

EN BANC

[G.R. Nos. 178831-32, April 01, 2009]

JOCELYN SY LIMKAICHONG, PETITIONER, VS. COMMISSION ON ELECTIONS, NAPOLEON N. CAMERO AND RENALD F. VILLANDO, RESPONDENTS.

[G.R. NO. 179120]

LOUIS C. BIRAOGO, PETITIONER, VS. HON. PROSPERO NOGRALES, SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE PHILIPPINES, AND JOCELYN SY LIMKAICHONG, RESPONDENTS.

[G.R. NOS. 179132-33]

OLIVIA P. PARAS, PETITIONER, VS. HON. PROSPERO NOGRALES, IN HIS CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES; HON. ROBERTO NAZARENO, IN HIS CAPACITY AS SECRETARY GENERAL OF THE HOUSE OF REPRESENTATIVES; HON. RHODORA SEVILLA, IN HER CAPACITY AS DEPUTY SECRETARY GENERAL FOR FINANCE OF THE HOUSE OF REPRESENTATIVES; THE COMMISSION ON ELECTIONS AND JOCELYN SY LIMKAICHONG, RESPONDENTS.

[G.R. NOS. 179240-41]

RENALD F. VILLANDO, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOCELYN SY LIMKAICHONG, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Once a **winning candidate** has been **proclaimed, taken his oath, and assumed office** as a Member of the House of Representatives, the **jurisdiction of the House of Representatives Electoral Tribunal begins** over election contests relating to his election, returns, and qualifications, and **mere allegation as to the invalidity of her proclamation does not divest the Electoral Tribunal of its jurisdiction.**

At the core of these contentious consolidated petitions are: (1) the Joint Resolution^[1] of the Commission on Elections (COMELEC) Second Division dated May 17, 2007, disqualifying Jocelyn D. Sy Limkaichong (Limkaichong) from running as a congressional candidate for the First District of Negros Oriental; (2) the COMELEC *En Banc* Resolution^[2] dated June 29, 2007, affirming her disqualification; and (3) the COMELEC *En Banc* Resolution^[3] dated August 16, 2007, resolving that all

pending incidents relating to her qualifications should now be determined by the House of Representatives Electoral Tribunal (HRET).

The facts are uncontroverted. On March 26, 2007, Limkaichong filed with the COMELEC her Certificate of Candidacy^[4] (COC) for the position of Representative of the First District of Negros Oriental.

In the following weeks, two (2) petitions for her disqualification were instituted before the COMELEC by concerned citizens coming from her locality. On April 4, 2007, Napoleon Camero, a registered voter of La Libertad, Negros Oriental, filed the petition for her disqualification on the ground that she lacked the citizenship requirement of a Member of the House of Representatives. The petition, which was docketed as SPA No. (PES) A07-006,^[5] alleged that she is not a natural-born Filipino because her parents were Chinese citizens at the time of her birth. On April 11, 2007, Renald F. Villando, also a registered voter of the same locality, filed the second petition on the same ground of citizenship, docketed as SPA (PES) No. A07-007.^[6] He claimed that when Limkaichong was born, her parents were still Chinese citizens as the proceedings for the naturalization of Julio Ong Sy, her father, never attained finality due to procedural and substantial defects. Both petitions prayed for the cancellation of Limkaichong's COC and for the COMELEC to strike out her name from the list of qualified candidates for the Representative of the First District of Negros Oriental.

In her separate Answers^[7] to the petitions, Limkaichong claimed that she is a **natural-born Filipino** since she was born to a **naturalized Filipino father** and a **natural-born Filipino mother**, who had reacquired her status as such due to her husband's naturalization. Thus, at the time of her birth on November 9, 1959, nineteen (19) days had already passed after her father took his Oath of Allegiance on October 21, 1959 and after he was issued a Certificate of Naturalization on the same day. She contended that the COMELEC should dismiss the petitions outright for lack of cause of action. Citing *Salcedo II v. Commission on Elections*,^[8] she averred that a petition filed before an election, questioning the qualification of a candidate, should be based on Section 78,^[9] in relation to Section 74^[10] of the Omnibus Election Code (OEC),^[11] and not under Sections 68^[12] and 74 thereof in relation to Section 1,^[13] Rule 25 of the COMELEC Rules of Procedure^[14] and Section 5,^[15] paragraph C (3.a) of COMELEC Resolution No. 7800.^[16] She also contended that the petitions were dismissible on the ground that they were in the nature of a collateral attack on her and her father's citizenships, in contravention of the well-established rule that attack on one's citizenship may only be made through a direct action for its nullity.

The COMELEC consolidated the two (2) petitions and re-docketed them as SPA Nos. 07-247^[17] and 07-248,^[18] entitled *IN THE MATTER OF THE PETITION TO DISQUALIFY JOCELYN SY LIMKAICHONG FROM HER CANDIDACY AS FIRST DISTRICT REPRESENTATIVE OF NEGROS ORIENTAL* (herein referred to as the disqualification cases), which remained pending on May 14, 2007, when the National and Local Elections were conducted.

After the casting, counting and canvassing of votes in the said elections, Limkaichong emerged as the **winner** with 65,708 votes^[19] or by a margin of 7,746

votes over another congressional candidate, Olivia Paras^[20] (Paras), who obtained 57,962.

On May 15, 2007, Paras filed with the COMELEC a **Very Urgent Motion for Leave to Intervene and to Suspend the Proclamation of Jocelyn Sy Limkaichong as Winning Candidate of the First District of Negros Oriental.**^[21]

In a Joint Resolution^[22] dated May 17, 2007, the COMELEC Second Division granted the petitions in the disqualification cases, disqualified Limkaichong as a candidate for Representative of the First District of Negros Oriental, directed the Provincial Supervisor of the COMELEC to strike out her name from the list of eligible candidates, and for the Provincial Board of Canvassers (PBOC) to suspend her proclamation. In disposing the cases, the COMELEC Second Division made the following ratiocination:

On the substantial issue of whether respondent Jocelyn Sy-Limkaichong is disqualified to run for the congressional seat of the First District of Negros Oriental on the ground that she is not a natural-born Filipino, we hold that she is so disqualified.

Petitioners have successfully discharged their burden of proof and has convincingly shown with pieces of documentary evidence that **Julio Ong Sy, father of herein respondent Jocelyn Sy-Limkaichong, failed to acquire Filipino citizenship in the naturalization proceedings** which he underwent for the said purpose.

An examination of the records of Special Case No. 1043 would reveal that the **Office of the Solicitor General was deprived of its participation in all the stages of the proceedings therein**, as required under Commonwealth Act No. 473 or the Revised Naturalization Law and Republic Act No. 530, An Act Making Additional Provisions for Naturalization.

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The documents presented by petitioners showed that **the OSG was not furnished copies of two material orders of the trial court in the said proceedings.** One was the **July 9, 1957 Order** granting his petition for naturalization and the other was the **September 21, 1959 Order** declaring Julio Ong Sy as a Filipino citizen.

Moreover, from a perusal of the same page 171 of the OSG logbook, we have determined that **the OSG did not receive a notice for the hearing conducted by the trial court on July 9, 1959**, prior to its issuance of the September 12, 1959 Order declaring Julio Ong Sy as a Filipino citizen.

As correctly pointed out by petitioners, this was **fatal to the naturalization proceedings of Julio Ong Sy**, and **prevented the same from gaining finality.** The leading case in the matter is *Republic*

v. Hon. Gabriel V. Valero, 136 SCRA 617 (May 31, 1985), wherein the Supreme Court declared:

And as though that was not enough, the hearing prior to the oathtaking of respondent Tan was conducted without the required notice to the Solicitor General. It is true, as it appeared later, that Fiscal Veluz, Jr. was authorized by the Solicitor General to represent the Government in the hearing of the application for naturalization. That authority, however, does not extend to Fiscal [Veluz's] right to appear for the State in the hearing preparatory to the oathtaking. Private respondent Tan was therefore under legal obligation to serve copy of his motion to be allowed to take his oath of allegiance as a Filipino citizen upon the Solicitor General which was not done.

Respondent argues that upon his taking of the Oath of Allegiance, Julio Ong Sy became a Filipino citizen for all intents and purposes, with all the rights appurtenant thereto.

This argument does not hold water, as was held by the Supreme Court in the same case of *Republic v. Valero*, *supra*:

That private respondent Tan had already taken his oath of allegiance does not in any way legalize the proceedings relative thereto which is pregnant with legal infirmities. Compounding these irregularities is the fact that Tan was allowed to take his oath even before the expiration of the thirty (30)-day period within which an appeal may be made thus making the said oath not only highly improper but also illegal.

In the same case, the Supreme Court added:

To sustain the same would be to sanction a monstrosity known as citizenship by estoppel. The grant of naturalization under such circumstances is illegal and cancellation thereof may be had at any time. Neither estoppel nor *res judicata* may be set up as a bar from instituting the necessary proceedings to nullify the certificate of naturalization so issued.

Another glaring defect in the said proceedings was the fact that **Julio Ong Sy took his Oath of Allegiance on October 21, 1959, which was exactly thirty (30) days after his declaration as a naturalized Filipino.**

Even granting that the OSG was notified of the September 21, 1959 Order, this was still one day short of the reglementary period required under Sections 11 and 12 of C.A. No. 473, above-cited.

The thirty-day reglementary period is so required under the law so that the OSG could make known his objections and to appeal from the order of the trial court declaring the petitioner a naturalized Filipino citizen.

This is also the reason why a copy of the petitioner's motion to take his oath of allegiance has to be furnished to the OSG.

The respondent insists that naturalization proceedings are *in rem* and are binding on the whole world.

She would have been correct had all the necessary parties to the case been informed of the same. The OSG, being the counsel for the government, has to participate in all the proceedings so that it could be bound by what has transpired therein. Lacking the participation of this indispensable party to the same, the proceedings are null and void and, hence, no rights could arise therefrom.

From all the foregoing, therefore, it could be seen that **Julio Ong Sy did not acquire Filipino citizenship through the naturalization proceedings in Special Case No. 1043. Thus, he was only able to transmit to his offspring, Chinese citizenship.**

Respondent Jocelyn Sy-Limkaichong being the **daughter** of Julio Ong Sy, and having been **born on November 9, 1959**, under the 1935 Philippine Constitution, is a **Chinese national**, and is **disqualified** to run as First District Representative of Negros Oriental.

WHEREFORE, the Petitions are GRANTED and Jocelyn D. Sy-Limkaichong is declared as DISQUALIFIED from her candidacy for Representative of the First District of Negros Oriental.

The Provincial Supervisor of the Commission on Elections of Negros Oriental is hereby directed to strike out the name JOCELYN SY-LIMKAICHONG from the list of eligible candidates for the said position, and the concerned Board of Canvassers is hereby directed to hold and/or suspend the proclamation of JOCELYN SY-LIMKAICHONG as winning candidate, if any, until this decision has become final.

SO ORDERED.^[23]

The PBOC received the Joint Resolution of the COMELEC Second Division on the evening of May 17, 2007, and accordingly suspended the proclamation of Limkaichong.^[24]

The following day, or on May 18, 2007, the COMELEC *En Banc* issued **Resolution No. 8062**^[25] adopting the policy-guidelines of **not suspending the proclamation of winning candidates with pending disqualification cases** which shall be without prejudice to the continuation of the hearing and resolution of the involved cases.

On May 20, 2007, Limkaichong filed with the COMELEC a **Motion for Reconsideration of the Joint Resolution of May 17, 2007 and Urgent Motion to Lift the Order Suspending Proclamation.**^[26]

On May 22, 2007, Limkaichong filed another motion for the lifting of the directive