

## EN BANC

[ G.R. No. 120295, June 28, 1996 ]

**JUAN G. FRIVALDO, PETITIONER, VS. COMMISSION ON ELECTIONS, AND RAUL R. LEE, RESPONDENTS.**

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## D E C I S I O N

### **PANGANIBAN, J.:**

The ultimate question posed before this Court in these twin cases is: Who should be declared the rightful governor of Sorsogon--

(i) Juan G. Frivaldo, who unquestionably obtained the highest number of votes in three successive elections but who was twice declared by this Court to be disqualified to hold such office due to his alien citizenship, and who now claims to have re-assumed his lost Philippine citizenship thru repatriation;

(ii) Raul R. Lee, who was the second placer in the canvass, but who claims that the votes cast in favor of Frivaldo should be considered void; that the electorate should be deemed to have intentionally thrown away their ballots; and that legally, he secured the most number of valid votes; or

(iii) The incumbent Vice-Governor, Oscar G. Deri, who obviously was not voted directly to the position of governor, but who according to prevailing jurisprudence should take over the said post inasmuch as, by the ineligibility of Frivaldo, a "permanent vacancy in the contested office has occurred"?

In ruling for Frivaldo, the Court lays down new doctrines on repatriation, clarifies/reiterates/amplifies existing jurisprudence on citizenship and elections, and upholds the superiority of substantial justice over pure legalisms.

G.R. No. 123755.

This is a special civil action under Rules 65 and 58 of the Rules of Court for certiorari and preliminary injunction to review and annul a Resolution of the respondent Commission on Elections (Comelec), First Division,<sup>[1]</sup> promulgated on December 19, 1995<sup>[2]</sup> and another Resolution of the Comelec en bane promulgated February 23, 1996<sup>[3]</sup> denying petitioner's motion for reconsideration.

The Facts

On March 20, 1995, private respondent Juan G. Frivaldo filed his Certificate of Candidacy for the office of Governor of Sorsogon in the May 8, 1995 elections. On March 23, 1995, petitioner Raul R. Lee, another candidate, filed a petition<sup>[4]</sup> with the Comelec docketed as SPA No. 95-028 praying that Frivaldo "be disqualified from seeking or holding any public office or position by reason of not yet being a citizen of the Philippines," and that his Certificate of Candidacy be cancelled. On May 1, 1995, the Second Division of the Comelec promulgated a Resolution<sup>[5]</sup> granting the petition with the following disposition:<sup>[6]</sup>

"WHEREFORE, this Division resolves to GRANT the petition and declares that respondent is DISQUALIFIED to run for the Office of Governor of Sorsogon on the ground that he is NOT a citizen of the Philippines. Accordingly, respondent's certificate of candidacy is cancelled."

The Motion for Reconsideration filed by Frivaldo remained unacted upon until after the May 8, 1995 elections. So, his candidacy continued and he was voted for during the elections held on said date. On May 11, 1995, the Comelec *en banc*<sup>[7]</sup> affirmed the aforementioned Resolution of the Second Division.

The Provincial Board of Canvassers completed the canvass of the election returns and a Certificate of Votes<sup>[8]</sup> dated May 27, 1995 was issued showing the following votes obtained by the candidates for the position of Governor of Sorsogon:

<b>Antonio H. Escudero, Jr.</b>	51,060
<b>Juan G. Frivaldo</b>	73,440
<b>Raul R. Lee</b>	53,304
<b>Isagani P. Ocampo</b>	1,925

On June 9, 1995, Lee filed in said SPA No. 95-028, a (supplemental) petition<sup>[9]</sup> praying for his proclamation as the duly-elected Governor of Sorsogon.

In an order<sup>[10]</sup> dated June 21, 1995, but promulgated according to the petition "only on June 29, 1995," the Comelec *en banc* directed "the Provincial Board of Canvassers of Sorsogon to reconvene for the purpose of proclaiming candidate Raul Lee as the winning gubernatorial candidate in the province of Sorsogon on June 29, 1995 x x x." Accordingly, at 8:30 in the evening of June 30, 1995, Lee was proclaimed governor of Sorsogon.

On July 6, 1995, Frivaldo filed with the Comelec a new petition,<sup>[11]</sup> docketed as SPC No. 95-317, praying for the annulment of the June 30, 1995 proclamation of Lee and for his own proclamation. He alleged that on June 30, 1995, at 2:00 in the afternoon, he took his oath of allegiance as a citizen of the Philippines after "his petition for repatriation under P.D. 725 which he filed with the Special Committee on Naturalization in September 1994 had been granted." As such, when "the said order (dated June 21, 1995) (of the Comelec) x x x was released and received by Frivaldo on June 30, 1995 at 5:30 o'clock in the evening, there was no more legal

impediment to the proclamation (of Frivaldo) as governor x x x." In the alternative, he averred that pursuant to the two cases of *Labo vs. Comelec*,<sup>[12]</sup> the Vice-Governor-- not Lee -- should occupy said position of governor.

On December 19, 1995, the Comelec First Division promulgated the herein assailed Resolution<sup>[13]</sup> holding that Lee, "not having garnered the highest number of votes," was not legally entitled to be proclaimed as duly-elected governor; and that Frivaldo, "having garnered the highest number of votes, and xxx having reacquired his Filipino citizenship by repatriation on June 30, 1995 under the provisions of Presidential Decree No. 725 xxx (is) qualified to hold the office of governor of Sorsogon"; thus:

"PREMISES CONSIDERED, the Commission (First Division), therefore RESOLVES to GRANT the Petition.

Consistent with the decisions of the Supreme Court, the proclamation of Raul R. Lee as Governor of Sorsogon is hereby ordered annulled, being contrary to law, he not having garnered the highest number of votes to warrant his proclamation.

Upon the finality of the annulment of the proclamation of Raul R. Lee, the Provincial Board of Canvassers is directed to immediately reconvene and, on the basis of the completed canvass, proclaim petitioner Juan G. Frivaldo as the duly elected Governor of Sorsogon having garnered the highest number of votes, and he having reacquired his Filipino citizenship by repatriation on June 30, 1995 under the provisions of Presidential Decree No. 725 and, thus, qualified to hold the office of Governor of Sorsogon.

Conformably with Section 260 of the Omnibus Election Code (B.P. Blg. 881), the Clerk of the Commission is directed to notify His Excellency the President of the Philippines, and the Secretary of the Sangguniang Panlalawigan of the Province of Sorsogon of this resolution immediately upon the due implementation thereof."

On December 26, 1995, Lee filed a motion for reconsideration which was denied by the Comelec *en banc* in its Resolution<sup>[14]</sup> promulgated on February 23, 1996. On February 26, 1996, the present petition was filed. Acting on the prayer for a temporary restraining order, this Court issued on February 27, 1996 a Resolution which *inter alia* directed the parties "to maintain the status quo prevailing prior to the filing of this petition."

#### The Issues in G.R. No. 123755

Petitioner Lee's "position on the matter at hand briefly be capsulized in the following propositions":<sup>[15]</sup>

"First - The initiatory petition below was so far insufficient in form and substance to warrant the exercise by the COMELEC of its jurisdiction with the result that, in effect, the COMELEC acted without jurisdiction in taking cognizance of and deciding said petition;

Second- The judicially declared disqualification of respondent was a continuing condition and rendered him ineligible to run for, to be elected to and to hold the Office of Governor;

Third - The alleged repatriation of respondent was neither valid nor is the effect thereof retroactive as to cure his ineligibility and qualify him to hold the Office of Governor; and

Fourth - Correctly read and applied, the Labo Doctrine fully supports the validity of petitioner's proclamation as duly elected Governor of Sorsogon."

#### G.R. No. 120295

This is a petition to annul three Resolutions of the respondent Comelec, the first two of which are also at issue in G.R. No. 123755, as follows:

1. Resolution<sup>[16]</sup> of the Second Division, promulgated on May 1, 1995, disqualifying Frivaldo from running for governor of Sorsogon in the May 8, 1995 elections "on the ground that he is not a citizen of the Philippines";
2. Resolution<sup>[17]</sup> of the Comelec *en banc*, promulgated on May 11, 1995; and
3. Resolution<sup>[18]</sup> of the Comelec *en banc*, promulgated also on May 11, 1995 suspending the proclamation of, among others, Frivaldo.

#### The Facts and the Issue

The facts of this case are essentially the same as those in G.R. No. 123755. However, Frivaldo assails the above-mentioned resolutions on a different ground: that under Section 78 of the Omnibus Election Code, which is reproduced hereinunder:

"Section 78. Petition to deny due course or to 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 notice and hearing, not later than fifteen days before the election." (Italics supplied.)

the Comelec had no jurisdiction to issue said Resolutions because they were not rendered "within the period allowed by law," i.e., "not later than fifteen days before the election."

Otherwise stated, Frivaldo contends that the failure of the Comelec to act on the petition for disqualification within the period of fifteen days prior to the election as provided by law is a jurisdictional defect which renders the said Resolutions null and void.

By Resolution on March 12, 1996, the Court consolidated G.R. Nos. 120295 and 123755 since they are intimately related in their factual environment and are identical in the ultimate question raised, *viz.*, who should occupy the position of governor of the province of Sorsogon.

On March 19, 1995, the Court heard oral argument from the parties and required them thereafter to file simultaneously their respective memoranda.

### The Consolidated Issues

From the foregoing submissions, the consolidated issues may be restated as follows:

1. Was the repatriation of Frivaldo valid and legal? If so, did it seasonably cure his lack of citizenship as to qualify him to be proclaimed and to hold the Office of Governor? If not, may it be given retroactive effect? If so, from when?
2. Is Frivaldo's "judicially declared" disqualification for lack of Filipino citizenship a continuing bar to his eligibility to run for, be elected to or hold the governorship of Sorsogon?
3. Did the respondent Comelec have jurisdiction over the initiatory petition in SPC No. 95-317 considering that : said petition is not "a pre-proclamation case, an election protest or a *quo warranto* case"?
4. Was the proclamation of Lee, a runner-up in the election, valid and legal in light of existing jurisprudence?
5. Did the respondent Commission on Elections exceed its jurisdiction in promulgating the assailed Resolutions, all of which prevented Frivaldo from assuming the governorship of Sorsogon, considering that they were not rendered within ( the period referred to in Section 78 of the Omnibus Election Code, *viz.*, "not later than fifteen days before the elections"?

### The First Issue: Frivaldo's Repatriation

The validity and effectivity of Frivaldo's repatriation is the *lis mota*, the threshold