

## EN BANC

[ G.R. No. 179851, April 18, 2008 ]

### **MAYOR JOSE UGDORACION, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND EPHRAIM M. TUNGOL, RESPONDENTS.**

#### **DECISION**

##### **NACHURA, J.:**

At bar is a petition for *certiorari* and prohibition under Rule 64 of the Rules of Court filed by petitioner Jose Ugdoracion, Jr., pursuant to Article IX-A, Section 7 of the Constitution, challenging the May 8, 2007 and September 28, 2007 Resolutions<sup>[1]</sup> of the public respondent Commission on Elections (COMELEC) First Division and *En Banc*, respectively.

The facts:

Ugdoracion and private respondent, Ephraim Tungol, were rival mayoralty candidates in the Municipality of Albuquerque, Province of Bohol in the May 14, 2007 elections. Both filed their respective Certificates of Candidacy (COC).

On April 11, 2007, Tungol filed a Petition to Deny Due Course or Cancel the Certificate of Candidacy of Jose Ugdoracion, Jr., contending that Ugdoracion's declaration of eligibility for Mayor constituted material misrepresentation because Ugdoracion is actually a "green card" holder or a permanent resident of the United States of America (USA). Specifically, Ugdoracion stated in his COC that he had resided in Albuquerque, Bohol, Philippines for forty-one years before May 14, 2007 and he is not a permanent resident or an immigrant to a foreign country.

It appears that Ugdoracion became a permanent resident of the USA on September 26, 2001. Accordingly, the United States Immigration and Naturalization Services<sup>[2]</sup> (USINS) issued him Alien Number 047-894-254.<sup>[3]</sup>

For his part, Ugdoracion argued that, in our jurisdiction, domicile is equivalent to residence, and he retained his domicile of origin (Albuquerque, Bohol) notwithstanding his ostensible acquisition of permanent residency in the USA. Ugdoracion then pointed to the following documents as proof of his substantial compliance with the residency requirement: (1) a residence certificate dated May 5, 2006; (2) an application for a new voter's registration dated October 12, 2006; and (3) a photocopy of Abandonment of Lawful Permanent Resident Status dated October 18, 2006.

On May 8, 2007, the COMELEC First Division promulgated one of the herein questioned resolutions canceling Ugdoracion's COC and removing his name from the certified list of candidates for the position of Mayor of Albuquerque, Bohol. Posthaste, on May 11, 2007, Ugdoracion filed a motion for reconsideration of the

aforesaid resolution arguing in the main that his status as a "green card" holder was not of his own making but a mere offshoot of a petition filed by his sister. He admitted his intermittent travels to the USA, but only to visit his siblings, and short working stint thereat to cover his subsistence for the duration of his stay.

In yet another setback, the COMELEC *En Banc* issued the other questioned resolution denying Ugdooracion's motion for reconsideration and affirming the First Division's finding of material misrepresentation in Ugdooracion's COC.

Hence, this petition imputing grave abuse of discretion to the COMELEC. Subsequently, Tungol and the COMELEC filed their respective Comments<sup>[4]</sup> on the petition. On March 7, 2008, Ugdooracion filed an Extremely Urgent Motion to Reiterate Issuance of an Injunctive Writ.<sup>[5]</sup> On March 11, 2008, we issued a *Status Quo* Order. The next day, March 12, 2008, Ugdooracion filed a Consolidated Reply to respondents' Comments.

Ugdooracion's argument focuses on his supposed involuntary acquisition of a permanent resident status in the USA which, as he insists, did not result in the loss of his domicile of origin. He bolsters this contention with the following facts:

1. He was born in Albuquerque, Bohol, on October 15, 1940 and as such, is a natural-born Filipino citizen;
2. He was baptized in the Catholic Church of Sta. Monica Paris in Albuquerque, Bohol on February 2, 1941;
3. He was raised in said municipality;
4. He grew up in said municipality;
5. He raised his own family and established a family home thereat;
6. He served his community for twelve (12) years and had been the former Mayor for three (3) terms;
7. From 1986 to 1988, he was appointed as Officer-in-Charge;
8. He ran for the same position in 1988 and won;
9. He continued his public service as Mayor until his last term in the year 1998;
10. After his term as Mayor, he served his people again as Councilor;
11. He built his house at the very place where his ancestral home was situated;
12. He still acquired several real properties at the same place;
13. He never lost contact with the people of his town; and

14. He secured a residence certificate on May 5, 2006 at Western Poblacion, Albuquerque, Bohol and faithfully paid real property taxes.<sup>[6]</sup>

The sole issue for our resolution is whether the COMELEC committed grave abuse of discretion in canceling Ugdoracion's COC for material misrepresentation. Essentially, the issue hinges on whether the representations contained in Ugdoracion's COC, specifically, that he complied with the residency requirement and that he does not have "green card" holder status, are false.

We find no grave abuse of discretion in the COMELEC's cancellation of Ugdoracion's COC for material misrepresentation. Accordingly, the petition must fail.

Section 74, in relation to Section 78 of the Omnibus Election Code, in unmistakable terms, requires that the facts stated in the COC must be true, and any false representation therein of a material fact shall be a ground for cancellation thereof, thus:

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.**

x x x x

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 contemplated by Section 78 of the Code pertains to material fact, and is not simply an innocuous mistake. A material fact refers to a candidate's qualification for elective office such as one's citizenship and residence.<sup>[7]</sup> Our holding in *Salcedo II v. COMELEC*<sup>[8]</sup> reiterated in *Lluz v. COMELEC*<sup>[9]</sup> is instructive, thus:

In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to Section 78. x x x

x x x x

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain[s] to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate-- the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the court has interpreted this phrase in a line of decisions applying Section 78 of [B.P. 881].

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer[s] to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in [the] certificate of candidacy are grave--to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office.

Viewed in this light, the question posed by Ugdoracion is hardly a novel one.

Ugdoracion urges us, however, that he did not lose his domicile of origin because his acquisition of a "green card" was brought about merely by his sister's petition. He maintains that, except for this unfortunate detail, all other facts demonstrate his retention of residence in Albuquerque, Bohol. Believing in the truth of these circumstances, he simply echoed in his COC a truthful statement that he is a resident of Albuquerque, Bohol, and, therefore, eligible and qualified to run for Mayor thereof.

We are not convinced. Ugdoracion's assertions miss the mark completely. The dust had long settled over the implications of a "green card" holder status on an elective official's qualification for public office. We ruled in *Caasi v. Court of Appeals*<sup>[10]</sup> that a Filipino citizen's acquisition of a permanent resident status abroad constitutes an abandonment of his domicile and residence in the Philippines. In short, the "green card" status in the USA is a renunciation of one's status as a resident of the