

## EN BANC

[ G.R. No. 202202, March 19, 2013 ]

**SILVERIO R. TAGOLINO, PETITIONER, VS. HOUSE OF  
REPRESENTATIVES ELECTORAL TRIBUNAL AND LUCY MARIE  
TORRES GOMEZ, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court is the March 22, 2012 Decision<sup>[1]</sup> of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-031 (QW) which declared the validity of private respondent Lucy Marie Torres Gomez's substitution as the Liberal Party's replacement candidate for the position of Leyte Representative (Fourth Legislative District) in lieu of Richard Gomez.

#### The Facts

On November 30, 2009, Richard Gomez (Richard) filed his certificate of candidacy<sup>[2]</sup> (CoC) with the Commission on Elections (COMELEC), seeking congressional office as Representative for the Fourth Legislative District of Leyte under the ticket of the Liberal Party. Subsequently, on December 6, 2009, one of the opposing candidates, Buenaventura Juntilla (Juntilla), filed a Verified Petition,<sup>[3]</sup> alleging that Richard, who was actually a resident of Colgate Street, East Greenhills, San Juan City, Metro Manila, misrepresented in his CoC that he resided in 910 Carlota Hills, Can-adieng, Ormoc City. In this regard, Juntilla asserted that Richard failed to meet the one (1) year residency requirement under Section 6, Article VI<sup>[4]</sup> of the 1987

Philippine Constitution (Constitution) and thus should be declared disqualified/ineligible to run for the said office. In addition, Juntilla prayed that Richard's CoC be denied due course and/or cancelled.<sup>[5]</sup>

On February 17, 2010, the COMELEC First Division rendered a Resolution<sup>[6]</sup> granting Juntilla's petition without any qualification. The dispositive portion of which reads:

**WHEREFORE**, premises considered, the Commission **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the Petition to Disqualify Candidate for Lack of Qualification filed by **BUENAVENTURA O. JUNTILLA** against **RICHARD I. GOMEZ**. Accordingly, **RICHARD I. GOMEZ** is **DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.

**SO ORDERED.**

Aggrieved, Richard moved for reconsideration but the same was denied by the COMELEC *En Banc* through a Resolution dated May 4, 2010.<sup>[7]</sup> Thereafter, in a Manifestation of even date, Richard accepted the said resolution with finality "in order to enable his substitute to facilitate the filing of the necessary documents for substitution."<sup>[8]</sup>

On May 5, 2010, Lucy Marie Torres-Gomez (private respondent) filed her CoC<sup>[9]</sup> together with a Certificate of Nomination and Acceptance<sup>[10]</sup> from the Liberal Party endorsing her as the party's official substitute candidate vice her husband, Richard, for the same congressional post. In response to various letter-requests submitted to the COMELEC's Law Department (Law Department), the COMELEC *En Banc*, in the exercise of its administrative functions, issued Resolution No. 8890<sup>[11]</sup> on May 8, 2010, approving, among others, the recommendation of the said department to allow the substitution of private respondent. The recommendation reads:

### **STUDY AND OBSERVATION**

On the same date, this Department received an Opposition from Mr. Buenaventura O. Juntilla, thru his counsel, opposing the candidacy of Ms. Lucy Marie Torres Gomez, as a substitute candidate for Mr. Richard I. Gomez.

The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.

It must be stressed that the resolution of the First Division, this Commission, in SPA No. 09-059 speaks for disqualification of candidate Richard I. Gomez and **not of cancellation** of his Certificate of Candidacy:

'Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed x· x x against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ **is DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement.'

The said resolution was affirmed by the Commission En Banc on May 04, 2010.

The disqualification of a candidate does not automatically cancel one's certificate of candidacy, especially when it is nominated by a political party. In effect, the political party is still allowed to substitute the candidate whose candidacy was declared disqualified. After all, the right to substitute is a privilege given to a political party to exercise and not dependent totally to a candidate.

Nonetheless, in case of doubt, the same must always be resolved to the qualification of a candidate to run in the public office.

The substitution complied with the requirements provided under Section 12 in relation to Section 13 of Comelec Resolution No. 8678 dated October 6, 2009.

In view of the foregoing, the Law Department RECOMMENDS the following:

XXXX

**2. TO ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ;** (Emphasis and underscoring supplied)

XXXX•

The following day, or on Mar 9, 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration<sup>[12]</sup> (May 9, 2010 Motion) of the abovementioned COMELEC *En Banc* resolution.

Pending resolution of Juntilla's May 9, 2010 Motion, the national and local elections were conducted as scheduled on May 10, 2010. During the elections, Richard, whose name remained on the ballots, garnered 101,250 votes while his opponents, namely, Eufrocino Codilla, Jr. and herein petitioner Silverio Tagolino, obtained 76,549 and 493 votes, respectively.<sup>[13]</sup> In view of the aforementioned substitution, Richard's votes were credited in favor of private respondent and as a result, she was proclaimed the duly elected Representative of the Fourth District of Leyte.

On May 11, 2010, Juntilla filed an Extremely Urgent Motion to resolve the pending May 9, 2010 Motion relative to Resolution No. 8890. <sup>[14]</sup> The said motion, however, remained unacted.

On May 24, 2010, petitioner filed a Petition<sup>[15]</sup> for *quo warranto* before the HRET in order to oust private respondent from her congressional seat, claiming that: (1) she failed to comply with the one (1) year residency requirement under Section 6, Article VI of the Constitution considering that the transfer of her voter registration from San Rafael, Bulacan<sup>[16]</sup> to the Fourth District of Leyte was only applied for on July 23, 2009; (2) she did not validly substitute Richard as his CoC was void *ab initio*; and (3) private respondent's CoC was void due to her non-compliance with the prescribed notarial requirements *i.e.*, she failed to present valid and competent proof of her identity before the notarizing officer.<sup>[17]</sup>

In her Verified Answer,<sup>[18]</sup> private respondent denied petitioner's allegations and claimed that she validly substituted her husband in the electoral process. She also averred that she was personally known to the notary public who notarized her CoC; one Atty. Edgardo Cordeno, and thus, she was not required to have presented any competent proof of identity during the notarization of the said document. Lastly, she asserted that despite her marriage to Richard and exercise of profession in Metro

Manila, she continued to maintain her residency in Ormoc City which was the place where she was born and raised.

During the preliminary conference, and as shown in the Preliminary Conference Order dated September 2, 2010, the parties agreed on the following issues for resolution:•

1. Whether or not the instant petition for *quo warranto* is meritorious;
2. Whether or not the substitution of respondent is valid;
3. Whether or not a petition for *quo warranto* can be used as a substitute for failure to file the necessary petition for disqualification with the COMELEC;
4. Whether or not respondent's CoC was duly subscribed; and
5. Whether or not respondent is ineligible for the position of Representative of the Fourth District of Leyte for lack of residency requirement.<sup>[19]</sup>

### **Ruling of the HRET**

After due proceedings, the HRET issued the assailed March 22, 2012 Decision<sup>[20]</sup> which dismissed the *quo warranto* petition and declared that private respondent was a qualified candidate for the position of Leyte Representative (Fourth Legislative District). It observed that the resolution denying Richard's candidacy *i.e.*, the COMELEC First Divisions February 17, 2010 Resolution, spoke of disqualification and not of CoC cancellation. Hence, it held that the substitution of private respondent in lieu of Richard was legal and valid.<sup>[21]</sup> Also, it upheld the validity of private respondent's CoC due to petitioner's failure to controvert her claim that: she was personally known to the notary public who notarized her CoC.<sup>[22]</sup> Finally, the HRET ruled that while it had been admitted that private respondent resides in Colgate Street, San Juan City and lived in San Rafael, Bulacan, the fact was she continued to retain her domicile in Ormoc City given that her absence therefrom was only temporary.

Hence, the instant petition.

### **Issues Before the Court**

The crux of the present controversy is whether or not . the HRET gravely abused its .discretion in finding that Richard was validly substituted by private respondent as candidate for Leyte Representative (Fourth Legislative District) in view of the former's failure to meet the one (1) year residency requirement provided under Section 6, Article VI of the Constitution.

It is petitioner's submission that the HRET gravely abused its discretion when it upheld the validity of private respondent's substitution despite contrary jurisprudence holding that substitution is impermissible where the substituted candidate's CoC was denied due course to and/or cancelled, as in the case of Richard. On the other hand, respondents maintain that Richard's CoC was not denied due course to and/or cancelled by the COMELEC as he was only "disqualified"

and therefore, was properly substituted by private respondent.

### **Ruling of the Court**

The petition is meritorious.

#### ***A. Distinction between a petition for disqualification and a petition to deny due course to/cancel a certificate of candidacy***

The Omnibus Election Code<sup>[23]</sup> (OEC) provides for certain remedies to assail a candidate's bid for public office. Among these which obtain particular significance to this case are: (1) a petition for disqualification under Section 68; and (2) a petition to deny due course to and/or cancel a certificate of candidacy under Section 78. The distinctions between the two are well-perceived.

Primarily, a disqualification case under Section 68 of the OEC is hinged on either: (a) a candidate's possession of a permanent resident status in a foreign country;<sup>[24]</sup> or (b) his or her commission of certain acts of disqualification. Anent the latter, the prohibited acts under Section 68 refer to election offenses under the OEC, and not to violations of other penal laws.<sup>[25]</sup> In particular, these are: (1) giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (2) committing acts of terrorism to enhance one's candidacy; (3) spending in one's election campaign an amount in excess of that allowed by the OEC; (4) soliciting, receiving or making any contribution prohibited under Sections 89, 95, 96, 97 and 104 of the OEC; and (5) violating Sections 80,<sup>[26]</sup> 83,<sup>[27]</sup> 85<sup>[28]</sup> 86<sup>[29]</sup> and 261, paragraphs d,<sup>[30]</sup> e<sup>[31]</sup> k,<sup>[32]</sup> v,<sup>[33]</sup> and cc, sub-paragraph 6<sup>[34]</sup> of the OEC. Accordingly, the same provision (Section 68) states that any candidate who, in an action or protest in which he or she is a party, is declared by final decision of a competent court guilty of, or found by the COMELEC to have committed any of the foregoing acts shall be disqualified from continuing as a candidate for public office, or disallowed from holding the same, if he or she had already been elected.<sup>[35]</sup>

It must be stressed that one who is disqualified under Section 68 is still technically considered to have been a candidate, albeit proscribed to continue as such only because of supervening infractions which do not, however, deny his or her statutory eligibility. In other words, while the candidate's compliance with the eligibility requirements as prescribed by law, such as age, residency, and citizenship, is not in question, he or she is, however, ordered to discontinue such candidacy as a form of penal sanction brought about by the commission of the above-mentioned election offenses.

On the other hand, a denial of due course to and/or cancellation of a CoC proceeding under Section 78 of the OEC<sup>[36]</sup> is premised on a person's misrepresentation of any of the material qualifications required for the elective office aspired for. It is not enough that a person lacks the relevant qualification; he or she must have also made a false representation of the same in the CoC.<sup>[37]</sup> The nature of a Section 78 petition was discussed in the case of *Fermin v. COMELEC*,<sup>[38]</sup> where