

EN BANC

[G.R. No. 179413, November 28, 2008]

PRISCILA R. JUSTIMBASTE, PETITIONER, VS. COMMISSION ON ELECTIONS AND RUSTICO B. BALDERIAN, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

On challenge *via* Certiorari and Prohibition is the Commission on Elections (COMELEC) *en banc* Resolution of August 21, 2007^[1] affirming the May 28, 2007^[2] Resolution of its Second Division dismissing the petition for disqualification filed by Priscila R. Justimbaste (petitioner) against Rustico B. Balderian (private respondent).

Gathered from the records of the case are the following antecedent facts:

On April 3, 2007, petitioner filed with the Office of the Leyte Provincial Election Supervisor a petition to disqualify private respondent as a candidate for mayor of Tabontabon, Leyte during the May 14, 2007 elections. In the main, petitioner alleged:

2.3. That the Respondent committed **falsification** and **misinterpretation** in his application for candidacy for mayor as follows;

- a. That while Respondent stated in the application [that] his name is Rustico Besa Balderian, his real name is CHU TECK SIAO as shown in the Certificate of Birth issued by the National Statistic Office, copy of which is hereto attached as "Annex B". (*sic*)
- b. That the Respondent had been using as his middle name BESA, while his brother Bienvenido is using the middle name SIAO, as shown by "Annexes C and D", a copy of which [is] hereto attached, thereby confusing the public as to his identity.
- c. That the Respondent is **reportedly** a U.S. citizen or Permanent resident of the United States and has not **reportedly** relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis and underscoring supplied)^[3]

Private respondent denied petitioner's allegations, he asserting that he is a Filipino citizen.

In her Position Paper filed before the COMELEC, petitioner attached a record of private respondent's travels from 1998 to 2006, as certified by the Bureau of Immigration;^[4] a photocopy of private respondent's Philippine Passport^[5] issued on

November 6, 2002 by the Philippine Consulate in Los Angeles which shows his nationality as a Filipino; a Certification from the National Statistics Office dated April 4, 2007 for one Rustico S. Balderian^[6] and another for one Rustico B. Balderian;^[7] a Certification from the Office of the Civil Registrar of Tabontabon dated March 30, 2007 as to the fact of birth of one Chu Teck Siao to Peter Siao and Zosima Balderian;^[8] and a Certification from the Office of the Clerk of Court of the Regional Trial Court, Tacloban City that the records of the Petition for Change of Name of private respondent "is (sic) not available in the records of this office."^[9]

In the meantime, private respondent won and was proclaimed as mayor of Tabontabon.

By Resolution of May 28, 2007, the Second Division of the COMELEC denied the petition for disqualification, disposing as follows:

WHEREFORE, premises considered the instant petition for disqualification is denied and the respondent Rustico B. Balderian is considered a Filipino, having elected to be and is thus qualified to run as Mayor of the Municipality of Tabontabon, Leyte. (Emphasis and underscoring supplied)

As reflected early on, petitioner's Motion for Reconsideration of the COMELEC Second Division Resolution was denied by the *banc*, hence, the present petition.

The issue in the main is whether private respondent committed **material** misrepresentation and falsification in his certificate of candidacy.

Section 74 of the Omnibus Election Code (OEC) provides that the contents of the certificate of candidacy must be true to the best of the candidate's knowledge, 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. (Emphasis and underscoring supplied)

If the certificate contains a material representation which is false, Section 78 provides the procedure to challenge the same, thus:

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. (Emphasis and underscoring supplied)

Material misrepresentation as a ground to deny due course or cancel a certificate of candidacy refers to the **falsity of a statement required to be entered therein**, as enumerated in above-quoted Section 74 of the Omnibus Election Code. Concurrent with materiality is a **deliberate intention to deceive** the electorate as to one's qualifications. Thus *Salcedo II v. Commission on Elections*^[10] reiterates:

As stated in law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein **pertained 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.^[11]

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code **refers to the 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 his certificate of candidacy are grave - to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of 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.^[12]

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. x x x^[13] (Emphasis and underscoring supplied)

The pertinent provision of Republic Act No. 7160 or the Local Government Code (LGC) governing qualifications for **elective municipal officials**^[14] reads:

SEC. 39. **Qualifications.** - (a) An elective local official must be a **citizen of the Philippines**; a registered voter in the barangay, municipality, city or province or in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any local language or dialect.

(b) Candidates for the position of governor, vice-governor or member of the sangguniang panlalawigan or mayor, vice mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty three (23) years of age on election day."

x x x x (Emphasis in the original; underscoring supplied)

Petitioner asserts that private respondent committed material misrepresentation when he stated in his certificate of candidacy that he is a Filipino citizen and that his name is Rustico Besa Balderian, instead of Chu Teck Siao. Further, petitioner asserts that the immigration records of private respondent who frequently went to the United States from 1998 up to 2006 reflected the acronyms "BB" and "RP" which petitioner takes to STAND FOR "*Balikbayan*" and "Re-entry Permit," thus showing that private respondent either harbors dual citizenship or is a permanent resident of a foreign country in contravention of Section 40 of the LGC:

Sec. 40. **Disqualifications.** - The following persons are disqualified from running for any elective local position:

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted of final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;**
- (e) Fugitives from justice in criminal or non-political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code;** and
- (g) The insane or feeble-minded. (Emphasis in the original and supplied)

Upon the other hand, private respondent insists on his Filipino citizenship.

Republic Act 6768^[15] provides that a *balikbayan* is

1. A Filipino citizen who has been continuously out of the Philippines for a period of at least one year;
2. A Filipino overseas worker; or
3. A former Filipino citizen and his or her family, who had been naturalized in a foreign country and comes or returns to the Philippines.

Re-entry permits are, under the Philippine Immigration Act, issued to lawful resident aliens who depart temporarily from the Philippines.^[16]

The record of the case yields no concrete proof to show that private respondent,

who holds a Philippine passport, falls under the third category of a *balikbayan* (former Filipino citizen).

As noted by public respondent:

[T]he Commission (Second Division) dismissed the instant petition since the same was based on mere conjectures and surmises. Petitioner never presented clear and convincing evidence that respondent is indeed an American citizen and a permanent resident of the United States of America. (Emphasis and underscoring supplied)

As in petitioner's petition before the COMELEC, as alleged above, she, in her present Petition, is uncertain of private respondent's citizenship or resident status, viz:

c. That the Respondent is **reportedly a US citizen or Permanent resident of the United States** and has not **reportedly** relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis, italics, and underscoring supplied)^[17]

Private respondent's notarized photocopy of his Philippine Passport^[18] issued in 2002, the genuineness and authenticity of which is not disputed by petitioner, shows that he is a Filipino.

Petitioner insists, however, that private respondent is a Chinese national, following the nationality of his father, Peter Siao. There are, however, conflicting documentary records bearing on the citizenship of private respondent's father. Thus, in the Certificate of Live Birth of private respondent on file at the Local Civil Registrar of Tabontabon,^[19] the father is registered as a Filipino. But in the Certificate of Live Birth of private respondent's older brother Bienvenido Balderian,^[20] the father is registered as a Chinese.

In private respondent's Certificate of Live Birth, the entry on the date, as well as the place of marriage of private respondents' parents, reads "no data available." In his brother's Certificate of Live Birth, the entry on the same desired information is left blank. In light of these, absent any proof that private respondent's parents Peter Siao and Zosima Balderian^[21] contracted marriage, private respondent is presumed to be illegitimate, hence, he follows the citizenship of his mother who is a Filipino.^[22] As will be reflected shortly, private respondent was, in a certified true copy of a decision dated August 26, 1976 rendered by then Juvenile and Domestic Relations Court (JDRC) of Leyte and Southern Leyte, therein noted, as gathered by the said court from the evidence presented, to be an illegitimate child.

Petitioner goes on to bring attention to private respondent's filing of a petition for change of name from Chu Teck Siao to Rustico B. Balderian, which petition, petitioner alleges, is not reflected in the records of the National Statistics Office as shown by two Certifications from the said agency.

Responding, private respondent confirms that he indeed filed a verified petition for change of name in 1976, docketed as SP Proc. JP-0121, with the then JDRC of Leyte and Southern Leyte which rendered a decision in his favor in the same year. He adds that his previous counsel, Atty. Rufino Reyes, sought in 1986 to secure a