatriation a Filipino Citizen and hence qualified to run as a candidate for any local post.

x x x x

It must be noted that absent any showing of irregularity that overturns the prevailing status of a citizen, the presumption of regularity remains. Citizenship is an important aspect of every individual's constitutionally granted rights and privileges. This is essential in determining whether one has the right to exercise pre-determined political rights such as the right to vote or the right to be elected to office and as such rights spring from citizenship.

Owing to its primordial importance, it is thus presumed that every person is a citizen of the country in which he resides; that citizenship once granted is presumably retained unless voluntarily relinquished; and that the burden rests upon who alleges a change in citizenship and allegiance

to establish the fact.

Our review of the Motion for Reconsideration shows that it does not raise any new or novel issues. The arguments made therein have already been dissected and expounded upon extensively by the first Division of the Commission, and there appears to be no reason to depart from the wisdom of the earlier resolution. We thus affirm that [Ty] did not commit any material misrepresentation when he accomplished his Certificate of Candidacy. The only ground for denial of a Certificate of Candidacy would be when there was material misrepresentation meant to mislead the electorate as to the qualifications of the candidate. There was none in this case, thus there is not enough reason to deny due course to the Certificate of Candidacy of Respondent James S. Ty.^[13]

Failing to obtain a favorable resolution from the COMELEC, Japzon proceeded to file the instant Petition for *Certiorari*, relying on the following grounds:

A. THE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY, WHIMSICALLY AND WANTONLY DISREGARDED THE PARAMETERS SET BY LAW AND JURISPRUDENCE FOR THE ACQUISITION OF A NEW DOMICILE OF CHOICE AND RESIDENCE.^[14]

B. THE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY, WHIMSICALLY AND WANTONLY REFUSED TO CANCEL [TY'S] CERTIFICATE OF CANDIDACY, AND CONSEQUENTLY DECLARE [JAPZON] AS THE DULY ELECTED MAYOR OF GEN. MACARTHUR, EASTERN SAMAR.^[15]

Japzon argues that when Ty became a naturalized American citizen, he lost his domicile of origin. Ty did not establish his residence in the Municipality of General Macarthur, Eastern Samar, Philippines, just because he reacquired his Philippine citizenship. The burden falls upon Ty to prove that he established a new domicile of choice in General Macarthur, Eastern Samar, a burden which he failed to discharge. Ty did not become a resident of General Macarthur, Eastern Samar, by merely executing the Oath of Allegiance under Republic Act No. 9225.

Therefore, Japzon asserts that Ty did not meet the one-year residency requirement for running as a mayoralty candidate in the 14 May 2007 local elections. The one-year residency requirement for those running for public office cannot be waived or liberally applied in favor of dual citizens. Consequently, Japzon believes he was the only remaining candidate for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, and is the only placer in the 14 May 2007 local elections.

Japzon prays for the Court to annul and set aside the Resolutions dated 31 July 2007 and 28 September 2007 of the COMELEC First Division and *en banc*, respectively; to issue a new resolution denying due course to or canceling Ty's Certificate of Candidacy; and to declare Japzon as the duly elected Mayor of the Municipality of General Macarthur, Eastern Samar.