EN BANC

G.R. No. 257453 – MARIZ LINDSEY TAN GANA – CARAIT y VILLEGAS, *petitioner,* ***versus*** **COMMISSION ON ELECTIONS, ROMMEL MITRA LIM AND DOMINIC P. NUÑEZ,*** *respondents.*

Promulgated:

August 9, 2022

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SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the Petition for *Certiorari* and Prohibition (With Prayer for the Immediate Issuance of a Temporary Restraining Order [TRO] and/or Status Quo Ante Order and/or Writ of Preliminary Injunction)[1] (Petition), and annuls and sets aside the assailed Resolutions dated September 23, 2021[2] of the Commission on Elections (COMELEC) *En Banc* (assailed COMELEC *En Banc* Resolution) and February 27, 2019[3] of the COMELEC First Division in SPA No. 18-057 (DC) and SPA No. 18-126 (DC). Accordingly, it dismisses the Petition to Deny Due Course to or Cancel the Certificate of Candidacy (CoC) (Section 78 Petition) filed against petitioner Mariz Lindsey Tan Gana-Carait (Carait).[4]

I concur. I write this Separate Opinion to stress that:

1) The assailed COMELEC *En Banc* Resolution did not attain finality in light of the timely filing of the present Petition under Rule 64 in relation to Rule 65 of the Rules of Court (Rules);

2) It is proper to resolve the case on its merits considering that: a) the failure to attach a copy of the Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA) is not fatal and the records are sufficient to support a conclusion on the merits, b) the issues raised are proper in an action under Rule 64 in relation to Rule 65 of the Rules, and c) it involves novel and important issues greatly bearing on our immigration and election laws;

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* Also Dominic P. Nunez in some parts of the *rollo.*

1 *Rollo,* pp. 5-34.

2 Id. at 35-39.

3 Id. at 50-67-A.

4 *Ponencia,* p. 19.

3) On the merits, the conclusion of the COMELEC that Carait acquired her American citizenship through naturalization lacks any basis in law and the evidence presented;

4) The twin requirements to run for public office under Republic Act No. (R.A.) 9225[5] or the Citizenship Retention and Re-acquisition Act of 2003 apply only to natural-born Filipinos who subsequently became foreign citizens through the process of naturalization. Carait, having acquired her United States (US) citizenship by reason of her birth, is not covered by said law; and

5) The COMELEC committed grave abuse of discretion in cancelling Carait's CoC because she is not guilty of false representation of her eligibility thereon as she possesses the qualification of being a Filipino citizen under Section 39[6] of R.A. 7160[7] or the Local Government Code of 1991 (LGC).

The assailed COMELEC En Banc Resolution did not attain finality because the present Rule 64 petition was timely filed with the Court.

At the outset, it bears stressing that, despite the COMELEC's issuance of a Certificate of Finality and Entry of Judgment, both dated December 13, 2021 and Writ of Execution dated January 31, 2022,[8] the assailed COMELEC *En Banc* Resolution had not attained finality.

Records show that the Petition before the Court was timely filed. Carait received the notice of denial by the COMELEC *En Banc* of her Motion for Reconsideration on October 6, 2021.[9] She filed the present Petition before the

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5 AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT, AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED, AND FOR OTHER PURPOSES, approved on August 29, 2003.

6 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 other 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.

(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.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

7 AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, approved on October 10, 1991.

8 See *ponencia,* p. 7.

9 *Rollo*, pp. 6 and 8.

Court on October 12, 2021.[10] This filing is in accordance with the period laid down in Rule 64 of the Rules, the relevant portion of which provides:

RULE 64

Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit

x x x x

SEC. 2. *Mode of review.* — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided. (n)

SEC. 3. *Time to file petition.* — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n)

Significantly, Rule 64 merely mirrors the period fixed under Section 7, Article IX of the 1987 Constitution, thus:

> Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless otherwise provided* ***by this Constitution or by law****, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party* ***within thirty days from receipt of a copy*** *thereof.* (Emphasis and italics supplied)

Thus, the Constitution affords aggrieved parties thirty (30) days to elevate to the Court decisions, orders or rulings of the COMELEC, *via* a petition for *certiorari.*

On the other hand, Section 8, Rule 23 of the COMELEC Rules of Procedure (COMELEC Rules), as amended by Resolution No. 9523[11] provides that decisions and resolutions of the COMELEC *En Banc* are deemed final and executory if no restraining order is issued by the Court within five (5) days from receipt of such decision or resolution, thus:

Section 8. Effect if Petition Unresolved. — x x x

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[10] Id. at 1 and 5.

[11] IN THE MATTER OF THE AMENDMENT TO RULES 23, 24, AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS, promulgated on September 25, 2012.

> A Decision or Resolution is deemed final and executory if, in case of a Division ruling, no motion for reconsideration is filed within the reglementary period, or in cases of rulings of the Commission *En Banc*, no restraining order is issued by the Supreme Court within five (5) days from receipt of the decision or resolution.

Only by its own Rules of Procedure does the COMELEC treat as "final and executory" its *En Banc* decisions and resolutions when no restraining order is issued by the Court within five (5) days from receipt thereof.

Thus, in the present case, even as the assailed COMELEC *En Banc* Resolution was elevated to the Court within the thirty (30)-day period fixed under the Constitution, the COMELEC nevertheless proceeded to issue a Certificate of Finality, Entry of Judgment and Writ of Execution of said Resolution.

Notwithstanding these issuances and the COMELEC Rules, as mentioned, the assailed COMELEC *En Banc* Resolution has not attained finality for the simple reason that the same was assailed timely by Carait with the Court. To stress, the COMELEC Rules are merely procedural and remedial in nature. They cannot, in any way, alter or supersede the clear language of the Constitution, or the Rules, which, to repeat, give aggrieved parties a period of thirty (30) days to bring before the Court, on *certiorari,* the COMELEC *En Banc* decisions and resolutions.

I submit that the proper way of harmonizing Section 8, Rule 23 of the COMELEC Rules with Article IX of the Constitution and Rule 64 of the Rules is to understand it to mean that decisions and resolutions of the COMELEC *En Banc,* in the absence of a restraining order from the Court issued within five (5) days from receipt, are rendered only executory — but not final. Hence, in the present case, the assailed COMELEC *En Banc* Resolution is merely executory, not final, and there is therefore no need for the Court to carve out an exception to the rule on immutability of judgments before it can resolve the case on its merits.

It is proper for the Court to resolve the case on its merits, instead of dismissing the same for technicalities, because: a) the failure to attach a copy of the CRBA is not fatal and the records are sufficient to support a conclusion on the merits, b) the issues raised are proper in an action under Rule 64 in relation to Rule 65, and c) the case involves novel and important issues greatly bearing on our immigration and election laws.

During the deliberations for the present case, it was raised that Carait's failure to attach to the Petition the CRBA which may show that she was conferred US citizenship upon birth, renders the Petition dismissible, pursuant to Sections 5 and 6 of the Rules.

As stated at the outset, I disagreed with this posture.

Not all pleadings and records are required to be attached to a petition — only such as would give the reviewing body enough documentary and evidentiary bases to resolve the issues and ultimately the case before it.[12] In *Air Philippines Corp. v. Zamora*,[13] the Court laid down "guideposts" in determining the necessity of attaching pleadings and portions of the records in a Rule 65 petition, thus:

> First, not all pleadings and parts of case records are required to be attached to the petition. **Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.**
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> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown **that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.**
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> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that **petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.**[14] (Emphasis supplied)

In an abundance of cases strikingly similar to this one,[15] the Court had excused the failure of parties to attach copies of the material records of the case as the same were already reflected or substantially summarized in the assailed decisions, certified true copies of which were properly annexed to the petitions. The Court had cautioned in these cases against overzealousness in the enforcement of technical rules at the expense of a just resolution of the cases,[16] stressing the oft-repeated rule that cases should be determined on the

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12 See *Air Philippines Corp. v. Zamora,* 529 Phil. 718 (2006).

13 Id.

14 Id. at 728. Citations omitted.

15 See *Air Philippines Corp. v. Zamora,* supra note 12. See also *Spouses Cordero v. Octaviano,* G.R. No. 241385, July 7, 2020 accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66490>; *Galvez v. Court of Appeals, et al.*, 708 Phil. 9 (2013); *San Miguel Corp. v. Aballa*, 500 Phil. 170 (2005); and *Cusi-Hernandez v. Spouses Diaz*, 390 Phil. 1245 (2000).

16 See *Galvez v. Court of Appeals, et al.*, id. at 22 and *Air Philippines Corp. v. Zamora,* supra note 12, at 728.

merits rather than on technicality or some procedural imperfection so that the ends of justice could be better served.[17]

In *Spouses Cordero v. Octaviano*,[18] the Court found that the Court of Appeals (CA) grossly erred in dismissing the petition for, among other technicalities, its failure to annex material parts of the records when the attached decisions of the trial courts substantially summarized the contents of the omitted documents. In *Galvez v. Court of Appeals, et al.*,[19] the Court extensively discussed related jurisprudence, concluding thus:

> The foregoing rulings show that the mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations.[20]

In all of the above, the Court remanded the cases to the CA and directed it to give due course to the petition for resolution on the merits.

Here, the CRBA, which appears vital to the case, is cited, mentioned and quoted repeatedly in the assailed COMELEC Resolutions dated September 23, 2021 and February 27, 2019 in SPA No. 18-057 (DC) and SPA No. 18-126 (DC), certified true copies[21] of which are duly attached to the Petition. Additionally, the same was quoted verbatim in the Separate Dissenting Opinions of then Commissioner, now Associate Justice of the Court, Antonio T. Kho, Jr. (J. Kho)[22] and Commissioner Aimee P. Ferolino (Comm. Ferolino),[23] which are likewise part of the case *rollo*. Thus, a simple application of the foregoing jurisprudence shows that the records of the present case are enough for the Court to rule on the main issues presented.

Likewise brought to the fore during the case deliberations is the correctness of the issues raised in the present Rule 64 Petition, specifically that, as the Court does not re-evaluate findings of fact of the COMELEC in a Rule 64 action, the main issue raised in the Petition — whether Carait became a US citizen, in addition to being a Filipino citizen, by birth or by virtue of the positive act of presenting documentary evidence before the Consular Service of the US in the Philippines — is improper.

Contrarily, I submit that the issues raised are proper.

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17 See *Air Philippines Corp. v. Zamora,* id.
18 Supra note 15.
19 Supra note 15.
20 Id. at 19.
21 *Rollo*, pp. 35-39 and 50-67-A.
22 Id. at 44-49.
23 Id. at 40-43.

First, while the COMELEC's findings of facts are *generally* accorded respect in a Rule 64 action (in relation to Rule 65) in due deference to the COMELEC's relevant expertise, the same are not infallible and may be set aside when they fail the test of arbitrariness, or upon proof of grave abuse of discretion.[24] To stress, unlike in a Rule 45 action, questions of facts are not proscribed in Rules 64 and 65 actions, so that the Court, in determining whether or not the COMELEC had gravely abused its discretion, can examine the parties' submissions, as it had done so in a plethora of cases.[25] In *Mitra v. COMELEC, et al.*,[26] the Court struck down the COMELEC's argument that it overstepped its *certiorari* jurisdiction in taking cognizance of factual issues raised in the Rule 64 petition, ruling that the argument confuses Rule 45 actions with those under Rules 64 and 65.[27]

Indeed, factual findings of the COMELEC will be set aside when found to be unsupported by any evidence or substantial evidence.[28] In such cases, the Court is not only obliged, but has the constitutional duty to set aside such findings for lack of jurisdiction.[29]

Moreover, a perusal of the records shows that questions of law are raised in the main, the settlement of which requires no re-evaluation of the *probative value* of the evidence presented. Rather, what is demanded is the proper *appreciation* of the relevant facts which are largely uncontested. As the *ponencia* properly holds, the pivotal issue is whether Carait acquired her US citizenship — and therefore her status as a dual citizen — by birth or through naturalization.[30] This is a legal question which then bears on the ultimate legal issue of whether she committed false material representation when she claimed in her CoC that she was eligible to run for elective office despite her failure to renounce her American citizenship in accordance with the requirements of R.A. 9225.

In any case, even if we were to gratuitously assume that the Court is called upon by the Petition to take another look at the factual issues, the Court has the prerogative to call upon the parties to submit additional evidence should it determine the same to be necessary, as I had earlier suggested for the Court to merely order the submission of the CRBA for a more judicious resolution of the case.

All told, any premium placed on technicalities at the expense of a just resolution of the case is misplaced, especially considering the novel and important issues raised therein, which bear on the import of our election and immigration laws on the different modes of acquiring foreign citizenship by

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24 *Basarte v. COMELEC,* 551 Phil. 76, 85 (2007).

25 See *Mitra v. COMELEC, et al.,* 648 Phil. 165 (2010); *Domalanta v. COMELEC,* 390 Phil. 46 (2000); *Varias v. COMELEC, et al.,* 631 Phil. 213 (2010); and *Dano v. COMELEC, et al.,* 794 Phil. 573 (2016).

26 Id.

27 Id. at 183.

28 See J. Brion, Concurring Opinion in *Dano v. COMELEC, et al.,* supra note 25, at 603.

29 Id.

30 *Ponencia,* p. 11.

natural-born Filipinos pursuant to foreign laws. It likewise bears mentioning that the dismissal of the Petition necessarily leads to the reversal of the will of the electorate in the Lone District of Biñan, Laguna which elected Carait into office in the 2019 National and Local Elections (2019 NLE). To my mind, this circumstance, alone, already merits a thorough look at the records and a resolution of the case on its merits.

Carait did not acquire her dual citizenship through naturalization.

The COMELEC granted the Section 78 Petition filed by private respondent Dominic P. Nuñez (Nuñez) and cancelled Carait's CoC for her alleged false representation that she is eligible to run for Member of the *Sangguniang Panlungsod* of the Lone District of Biñan, Laguna, when she is not, as she failed to comply with the twin requirements to run for public office under R.A. 9225 of: (1) taking an Oath of Allegiance to the Republic of the Philippines, and (2) renouncing her foreign citizenship.[31]

Indeed, Carait does not appear to deny that she did not comply with the mentioned requirements prior to the filing of her CoC on October 17, 2018. What she posits, instead, is that R.A. 9225 does not apply to her.

The coverage of R.A. 9225, as well as the twin requirements to run for public office thereunder, are provided in Sections 3 and 5 of the law:

> SECTION 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, **natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country** are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:
>
> > "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion."
>
> **Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.**
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> x x x x
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> SECTION 5. *Civil and Political Rights and Liabilities.* — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy

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31 *Rollo*, p. 67.

> full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
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> x x x x
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> (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, **make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath**;
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> x x x x (Emphasis supplied)

In concluding that Carait is covered by R.A. 9225, the COMELEC First Division found that she falls under the second category of natural-born Filipinos covered by R.A. 9225, pursuant to the case of *De Guzman v. COMELEC, et al.*[32] (*De Guzman*) and that she was not a dual citizen by birth but a dual citizen by naturalization since there was a positive act that was done in acquiring her US citizenship.[33]

On the other hand, Carait contends that the law does not apply to her because she did not acquire her US citizenship through naturalization. Rather, she is a dual citizen by birth, having performed no positive act to acquire her foreign citizenship. She further contends that the COMELEC's finding that she acquired her American citizenship by naturalization is baseless.

At the outset, the following are the uncontroverted facts:

> 1) Carait was born on June 25, 1991 in Makati City to a father who is a Filipino citizen, and a mother who is an American citizen;[34]
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> 2) there is, in the COMELEC case records, a CRBA issued on August 23, 2004 by Vice Consul Catherine Graham which states that Carait "acquired United States citizenship **at birth** as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23, 2004;"[35] and
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> 3) Carait did not make a personal and sworn renunciation of her foreign citizenship prior to filing her CoC for the 2019 NLE.[36]

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32 607 Phil. 810 (2009).
33 *Rollo*, pp. 64-65.
34 Id. at 10.
35 Id. at 56.
36 Id. at 11.

To support its conclusion that Carait underwent naturalization, the COMELEC First Division cited Section 322 of the United States Immigration and Nationality Act[37] (INA) which states that "a parent who is a citizen of the United States x x x may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under Section 320."[38] It further delved on the other provisions of the INA and concluded that a condition to acquire the "automatic [US] citizenship" is that the child must have been admitted to the US as a lawful permanent resident status, which, again, requires some positive act to obtain.[39] Finally, the COMELEC First Division referred to the CRBA which states that Carait **"acquired United States citizenship at birth as established by documentary evidence presented to the Consular Service of the United States at Manila, Philippines on August 23, 2004."**[40] It ruled that on the basis of the express language of the CRBA, "documentary evidence was presented to establish and acquire [Carait's] United States citizenship."[41] It then finally concluded that "[t]his is a clear *indicia* that there is a positive act on the part of [Carait] to acquire foreign citizenship which militates against her claim of dual citizenship by birth."[42]

The COMELEC's conclusion is patently and egregiously erroneous. From the records, Carait did not acquire her dual citizenship through naturalization.

First, as astutely pointed out by J. Kho in his Dissenting Opinion, the COMELEC First Division's reference to the INA is mistaken as the same does not appear to have been proven in accordance with the Rules. The Court cannot take judicial notice of foreign laws, which must be presented as public documents of a foreign country and be evidenced by an official publication thereof, pursuant to Rule 132 of the Rules.[43]

Second, a reading of the cited portions of the INA, which refers to automatic citizenship of a *child* upon the application of his or her American citizen parent, even further bolsters the conclusion that, if, indeed, some positive acts were performed in the acquisition of Carait's American citizenship, the same could not have been performed by her but rather, by her American parent.

Third, the records are bereft of any evidence which would indicate to the slightest degree that Carait petitioned to acquire her US citizenship or that she went through the pertinent naturalization process. To stress, private respondents herein had the burden of proving their allegations before the

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37 IMMIGRATION AND NATIONALITY ACT, as amended through P.L. 117-103, enacted on March 15, 2022. Accessed at <https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>.

38 *Rollo*, p. 65.

39 Id. at 65-66.

40 Id. at 66. Additional emphasis supplied; underscoring omitted.

41 Id.

42 Id.

43 *Maquiling v. COMELEC, et al.*, 713 Phil. 178, 188 (2013).

COMELEC, having filed the petitions for disqualification and for cancellation of Carait's CoC.

Fourth, the categorical language of the CRBA — the sole pertinent evidence presented — shows that her American citizenship was *acquired* ***at birth*** and that documentary evidence was presented merely to *establish* this fact. The CRBA is very clear on this point and it is curious how both the COMELEC First Division and *En Banc* completely ignored the portion of the document that literally and unequivocally states that Carait "acquired United States Citizenship at birth."[44]

Carait, as well as the Separate Dissenting Opinion[45] of Comm. Ferolino, submits that the present case is similar to *Cordora v. COMELEC, et al.*[46] (*Cordora*). In *Cordora,* the candidate, Gustavo Tambunting (Tambunting), like Carait, was born to Filipino and American parents. Tambunting's American father petitioned him through INS Form I-130 (Petition for Relative) as a result of which he was issued a Certification of Citizenship and an American passport. The Court held that Tambunting did not need to go through naturalization process to acquire American citizenship because of the circumstances of his birth and that the process involved in INS Form I-130 only served to *confirm* his American citizenship acquired at birth, thus:

> We agree with Commissioner Sarmiento's observation that Tambunting possesses dual citizenship. Because of the circumstances of his birth, it was no longer necessary for Tambunting to undergo the naturalization process to acquire American citizenship. The process involved in INS Form I-130 only served to confirm the American citizenship which Tambunting acquired at birth. The certification from the Bureau of Immigration which Cordora presented contained two trips where Tambunting claimed that he is an American. However, the same certification showed nine other trips where Tambunting claimed that he is Filipino. Clearly, Tambunting possessed dual citizenship prior to the filing of his certificate of candidacy before the 2001 elections. The fact that Tambunting had dual citizenship did not disqualify him from running for public office.[47]

Applying *Cordora* here, Carait, because of the circumstances of her birth (*i.e.*, that she is born to an American mother and a Filipino father), did not need to go through the process of naturalization to acquire her US citizenship. Indeed, per the categorical language of her CRBA — the only evidence on record tending to prove the mode by which she acquired her US citizenship — the same was "acquired at birth." Further, the CRBA and the process through which it was obtained, merely served to *confirm* such US citizenship.

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44 *Rollo*, p. 56.
45 Id. at 40-43.
46 599 Phil. 168 (2009).
47 Id. at 175-176. Citation omitted.

The twin requirements to run for public office under R.A. 9225 apply only to natural-born Filipinos who acquired foreign citizenships through naturalization and not to those who acquired the same at birth or by reason of the circumstances of their birth.

In its Comment,[48] the COMELEC, through the Office of the Solicitor General (OSG), seemingly backpedals from the First Division's and *En Banc*'s conclusions that Carait was naturalized as an American citizen and clarifies that, although its assailed Resolutions use the term "naturalization," the same was meant to describe the "voluntariness of the process and not the naturalization process *per se*."[49] It concludes that some positive act of applying for approval of Carait's American citizenship and obtaining her CRBA was performed and that Carait appears to have been aware of the same.[50]

Assuming *arguendo* that Carait was, indeed, aware that some act was performed to obtain the CRBA or establish her American citizenship, **the same does not suffice to place her within the coverage of R.A. 9225**. As held in a plethora of cases, the law applies only to natural-born Filipinos who became citizens of a foreign country specifically by naturalization.[51]

In *De Guzman*, the Court dissected R.A. 9225 and held that the law contemplates two (2) classes of natural-born Filipinos, thus:

> R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[52]

The COMELEC concludes that Carait falls under the second category because she acquired her US citizenship after the passage of R.A. 9225 on August 23, 2004 (the date when the CRBA was issued). While the second category does not speak of "naturalization," jurisprudence is settled that R.A. 9225 covers only natural-born Filipinos who later became naturalized citizens

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48 *Rollo*, pp. 115-144.
49 Id. at 126.
50 Id. at 126-127.
51 See *De Guzman v. COMELEC, et al.*, supra note 32; *Maquiling v. COMELEC, et al.*, 709 Phil. 408 (2013); *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, 551 Phil. 110 (2007) and *Cordora v COMELEC, et al.*, supra note 46.
52 *De Guzman v. COMELEC, et al.*, id. at 817. Citation omitted.

of a foreign country, either before or after the passage of R.A. 9225.[53] The distinction between the two categories laid down in *De Guzman* lies not on whether naturalization was undertaken to obtain the foreign citizenship but rather, on whether the Filipino citizenship was lost upon such naturalization prior to the passage of R.A. 9225, by virtue of Commonwealth Act No. (C.A.) 63,[54] which provides:

> SECTION 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:
>
> (1) By **naturalization in a foreign country**;
>
> x x x x (Emphasis supplied)

In other words, R.A. 9225 is meant to avert the effects of Section 1(1) of C.A. 63 by allowing the retention and re-acquisition of Filipino citizenship, after *naturalization* in a foreign country, by taking the oath of allegiance to the Republic of the Philippines.[55] In *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*[56] (*AASJS*), the Court, after referring to the Congressional deliberations on R.A. 9225, explained thus:

> From the above excerpts of the legislative record, it is clear that the intent of the legislature in drafting Rep. Act No. 9225 is to do away with the provision in Commonwealth Act No. 63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. x x x[57]

Hence, both categories of Filipinos under R.A. 9225 contemplate naturalized dual citizens. Necessarily, likewise, the twin requirements to run for public office under Sections 3 and 5 of the law apply only to natural-born Filipinos who have been so naturalized as foreign citizens, as categorically ruled in several cases.[58]

The OSG, in arguing that R.A. 9225 covers any acquisition of foreign citizenship through the performance of any positive act (regardless of who performed the same and if the candidate went through naturalization), cites

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53 See *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, supra note 51; *Cordora v. COMELEC, et al.*, supra note 46; *De Guzman v. COMELEC, et al.*, supra note 32 and *Jacot v. Dal, et al.*, 592 Phil. 661 (2008).

54 AN ACT PROVIDING FOR THE WAYS IN WHICH PHILIPPINE CITIZENSHIP MAY BE LOST OR REACQUIRED, approved on October 21, 1936.

55 See *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, supra note 51, at 117-118.

56 Supra note 51.

57 Id. at 117-118. Citation omitted.

58 See *Jacot v. Dal, et al.*, supra note 53; *De Guzman v. COMELEC, et al.*, supra note 32 and *Maquiling v. COMELEC, et al.*, supra note 51.

Maquiling v. COMELEC, et al.[59] (*Maquiling*) and submits that "dual citizenship, in the context of election laws, has two categories: (a) dual citizenship through performance of positive act/s; and (b) dual citizens by virtue of birth,"[60] and that Carait falls under the first category.

A full and plain reading, however, of *Maquiling* readily refutes the OSG's proposition. *Maquiling* pertinently held:

> Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a **positive act of applying for naturalization**. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship. **Dual citizens by naturalization**, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.[61] (Emphasis supplied)

Indeed, R.A. 9225 covers only natural-born Filipinos who personally and voluntarily become naturalized foreign citizens, thereby possessing simultaneously two or more citizenships and allegiances. It is not concerned with dual citizenships acquired upon birth or due to the circumstances of one's birth, which are involuntary and a product of the concurrent application of different laws of two or more states.[62] Indeed, in *Cordora*, although Tambunting's American father performed the positive act of petitioning Tambunting under American laws, the Court nevertheless held that he did not acquire his foreign citizenship through naturalization and, thus, R.A. 9225 does not apply to him.

The emphasis on naturalization can be better understood when viewed in the context that, ultimately, R.A. 9225 is concerned not with dual citizenship *per se*, but with the status of naturalized Filipinos having dual allegiance.[63] *AASJS* quoted the pertinent legislative deliberations, thus:

> Rep. Locsin underscored that the measure does not seek to address the constitutional injunction on dual allegiance as inimical to public interest. **He said that the proposed law aims to facilitate the reacquisition of Philippine citizenship by speedy means. However, he said that in one sense, it addresses the problem of dual citizenship by requiring the taking of an oath. He explained that the problem of dual citizenship is transferred from the Philippines to the foreign country because the latest oath that will be taken by the former Filipino is one of allegiance to the Philippines and not to the United States, as the case**

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59 Id.

60 *Rollo*, p. 123.

61 *Maquiling v. COMELEC, et al.*, supra note 51, at 438. Citation omitted.

62 See *Cordora v. COMELEC, et al.*, supra note 46, at 176.

63 *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, supra note 51, at 118 and *Cordora v. COMELEC, et al.*, supra note 46, at 180.

> **may be.** He added that this is a matter which the Philippine government will have no concern and competence over.
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> x x x x
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> **Rep. Locsin further pointed out that the problem of dual allegiance is created wherein a natural-born citizen of the Philippines takes an oath of allegiance to another country and in that oath says that he abjures and absolutely renounces all allegiance to his country of origin and swears allegiance to that foreign country.** The original Bill had left it at this stage, he explained. **In the present measure, he clarified, a person is required to take an oath and the last he utters is one of allegiance to the country. He then said that the problem of dual allegiance is no longer the problem of the Philippines but of the other foreign country.** x x x[64] (Additional emphasis supplied)

From the excerpt, the oath requirement under Section 3 is meant to address the problem of dual allegiance which is created when "a natural-born citizen of the Philippines takes an oath of allegiance to another country and x x x renounces all allegiance to his country of origin x x x."[65] The taking of the oath of allegiance under Section 3 is an implicit renunciation of foreign citizenship[66] and transfers the problem of dual allegiance to the concerned foreign country.

The state policy against dual allegiance is etched in Section 5,[67] Article IV of the Constitution, which must be read alongside disqualification laws such as Section 5 of R.A. 9225. In *Cordora,* the Court, citing the landmark cases of *Mercado v. Manzano*[68] and *Valles v. COMELEC,*[69] discussed dual allegiance and dual citizenship in relation to R.A. 9225, thus:

> x x x Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.

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64 *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, id. at 116-117. Citation omitted.

65 Id. at 117.

66 As concluded likewise in *AASJS (Advocates and Adherents of Social Justice for School Teachers and Allied Workers) v. Datumanong*, supra note 51 and *Cordora v. COMELEC, et al.*, supra note 46.

67 Sec. 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

68 367 Phil. 132 (1999).

69 392 Phil. 327 (2000).

x x x x

> In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship *per se*, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. x x x[70]

In sum, R.A. 9225 and its twin requirements to run for public office apply only to natural-born Filipinos who became naturalized foreign citizens and had thereby sworn allegiance to the concerned foreign state. ***There being no proof showing that Carait became an American citizen through the process of naturalization, these requirements cannot apply to her.***

Carait did not commit false material representation in her CoC, hence, the COMELEC committed grave abuse of discretion in cancelling the same.

To recall, the COMELEC cancelled the CoC of Carait after finding that she misrepresented therein that she is eligible to run for the subject local office when she is not.[71] In finding that she is not so eligible, the COMELEC referred to the qualifications for an elective local office under Section 39[72] of the LGC, specifically that "[a]n elective local official must be a citizen of the Philippines x x x."[73] It then concluded that Carait's failure to comply with the twin requirements of R.A. 9225 renders her ineligible to run for elective office.[74]

The conclusion is egregiously wrong.

First, as earlier discussed, based on the evidence presented and the applicable law, Carait is not covered by the twin requirements of R.A. 9225, being that she is not a naturalized US citizen. Hence, her non-compliance with the law does not taint her candidacy in any way.

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70 *Cordora v. COMELEC, et al.*, supra note 46, at 179-180. Citation omitted.

71 *Rollo*, p. 67.

72 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 other local language or dialect. (Emphasis supplied)

73 *Rollo*, p. 63.

74 Id. at 67.

Second, even on the assumption that Carait violated Section 5 of R.A. 9225 for failing to renounce her American citizenship, the same does not render her ineligible for the office sought and therefore, cannot be a ground to cancel her CoC. As the COMELEC itself properly rules, a petition to deny due course to or cancel CoC under Section 78 of the OEC in relation to Section 74, specifically the required declaration that the candidate is "eligible" for the office sought, must be read in relation to the constitutional and statutory provisions on qualifications for public office.[75] For Carait's case, the COMELEC properly referenced Section 39. However, nothing under Section 39 is affected by Carait's alleged failure to comply with Section 5 of R.A. 9225.

Specifically, the failure to renounce foreign citizenship as required by Section 5 of R.A. 9225 does not affect a naturalized person's status as a Filipino citizen, which is retained or reacquired upon the taking of the oath of allegiance under R.A. 9225 — the same oath contained in the CoC.[76] Such failure merely maintains his or her status as a dual citizen. The requirement to renounce foreign citizenship, and therefore have full and sole allegiance to the Republic of the Philippines, is merely a *condition imposed upon the exercise of a naturalized dual citizen's political right to seek elective public office*, but not upon one's status as a Filipino citizen. This is clear from the language of Section 5.

Section 1[77] of C.A. 63 enumerates the acts by which a Filipino citizen may lose his citizenship, none of which pertains to failure to renounce foreign citizenship.

Indeed, failure to renounce foreign citizenship under R.A. 9225 and thereby remaining a dual citizen having dual allegiances does not appear to be an ineligibility, as it presupposes that the candidate is a Filipino citizen. Rather, the same is a disqualification under Section 40[78] of the LGC, and thus, the proper subject of a petition for disqualification. On this note, it bears to point out that a petition for disqualification was filed against Carait and

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75 See *Fermin v. COMELEC*, G.R. Nos. 179695 and 182369, December 18, 2008, 574 SCRA 782, 792-793.

76 See *De Guzman v. COMELEC, et al.*, supra note 32, at 821.

77 SEC. 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

(1) By naturalization in a foreign country;

(2) By express renunciation of citizenship;

(3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;

(4) By accepting commission in the military, naval or air service of a foreign country;

(5) By cancellation of the certificate of naturalization;

(6) By having been declared by competent authority, a deserter of the Philippine army, navy or air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and

(7) In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.

78 SEC. 40. *Disqualifications.* — The following persons are disqualified from running for any elective local position:

x x x x

(d) Those with dual citizenship;

consolidated with the Section 78 action before the COMELEC, but the same was dismissed and does not appear to have been appealed.

Hence, even assuming *arguendo* that Carait is covered by, and violated Section 5, she thereby remained in possession of the qualification of being a Filipino citizen under Section 39 of the LGC. When she declared that she was eligible to run for the subject office in her CoC, she cannot be said to have made a false representation.

Additionally, the assailed Resolutions are completely bereft of any finding that there was a deliberate attempt to mislead, misinform, or hide the alleged fact of Carait's ineligibility — an essential requisite for a Section 78 petition to prosper.[79]

All told, I submit that the assailed COMELEC *En Banc* Resolution has not attained finality as the same was timely assailed within the period fixed under the Constitution. Further, it is proper for the Court to rule on the merits of the case as the records are enough to resolve the same and that proper issues were raised therein.

The ruling on the merits is even more crucial when considering the exceptional issues raised and their impact on our election *vis-a-vis* immigration laws, as well as the fact that the Petition's outright dismissal necessarily leads to the reversal of the will of the electorate due to mere technicalities.

On the merits, I agree with the *ponencia* that the COMELEC gravely abused its discretion in cancelling Carait's CoC due to her alleged false representation in her CoC that she is eligible for the office sought. Her failure to comply with the requirements of R.A. 9225 to run for public office does not render her ineligible because a) she is not covered by R.A. 9225 as she did not acquire her American citizenship through naturalization and b) even on the assumption that she is so covered, her non-renunciation of her American citizenship as required under Section 5 does not divest her of her status as a Filipino citizen and therefore, she remains in full possession of the qualifications for the subject office under Section 39 of the LGC.

For the above reasons, I vote to **GRANT** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[79] See *Mitra v. COMELEC, et al.*, 636 Phil. 753, 780 (2010).