

EN BANC

[G.R. No. 137000, August 09, 2000]

CIRILO R. VALLES, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROSALIND YBASCO LOPEZ, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

This is a petition for certiorari under Rule 65, pursuant to Section 2, Rule 64 of the 1997 Rules of Civil Procedure, assailing Resolutions dated July 17, 1998 and January 15, 1999, respectively, of the Commission on Elections in SPA No. 98-336, dismissing the petition for disqualification filed by the herein petitioner, Cirilo R. Valles, against private respondent Rosalind Ybasco Lopez, in the May 1998 elections for governor of Davao Oriental.

Rosalind Ybasco Lopez was born on May 16, 1934 in Napier Terrace, Broome, Western Australia, to the spouses, Telesforo Ybasco, a Filipino citizen and native of Daet, Camarines Norte, and Theresa Marquez, an Australian. In 1949, at the age of fifteen, she left Australia and came to settle in the Philippines.

On June 27, 1952, she was married to Leopoldo Lopez, a Filipino citizen, at the Malate Catholic Church in Manila. Since then, she has continuously participated in the electoral process not only as a voter but as a candidate, as well. She served as Provincial Board Member of the Sangguniang Panlalawigan of Davao Oriental. In 1992, she ran for and was elected governor of Davao Oriental. Her election was contested by her opponent, Gil Taojo, Jr., in a petition for *quo warranto*, docketed as EPC No. 92-54, alleging as ground therefor her alleged Australian citizenship. However, finding no sufficient proof that respondent had renounced her Philippine citizenship, the Commission on Elections en banc dismissed the petition, ratiocinating thus:

"A cursory reading of the records of this case vis-a-vis the impugned resolution shows that respondent was able to produce documentary proofs of the Filipino citizenship of her late father... and consequently, prove her own citizenship and filiation by virtue of the Principle of Jus Sanguinis, the perorations of the petitioner to the contrary notwithstanding.

On the other hand, except for the three (3) alleged important documents . . . no other evidence substantial in nature surfaced to confirm the allegations of petitioner that respondent is an Australian citizen and not a Filipino. Express renunciation of citizenship as a mode of losing citizenship under Commonwealth Act No. 63 is an equivocal and deliberate act with full awareness of its significance and consequence. The evidence adduced by petitioner are inadequate, nay meager, to prove that respondent contemplated renunciation of her Filipino citizenship".^[1]

In the 1995 local elections, respondent Rosalind Ybasco Lopez ran for re-election as governor of Davao Oriental. Her opponent, Francisco Rabat, filed a petition for disqualification, docketed as SPA No. 95-066 before the COMELEC, First Division, contesting her Filipino citizenship but the said petition was likewise dismissed by the COMELEC, reiterating substantially its decision in EPC 92-54.

The citizenship of private respondent was once again raised as an issue when she ran for re-election as governor of Davao Oriental in the May 11, 1998 elections. Her candidacy was questioned by the herein petitioner, Cirilo Valles, in SPA No. 98-336.

On July 17, 1998, the COMELEC's First Division came out with a Resolution dismissing the petition, and disposing as follows:

"Assuming arguendo that *res judicata* does not apply and We are to dispose the instant case on the merits trying it *de novo*, the above table definitely shows that petitioner herein has presented no new evidence to disturb the Resolution of this Commission in SPA No. 95-066. The present petition merely restates the same matters and incidents already passed upon by this Commission not just in 1995 Resolution but likewise in the Resolution of EPC No. 92-54. Not having put forth any new evidence and matter substantial in nature, persuasive in character or sufficiently provocative to compel reversal of such Resolutions, the dismissal of the present petition follows as a matter of course.

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"WHEREFORE, premises considered and there being no new matters and issues tendered, We find no convincing reason or impressive explanation to disturb and reverse the Resolutions promulgated by this Commission in EPC 92-54 and SPA. 95-066. This Commission RESOLVES as it hereby RESOLVES to DISMISS the present petition.

SO ORDERED."^[2]

Petitioner interposed a motion for reconsideration of the aforesaid Resolution but to no avail. The same was denied by the COMELEC in its *en banc* Resolution of January 15, 1999.

Undaunted, petitioner found his way to this Court via the present petition; questioning the citizenship of private respondent Rosalind Ybasco Lopez.

The Commission on Elections ruled that private respondent Rosalind Ybasco Lopez is a Filipino citizen and therefore, qualified to run for a public office because (1) her father, Telesforo Ybasco, is a Filipino citizen, and by virtue of the principle of *jus sanguinis* she was a Filipino citizen under the 1987 Philippine Constitution; (2) she was married to a Filipino, thereby making her also a Filipino citizen *ipso jure* under Section 4 of Commonwealth Act 473; (3) and that, she renounced her Australian citizenship on January 15, 1992 before the Department of Immigration and Ethnic Affairs of Australia and her Australian passport was accordingly cancelled as certified to by the Australian Embassy in Manila; and (4) furthermore, there are the COMELEC Resolutions in EPC No. 92-54 and SPA Case No. 95-066, declaring her a Filipino citizen duly qualified to run for the elective position of Davao Oriental governor.

Petitioner, on the other hand, maintains that the private respondent is an Australian citizen, placing reliance on the admitted facts that:

- a) In 1988, private respondent registered herself with the Bureau of Immigration as an Australian national and was issued Alien Certificate of Registration No. 404695 dated September 19, 1988;
- b) On even date, she applied for the issuance of an Immigrant Certificate of Residence (ICR), and
- c) She was issued Australian Passport No. H700888 on March 3, 1988.

Petitioner theorizes that under the aforesaid facts and circumstances, the private respondent had renounced her Filipino citizenship. He contends that in her application for alien certificate of registration and immigrant certificate of residence, private respondent expressly declared under oath that she was a citizen or subject of Australia; and said declaration forfeited her Philippine citizenship, and operated to disqualify her to run for elective office.

As regards the COMELEC's finding that private respondent had renounced her Australian citizenship on January 15, 1992 before the Department of Immigration and Ethnic Affairs of Australia and had her Australian passport cancelled on February 11, 1992, as certified to by the Australian Embassy here in Manila, petitioner argues that the said acts did not automatically restore the status of private respondent as a Filipino citizen. According to petitioner, for the private respondent to reacquire Philippine citizenship she must comply with the mandatory requirements for repatriation under Republic Act 8171; and the election of private respondent to public office did not mean the restoration of her Filipino citizenship since the private respondent was not legally repatriated. Coupled with her alleged renunciation of Australian citizenship, private respondent has effectively become a stateless person and as such, is disqualified to run for a public office in the Philippines; petitioner concluded.

Petitioner theorizes further that the Commission on Elections erred in applying the principle of *res judicata* to the case under consideration; citing the ruling in *Moy Ya Lim Yao vs. Commissioner of Immigration*,^[3] that:

"xxx Everytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as *res adjudicata*, hence it has to be threshed out again and again as the occasion may demand. xxx"

The petition is unmeritorious.

The Philippine law on citizenship adheres to the principle of *jus sanguinis*. Thereunder, a child follows the nationality or citizenship of the parents regardless of the place of his/her birth, as opposed to the doctrine of *jus soli* which determines nationality or citizenship on the basis of place of birth.

Private respondent Rosalind Ybasco Lopez was born on May 16, 1934 in Napier Terrace, Broome, Western Australia, to the spouses, Telesforo Ybasco, a Filipino citizen and native of Daet, Camarines Norte, and Theresa Marquez, an Australian. Historically, this was a year before the 1935 Constitution took into effect and at that

time, what served as the Constitution of the Philippines were the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law.

Among others, these laws defined who were deemed to be citizens of the Philippine islands. The Philippine Bill of 1902 defined Philippine citizens as:

SEC. 4 xxx all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in the Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight. (*underscoring ours*)

The Jones Law, on the other hand, provides:

SEC. 2 That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who cannot come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein. (*underscoring ours*)

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed to be a Philippine citizen. By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo's daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines.

The signing into law of the 1935 Philippine Constitution has established the principle of *jus sanguinis* as basis for the acquisition of Philippine citizenship, to wit:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.