

EN BANC

[G.R. No. 163256, November 10, 2004]

CICERON P. ALTAREJOS, PETITIONER, VS. COMMISSION ON ELECTIONS, JOSE ALMIÑE AND VERNON VERSOZA, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for *certiorari*, with prayer for the issuance of a temporary restraining order and/or a writ of prohibitory and mandatory injunction, to set aside the Resolution promulgated by the Commission on Elections (COMELEC), First Division, on March 22, 2004 disqualifying petitioner Ciceron P. Altarejos from running as mayor of San Jacinto, Masbate, and another resolution of the COMELEC *en banc* promulgated on May 7, 2004 denying petitioner's motion for reconsideration.

The factual antecedents are as follows:

Petitioner Altarejos was a candidate for mayor in the Municipality of San Jacinto, Masbate in the May 10, 2004 national and local elections.

On January 15, 2004, private respondents Jose Almiñe Altiche and Vernon Versoza, registered voters of San Jacinto, Masbate, filed with the COMELEC, a petition to disqualify and to deny due course or cancel the certificate of candidacy of petitioner on the ground that he is not a Filipino citizen and that he made a false representation in his certificate of candidacy that "[he] was not a permanent resident of or immigrant to a foreign country."

Private respondents alleged that based on a letter^[1] from the Bureau of Immigration dated June 25, 2001, petitioner was a holder of a permanent U.S. resident visa, an Alien Certificate of Registration No. E139507 issued on November 3, 1997, and an Immigration Certificate of Residence No. 320846 issued on November 3, 1997 by the Bureau of Immigration.^[2]

On January 26, 2004, petitioner filed an Answer^[3] stating, among others, that he did not commit false representation in his application for candidacy as mayor because as early as December 17, 1997, he was already issued a Certificate of Repatriation by the Special Committee on Naturalization, after he filed a petition for repatriation pursuant to Republic Act No. 8171. Thus, petitioner claimed that his Filipino citizenship was already restored, and he was qualified to run as mayor in the May 10, 2004 elections. Petitioner sought the dismissal of the petition.

On the date of the hearing, the parties were required to submit their Memoranda within three days. Private respondents filed their Memorandum, while petitioner did

not file one within the required period.^[4] Petitioner, however, filed a Reply Memorandum^[5] subsequently.

Atty. Zacarias C. Zaragoza, Jr., regional election director for Region V and hearing officer of this case, recommended that petitioner Altarejos be disqualified from being a candidate for the position of mayor of San Jacinto, Masbate in the May 10, 2004 national and local elections. He found, thus:

x x x

The provisions of law governing the qualifications and disqualifications of elective local officials are found in Sections 39 and 40 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991, which provide as follows:

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 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 other local language or dialect.

xxx.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities or municipalities must be at least twenty-one (21) years of age on election day.

[SEC. 40. *Disqualifications.* – The following persons are disqualified from running for any elective position:]

xxx.

(d) Those with dual citizenship.

xxx.

(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; xxx

Under the terms of the above quoted statutory provisions, it is required that an elective local official must be a citizen of the Philippines, and he must not have a dual citizenship; must not be a permanent resident in a foreign country or must not have acquired the right to reside abroad.

In the present case, it has been established by clear and convincing evidence that respondent is a citizen of the United States of America.

Such fact is proven by his Alien Certificate of Registration (ACR) No. E139507 issued on 3 November 1997 and Immigration Certificate of Residence (ICR) with No. 320846 issued on 3 November 1997 by the Alien Registration Division, Bureau of Immigration and Deportation. This was further confirmed in a letter dated 25 June 2001 of then Commissioner ANDREA D. DOMINGO of the Bureau of Immigration and Deportation.

Although respondent had petitioned for his repatriation as a Filipino citizen under Republic Act No. 8171 on 17 December 1997, this did not restore to respondent his Filipino citizenship, because Section 2 of the aforementioned Republic Act No. 8171 specifically provides that **“repatriation shall be effected by taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper civil registry and in the Bureau of Immigration.”**

It appears from the records of this case that respondent failed to prove that he has fully complied with requirements of the above-quoted Section 2 of Republic Act 8171 to perfect his repatriation and reacquire his Filipino citizenship. Respondent has not submitted any document to prove that he has taken his oath of allegiance to the Republic of the Philippines and that he has registered his fact of repatriation in the proper civil registry and in the Bureau of Immigration. In fact, in a letter date 25 June 2001, Commissioner ANDREA DOMINGO stated that RESPONDENT is still a holder of visa under Section 13 (g) of the Philippine Immigration Act of 1940 as amended, with an indefinite authorized stay in the Philippines, implying that respondent did not register his supposed Certificate of Repatriation with the Bureau of Immigration otherwise his Alien Visa would have already been cancelled. The rule is that in case of doubt concerning the grant of citizenship, such doubt should be resolved in favor of the State and against the applicant (Cheng vs. Republic, L-16999, 22 June 1965).

x x x

Not having been able to prove that he has fully reacquired his Filipino citizenship after being naturalized as a citizen of the United States, it is clear that respondent is not qualified to be candidate for the position of Mayor of San Jacinto, Masbate, in the 10 May 2004 National and Local Elections, pursuant to the aforementioned Sections 39 and 40 of the Local Government Code of 1991.

As a further consequence of his not being a Filipino citizen, respondent has also committed false representation in his certificate of candidacy by stating therein that he is a natural-born Filipino citizen, when in fact, he has not yet even perfected the reacquisition of Filipino citizenship. Such false representation constitutes a material misrepresentation as it relates to his qualification as a candidate for public office, which could be a valid ground for the cancellation of his certificate of candidacy under Section 78 of the Omnibus Election Code x x x. [6]

In its Resolution promulgated on March 22, 2004, the COMELEC, First Division, adopted the findings and recommendation of Director Zaragoza. The dispositive portion of said Resolution stated, thus:

WHEREFORE, premises considered, respondent CICERON PEREZ ALTAREJOS is hereby disqualified to run as Mayor of San Jacinto, Masbate. Accordingly, his certificate of candidacy for the position of Municipal Mayor of San Jacinto, Masbate is denied due course and cancelled and his name deleted from the certified list of candidates for the May 10, 2004 elections.^[7]

On March 25, 2004, petitioner filed a motion for reconsideration and attached the following documents to prove that he had completed all the requirements for repatriation which thus entitled him to run for an elective office, *viz*:

(1) Oath of Allegiance dated December 17, 1997;

(2) Identification Certificate No. 116543 issued by the Bureau of Immigration on March 1, 2004;

(3) Certification from the City Civil Registration Office, Makati City, that the Certificate of Repatriation and Oath of Allegiance of petitioner was received by said office and registered, with the corresponding fee paid, on February 18, 2004;

(4) A letter dated December 17, 1997 from the Special Committee on Naturalization to the Bureau on Immigration and Deportation that it was furnishing said office with the Oath of Allegiance and Certificate of Repatriation of petitioner for the cancellation of petitioner's registration in said office as an alien, and the issuance to him of the corresponding Identification Card as Filipino citizen;

(5) A letter dated December 17, 1997 from the Special Committee on Naturalization to the Local Registrar of San Jacinto, Masbate that it was sending petitioner's Oath of Allegiance and Certificate of Repatriation for registration in their records and for petitioner's reacquisition of his former Philippine citizenship.

On May 7, 2004, the COMELEC *en banc* promulgated a resolution denying the motion for reconsideration, the dispositive portion of which reads:

WHEREFORE, premises considered, the Commission (En Banc) **RESOLVED** as it hereby **RESOLVES** to **DENY** the Motion for Reconsideration for **UTTER LACK OF MERIT** and **AFFIRMS** the Resolution of the First Division.^[8]

The Comelec *en banc* held, thus:

The Comelec Rules of Procedure provides that insufficiency of evidence to justify the decision is a ground for a motion for reconsideration (**Rule 19, Section 1**). The evidence referred to in the above provision and to be considered in the Motion for Reconsideration are those which were submitted during the hearing and attached to the respective Memoranda of the parties which are already part of the records of the case. In this regard, the evidence of the respondent were not able to overcome the evidence of the petitioners.

When the entire records of the case was forwarded to the Commission (First Division) the respondent's **only** evidence was his Certificate of Repatriation dated 17 December 1977 and marked as Annex 1 of his answer. This piece of evidence was not enough to controvert the evidence of the petitioners which consist of the letter of the then Bureau of Immigration Commissioner Andrea Domingo dated 25 June 2001 which stated that as of the even date respondent is a holder of permanent resident visa **(page 15 of the records)** and the certification of Josephine C. Camata dated 28 January 2004 certifying, that the name of the respondent could not be found in the records of repatriation. **(page 42 of the records)** The questioned resolution, is therefore, in order as the evidence submitted by the respondent were insufficient to rebut the evidence of the petitioner.

Now, the respondent, in his Motion for Reconsideration, attempted to introduce to the record new pieces of evidence, which introduction is not anymore allowed in a Motion for Reconsideration. These are the following a) Annex "2" – *Oath of Allegiance*; b) Annex "3" – *Bureau of Immigration Identification Certificate*; c) Annex "4" – *Certification of the City Civil Registrar of Makati City*; d) Annex "5" – *Letter addressed to the Local Civil Registrar of San Jacinto, Masbate by Aurora P. Cortes of Special Committee on Naturalization*; and e) Annex "6" – *Letter addressed to the Bureau of Immigration and Deportation by Aurora P. Cortes of Special Committee on Naturalization*.

Assuming that the new evidence of the respondent are admitted, with more reason should we cancel his certificate of candidacy for his act of [misrepresenting] himself as a Filipino citizen when at the time he filed his certificate of candidacy, he has not yet perfected the process of repatriation. He failed to comply with the requirements under Section 2 of [Republic Act No.] 8171 *which provides that repatriation shall be effected by taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper civil registry and in the Bureau of Immigration.*

The certification was issued by the same Ms. Josephine C. Camata, City Civil Registrar, dated February 18, 2004. This time, she certifies that Ciceron Perez Altarejos was registered under Registry No. 1, Page 19, Book No. 1, Series of 2004 and paid under OR nos. 88325/8833256 dated February 18, 2004. **(page 65 of the records)**. Obviously, he was able to register in the proper civil registry only on February 18, 2004.

The respondent was able to register with the Bureau of Immigration only on March 1, 2004 as evidenced by the Bureau of Immigration Identification Certificate attached to the Motion as Annex "3."

This fact confirms the finding of the Commission (First Division) that at the time respondent filed his certificate of candidacy he is yet to complete the requirement under section two (2) of RA 8171.

As a consequence of not being a Filipino citizen, he has committed false