

SECOND DIVISION

[G.R. NO. 150477, February 28, 2005]

**LAZARO C. GAYO, PETITIONER, VS. VIOLETA G. VERCELES,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Regional Trial Court (RTC), Agoo, La Union, Branch 32, in EPC A-07, dismissing a petition for *quo warranto* filed by petitioner Lazaro C. Gayo to declare as null and void the proclamation of respondent Violeta G. Verceles as Mayor of the Municipality of Tubao, La Union, during the May 14, 2001 elections.

This case proceeded from the following antecedents:

Sometime in 1977, the respondent migrated to the United States of America (U.S.A.) with her family to look for greener pastures. Although her husband was granted American citizenship, she retained her citizenship as a Filipino.^[2] In 1993, she returned to the Philippines for good. The following year, she was appointed as Treasurer of the B.P. Verceles Foundation^[3] and regularly attended the meetings of its Board of Directors.^[4]

In 1995, the respondent registered herself as a voter of Precinct No. 16 in Tubao, La Union.^[5] As certified by the Assistant Revenue District Officer, Revenue District No. 3 of the Bureau of Internal Revenue (BIR) in San Fernando City, the respondent also filed her income tax returns for the taxable years 1996 and 1997.^[6] Between the years 1993 to 1997, the respondent would travel to the U.S.A. to visit her children.^[7]

The respondent abandoned her status as lawful permanent resident of the U.S.A. effective November 5, 1997 for the purpose of filing her candidacy for Mayor of Tubao, La Union in the May 11, 1998 elections. On January 28, 1998, she surrendered her alien registration receipt card before the Immigration and Naturalization Service of the American Embassy in Manila.^[8]

The respondent ran in the May 11, 1998 elections and was elected Mayor of Tubao, La Union.

Thereafter, during the May 14, 2001 elections, the petitioner ran for re-election and won. She was proclaimed as the duly-elected Mayor on May 16, 2001.^[9]

On May 26, 2001, the petitioner, also a candidate for Mayor during the May 2001 elections, filed a petition for *quo warranto* with the RTC of Agoo, La Union. He

prayed that (a) the respondent be declared disqualified to hold the position of Mayor of Tubao, La Union; (b) the respondent's proclamation as winner be declared null and void; and (c) the petitioner be proclaimed as the duly-elected mayor.

In her Answer, the respondent argued that she had clearly and unequivocally shown, through direct and positive acts, that she already renounced and waived her right to permanently reside in the U.S.A. even before she surrendered her "green card" in 1998. As a counterclaim, she prayed for the payment of attorney's fees and litigation expenses, moral damages, and exemplary damages.

On October 12, 2001, the RTC rendered a Decision^[10] dismissing the petition for *quo warranto*. The RTC ruled that the respondent was qualified to occupy the position as Municipal Mayor.

The RTC held that the respondent's act of registration as a voter, or of filing an income tax return, does not constitute an abandonment or waiver of her status as a permanent resident of the U.S.A.^[11] Nonetheless, it declared that the respondent was no longer such permanent resident during the May 2001 elections because she had already waived her green card even prior to the filing of her certificate of candidacy when she first ran for mayor in the 1998 elections.^[12] The RTC held that the waiver of the status as a permanent resident under Sec. 68(e)^[13] of the Omnibus Election Code is still effective. It ruled that Sec. 40(f)^[14] of the Local Government Code (LGC) of 1991 did not repeal Sec. 68(e). For one, there is nothing in the repealing clause of the LGC that indicates an intention to repeal or modify the Omnibus Election Code.^[15] Moreover, the two provisions are not inconsistent with each other. In fact, Section 68(e) of the Omnibus Election Code complements Section 40(f) of the LGC, in the sense that the former may supply the condition when permanent residents may be qualified to run for public office.^[16]

Dissatisfied, the petitioner filed this petition for review based on the following ground:

THE TRIAL COURT HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND CONTRAVENED APPLICABLE LAW AND JURISPRUDENCE IN DISMISSING THE PETITION DESPITE PRESENCE OF LEGAL GROUND FOR ITS GRANT.^[17]

The fundamental issue in this case is whether or not the respondent was able to meet the residency requirement for the position of municipal mayor during the May 2001 elections.

Before ruling on the substantive issues of the case, we note that the petitioner filed a petition for review on certiorari with this Court under Rule 45 of the Rules of Court. While a petition for review on certiorari under Rule 45 may be filed with this Court to assail the decision of the RTC on questions of law, the rule is that the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.^[18] The Court notes that the petitioner has not relied on any such exceptional circumstances.

The remedy of the petitioner was to appeal the decision to the Court of Appeals (CA) *via* a writ of error under Rule 41 of the Revised Rules of Civil Procedure. Section 2(a) of Rule 41 provides for the appeal to the CA of cases decided by the RTC in the exercise of its original jurisdiction. The petition for *quo warranto* in this case was filed with and decided by the RTC in its original jurisdiction; hence, the remedy of the petitioner was to appeal by writ of error to the CA.

We also note that the contested term of office, which commenced on June 30, 2001, lasted only until June 30, 2004. This petition, thus, has become moot and academic insofar as it concerns the petitioner's right to the mayoralty seat in his municipality. [19] For this reason, we resolve to accept the appeal and consider the case on the merits. Further, as we have previously ruled, Courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review and if it will aid in fostering free, orderly, and peaceful elections. [20]

The issue in this case involves one of the essential qualifications for running for public office, that is, the one-year residency requirement prescribed under Section 39 of the LGC, thus:

SECTION 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.

In interpreting this requirement, our ruling in *Papandayan, Jr. v. Commission on Elections* [21] is instructive, thus:

The term "residence," as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. ... [22]

More recently in *Coquilla v. Commission on Elections*, [23] we further clarified the meaning of the term, and held as follows:

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 (*sic*) until the same is abandoned by acquisition of new domicile (domicile of choice). [24]

In *Caasi v. Court of Appeals*, [25] we held that a Filipino citizen's immigration to a foreign country constitutes an abandonment of his domicile and residence in the

Philippines. In other words, the acquisition of a permanent residency status in a foreign country constitutes a renunciation of the status as a resident of the Philippines. On the other hand, the Court explained in another case^[26] that a new domicile is reacquired if the following conditions concur:

... (1) [R]esidence or bodily presence in the new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.^[27]

Applying case law to the present case, it can be said that the respondent effectively abandoned her residency in the Philippines by her acquisition of the status of a permanent U.S. resident. Nonetheless, we find that the respondent reacquired her residency in the Philippines even before the holding of the May 2001 elections. The records show that she surrendered her green card to the Immigration and Naturalization Service of the American Embassy way back in 1998. By such act, her intention to abandon her U.S. residency could not have been made clearer. Moreover, when she decided to relocate to the Philippines for good in 1993, she continued living here and only went to the U.S.A. on periodic visits to her children who were residing there. Moreover, she was elected Mayor in the 1998 elections and served as such for the duration of her term. We find such acts sufficient to establish that the respondent intended to stay in the Philippines indefinitely and, ultimately, that she has once again made the Philippines her permanent residence. As we ruled in *Perez v. Commission on Elections*:^[28]

When the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected. In this case, considering the purpose of the residency requirement, *i.e.*, to ensure that the person elected is familiar with the needs and problems of his constituency, there can be no doubt that private respondent is qualified, having been governor of the entire province of Cagayan for ten years immediately before his election as Representative of that province's Third District.^[29]

The petitioner posits that, under existing law, the waiver of the status as a permanent resident of a foreign country is no longer allowed to cure the disqualification, in case of permanent residents abroad. He argues that the prevailing law is the LGC of 1991 which impliedly repealed Sec. 68 of the Omnibus Election Code for being inconsistent. He asserts that the inconsistency lies in the fact that Section 40(f) of the LGC does not provide for the waiver of the status as permanent residents in a foreign country which, on the other hand, is provided under Section 68 of the Omnibus Election Code. He contends that under Section 40(f) of the LGC, permanent residents or those who have acquired the right to reside abroad and continue to avail of the same right even after the effectivity of the law on January 1, 1992, are disqualified from running for any local elective position. Hence, the petitioner argues, since the respondent continued to avail of the right to reside permanently in the U.S.A. until 1997, the respondent was disqualified from running for mayor during the May 2001 elections.