



Republic of the Philippines
Supreme Court
Manila

EN BANC

JULIET B. DANO,

Petitioner,

G.R. No. 210200

Present:

- versus -

**COMMISSION ON ELECTIONS and
MARIE KAREN JOY B. DIGAL,**
Respondents.

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,*
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA, and
CAGUIOA, *JJ*.

MARIA EMILY D. DAGAANG,
Petitioner-Intervenor.

Promulgated:

September 13, 2016

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DECISION

SERENO, *CJ*:

This petition for *certiorari*,¹ based on Rules 64 and 65 of the Revised Rules of Court, seeks to annul the following: (1) the Commission on Elections (COMELEC) First Division Resolution² cancelling the Certificate of Candidacy (COC) of petitioner Juliet B. Dano in the election case SPA No. 13-083 (DC); and (2) the COMELEC En Banc Resolution³ denying

* On official leave.

¹ Mistakenly titled "Petition for Review"; *rollo*, p. 3-15.

² Dated 8 May 2013, signed by Presiding Commissioner Lucenito N. Tagle and Commissioners Christian Robert S. Lim and Al A. Pareño; *id.* at 16-23.

³ Dated 20 November 2013, signed by Chairman Sixto Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Pareño, and Luie Tito F. Guia; *id.* at 24-29.

petitioner's Motion for Reconsideration. The crux of the controversy is whether COMELEC committed grave abuse of discretion in concluding that petitioner, a candidate for mayor of Sevilla, Bohol in the elections of 13 May 2013, failed to fulfill the one-year residence requirement laid down by the Local Government Code (LGC).⁴

While this Court was initially divided on whether the evidence presented before COMELEC could sustain the latter's finding of material misrepresentation in petitioner's COC because petitioner had not satisfied the one-year residency requirement in the locality in which she sought to be elected as mayor, there was eventual agreement by its Members, that it is more in keeping with the spirit of the Omnibus Election Code, and in line with jurisprudence relating the definition of "residence" with the concept of *animus manendi et revertendi*, that the Court concludes that COMELEC should have given petitioner sufficient benefit of the doubt, and accorded credit to her allegations and evidence.

We thus resolve to grant the Petition.

FACTS

Petitioner was a natural-born Filipino who hailed from the Municipality of Sevilla, Province of Bohol (Sevilla).⁵ She worked as a nurse in the US and thereafter acquired American citizenship.⁶

On 2 February 2012, she obtained a Community Tax Certificate (CTC) from the municipal treasurer of Sevilla.⁷

On 30 March 2012, she took her Oath of Allegiance before the Vice Consul of the Philippine Consulate in Los Angeles, California.⁸

On 2 May 2012, petitioner went to Sevilla to apply for voter's registration.⁹ Eight days later, she went back to the US and stayed there until 28 September 2012.¹⁰ She claims that she went there to wind up her affairs, particularly to sell her house in Stockton, California, as well as her shares of stock in various companies.¹¹

⁴ 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 other local language or dialect.

⁵ *Rollo*, p. 5.

⁶ *Id.*

⁷ *See* CTC, records, p. 100.

⁸ *See* Oath, records, p. 79.

⁹ *Rollo*, p. 5.

¹⁰ *Id.* at 17.

¹¹ *Id.* at 36.

Upon returning to the Philippines, petitioner executed a Sworn Renunciation of Any and All Foreign Citizenship on 30 September 2012.¹²

On 4 October 2012, she filed her COC for mayor of Sevilla.¹³ She represented herself therein as one who had been a resident of Sevilla for 1 year and 11 days prior to the elections of 13 May 2013, or from 2 May 2012.

On 10 October 2012, private respondent Marie Karen Joy Digal filed a petition with the COMELEC for the cancellation of petitioner's COC.¹⁴ Private respondent was the daughter of Ernesita Digal, whom petitioner would later best for the mayoralty position in the 2013 elections by a margin of 668 votes.¹⁵

Private respondent alleged that petitioner had made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section 39 of the LGC. In support of her allegation, private respondent presented the following documents:

1. Certification of the Office of the Municipal Assessor that petitioner had no real property declared under her name in Sevilla as of 30 October 2012¹⁶
2. Certification of the COMELEC Election Officer that petitioner had no voting record available as of 30 October 2012¹⁷
3. Affidavit executed by Ceferino Digal, husband of Ernesita Digal, petitioner's rival for the mayoralty position¹⁸

On the other hand, petitioner presented the following evidence to establish the fact of her residence in Sevilla:

1. Certification of the Office of the Civil Registrar of Sevilla issued upon the request of petitioner on 30 January 2012¹⁹
2. Community Tax Certificate issued on 2 February 2012²⁰
3. Application for Registration as voter dated 2 May 2012²¹
4. Philippine passport issued on 27 April 2012²²

¹² Id. at 5.

¹³ Records, p. 8.

¹⁴ Id. at 2-6.

¹⁵ Id. at 220.

¹⁶ Id. at 60.

¹⁷ Id. at 61.

¹⁸ Id. at 62.

¹⁹ Id. at 82.

²⁰ Id. at 100.

²¹ Id. at 59.

²² Id. at 102.

5. Deed of Absolute Sale of parcels of land in favor of petitioner executed on 18 May 2012.²³
6. Affidavit executed by Tristan Cabagnet, who was then the incumbent *punong barangay* of Poblacion, Sevilla²⁴
7. Affidavit executed by Praxides Mosqueda, a retired public school teacher and member of the Parish Pastoral Council of Sevilla²⁵

THE COMELEC RULING

On 8 May 2013, five days before the elections, the COMELEC First Division issued a Resolution cancelling the COC of petitioner.²⁶ It highlighted that even if she had reacquired her Filipino citizenship, registered as a voter in Sevilla, and executed her sworn renunciation, her prolonged absence resulted in her failure to reestablish her domicile in her hometown for the purpose of abiding by the one-year residence requirement.²⁷

[A] Filipino citizen who becomes naturalized elsewhere effectively abandons his domicile of origin. Upon reacquisition of Filipino citizenship pursuant to Republic Act No. 9225, he must still show, if running for public office, that he chose to establish his domicile in the Philippines through positive acts. The period of his residency shall be counted from the time he made it his domicile of choice and shall not retroact to time of his birth.

Here, respondent had executed an Oath of Allegiance to the Philippines on March 30, 2012. However, she executed her sworn Renunciation of Allegiance on a much later date, or on September 30, 2012. During the intervening six (6) month period between taking the oath of allegiance and the renunciation under oath, no concrete acts have been done by respondent to clearly establish that she has categorically chosen Sevilla, Bohol as her domicile of choice.

It must be stressed in this regard that physical presence and not mere intent is required to establish domicile which connotes actual, factual and *bona fide* residence in a given locality.

The contention of respondent that she registered as a voter after she reacquired her citizenship on May 2, 2012 or about a month from March 30, 2012 is not enough. Registering as a voter may indicate the intention to fix a domicile of choice, but, by itself, is not definite enough to evince a person's intention to abandon his domicile of choice and reacquire his domicile of origin. Such registration may have been done merely to comply with election law requirement.

To reckon the one-year residency period from the date of the Oath of Allegiance, respondent must show that immediately thereafter, she has taken positive steps to concretely establish her intention to truly abandon

²³ Id. at 143.

²⁴ Id. at 99.

²⁵ Id. at 101.

²⁶ Supra note 2.

²⁷ *Rollo*, pp. 21-22.

U.S.A. as her domicile of choice. But then, records show that after the submission of her Application for Registration on May 2, 2012, respondent made frequent trips in the U.S.A. and it was only upon her return sometime in September 2012 did she execute her sworn renunciation of allegiance.

Her frequent absence in the Philippines after the filing of her application for registration cannot be considered insignificant or as a mere temporary absence. This is because when respondent left for the U.S. she has yet to categorically fix Sevilla, Bohol as her domicile of choice. As it is, respondent left for the States and returned about 4 months later to accomplish the sworn renunciation of allegiance on September 30, 2012. Between the period from May 2012 to September 2012, nothing is clear as to respondent's intention insofar as the abandonment of the U.S. as her domicile and the reacquisition of Sevilla as her new residence.

Petitioner moved for reconsideration. She argued that the following acts showed that she had reestablished her domicile in Sevilla: a) she purchased parcels of land and a residential house as evidenced by a Deed of Absolute Sale executed on 18 May 2013; b) she made public her intention to run for mayor of Sevilla as early as January 2012; and c) she started to settle permanently in her ancestral home in *Barangay Poblacion*, Sevilla, starting January 2012.²⁸

Pending the resolution of her motion, petitioner assumed office as mayor of Sevilla and began discharging the powers of the office upon her proclamation.²⁹ On 15 December 2013, however, she received the COMELEC En Banc Resolution denying her Motion for Reconsideration and upholding the cancellation of her COC.³⁰

Petitioner filed the instant petition for *certiorari* with a prayer for the issuance of a temporary restraining order, assailing COMELEC's Resolutions.³¹ She later filed a Supplement to Petition for Review,³² to which she attached copies of the following documents evidencing the sale of her properties in the US:

1. California Residential Purchase Agreement³³
2. Buyer's Inspection Advisory³⁴
3. Short Sale Addendum³⁵
4. Disclosure Regarding Real Estate Agency Relationship³⁶
5. Trade Confirmation of Sale of Shares of Stocks³⁷

²⁸ Id. at 26.

²⁹ Id. at 5.

³⁰ Id. at 6.

³¹ Id. at 3-15.

³² Id. at 35-38.

³³ Id. at 39-44.

³⁴ Id. at 45-46.

³⁵ Id. at 47-48.

³⁶ Id. at 49-50.

³⁷ Id. at 51-56.

Pending the resolution of the petition, Sevilla's then Vice-Mayor-Elect Maria Emily D. Dagaang (Dagaang) filed a Petition-in-Intervention. She claimed that under Section 44 of the LGC, it was she who should be proclaimed as mayor of Sevilla in case petitioner's COC were to be cancelled.³⁸

ISSUES

The following are the issues for resolution:

1. Whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials; and
2. If the cancellation of petitioner's COC is upheld by this Court, whether she should be succeeded by the qualified candidate with the next highest number of votes or by the vice-mayor.

RULING OF THE COURT

We dispense with the second issue for being moot in view of the expiration of the term of office of the winners of the 2013 elections.

We now resolve the primary issue of whether COMELEC committed grave abuse of discretion in holding that petitioner had failed to prove compliance with the one-year residency requirement for local elective officials.

In *Mitra v. Comelec*,³⁹ this Court explained that the appreciation and evaluation of evidence by COMELEC is not ordinarily reviewed in a petition for certiorari. In exceptional cases, however, when the COMELEC's action oversteps the limits of its discretion to the point of being grossly unreasonable, this Court is not only obliged, but constitutionally mandated to intervene.⁴⁰

This case is one such instance in which this Court has to intervene. Here, instead of evaluating the probative value of the evidence presented by petitioner, COMELEC abruptly concluded that she had failed to reestablish her domicile in Sevilla, simply because she was admittedly absent from the municipality for four months. We remind the commission that the summary nature of proceedings under Section 78 only allows it to rule on patent material misrepresentations of facts, not to make conclusions of law that are even contrary to jurisprudence.

³⁸ Id. at 116-119.

³⁹ 636 Phil. 753 (2010).

⁴⁰ Id. citing Section 1, par. 2, Article VIII of the Constitution.

Physical presence, along with *animus manendi et revertendi*, is an essential requirement for the acquisition of a domicile of choice.⁴¹ However, the law does not require that physical presence be unbroken. In *Japzon v. Comelec*,⁴² this Court ruled that to be considered a resident of a municipality, the candidate is not required to stay and never leave the place for a full one-year period prior to the date of the election. In *Sabili v. Comelec*,⁴³ this Court reiterated that the law does not require a candidate to be at home 24 hours a day 7 days a week to fulfill the residency requirement.

COMELEC relied heavily on the affidavits executed by Ceferino and Marie Karen Joy Digal containing bare allegations that petitioner had never been a resident of Sevilla since she became an American citizen.⁴⁴ However, petitioner sufficiently established that she had already reacquired her Philippine citizenship when she started residing in Sevilla on 2 May 2012. It must be noted that the starting point from which her residence should be counted was not material to the deliberations before COMELEC or in any of the pleadings submitted before this Court. The only controverted issue was whether her absence from the locality for four months out of the 1 year and 11 days she had stated in her COC rendered her unable to fulfill the residence requirement.

Considering that the only material issue before COMELEC was the completeness of the period of residence, it should not have disregarded the following evidence showing specific acts performed by petitioner one year before the elections, or by 13 May 2012, which clearly demonstrated her *animus manendi et revertendi*:

1. She made public her intention to run for the mayoralty position. In preparation for this aspiration, and in order to qualify for the position, she went through the reacquisition process under Republic Act No. 9225.
2. She started to reside in her ancestral home, and even obtained a CTC, during the first quarter of 2012.
3. She applied for voter's registration in Sevilla.
4. She went back to the US to dispose of her properties located there.

COMELEC was also wrong in dismissively disregarding the affidavits of the *punong barangay* and a long-time resident of Sevilla for not being "substantiated by proof."⁴⁵

⁴¹ See *Limbona v. Comelec*, 578 Phil. 364 (2008); *Domino v. Comelec*, 369 Phil. 798 (1999).

⁴² 596 Phil. 354 (2009).

⁴³ 686 Phil. 649 (2012).

⁴⁴ Records, p. 62-64.

⁴⁵ *Id.* at 132.

In *Sabili*, We said that the certification of the *punong barangay* should be given due consideration. COMELEC should have likewise done so in this case. Two disinterested persons attested that even after her naturalization as an American citizen, petitioner had regularly visited her hometown to participate in community affairs.⁴⁶ According to the *punong barangay*, petitioner expressed, on several occasions, the latter's desire to come home. In this light, it should have been apparent to COMELEC that when petitioner returned in the first quarter of 2012, it was for good; and that when she left for the US on 10 May 2012, her purpose was to confirm her permanent abandonment of her US domicile.

COMELEC's grave abuse of discretion lay in its failure to fully appreciate petitioner's evidence and fully explained absence from Sevilla. Instead, it made a legal conclusion that a candidate who has been physically absent from a locality for four out of the twelve months preceding the elections can never fulfil the residence requirement under Section 39 of the LGC. In addition, COMELEC cancelled petitioner's COC without any prior determination of whether or not she had intended to deceive or mislead the electorate. This omission also constitutes grave abuse of discretion.

It must be emphasized that the denial of due course to, or the cancellation of, a COC must be anchored on a finding that the candidate made a material representation that was false.⁴⁷ In the sphere of election laws, a material misrepresentation pertains to a candidate's act done with the intention to gain an advantage by deceitfully claiming possession of all the qualifications and none of the disqualifications when, in fact, the contrary is true.⁴⁸ In *Mitra v. Comelec*,⁴⁹ the cancellation of the COC was reversed, because the COMELEC "failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan." Absent such finding, We cannot sustain the cancellation of petitioner's COC.

WHEREFORE, based on these premises, the Petition is hereby **GRANTED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

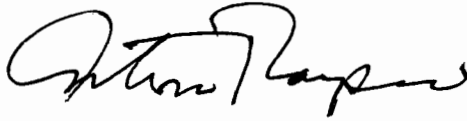
⁴⁶ Id. at 98-99.

⁴⁷ *Fermin v. Comelec*, 595 Phil. 449 (2008).

⁴⁸ See *Jalover v. Osmena*, G.R. No. 209286, 23 September 2014, 736 SCRA 267; *Maruhom v. Comelec*, 611 Phil. 501 (2009); *Justimbaste v. Commission on Elections*, 593 Phil. 383 (2008).

⁴⁹ *Supra* note 39.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See: Concurring Opn
Arturo D. Brion
ARTURO D. BRION
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice

Mariano C. del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

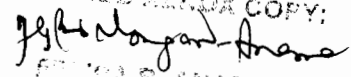
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prior to SG action*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY:

CECILIA C. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT