

EN BANC

[G.R. No. 151914, July 31, 2002]

**TEODULO M. COQUILLA, PETITIONER, VS. THE HON.
COMMISSION ON ELECTIONS AND MR. NEIL M. ALVAREZ,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to set aside the resolution,^[1] dated July 19, 2001, of the Second Division of the Commission on Elections (COMELEC), ordering the cancellation of the certificate of candidacy of petitioner Teodulo M. Coquilla for the position of mayor of Oras, Eastern Samar in the May 14, 2001 elections and the order, dated January 30, 2002, of the COMELEC *en banc* denying petitioner's motion for reconsideration.

The facts are as follows:

Petitioner Coquilla was born on February 17, 1938 of Filipino parents in Oras, Eastern Samar. He grew up and resided there until 1965, when he joined the United States Navy. He was subsequently naturalized as a U.S. citizen.^[2] From 1970 to 1973, petitioner thrice visited the Philippines while on leave from the U.S. Navy.^[3] Otherwise, even after his retirement from the U.S. Navy in 1985, he remained in the United States.

On October 15, 1998, petitioner came to the Philippines and took out a residence certificate, although he continued making several trips to the United States, the last of which took place on July 6, 2000 and lasted until August 5, 2000.^[4] Subsequently, petitioner applied for repatriation under R.A. No. 8171^[5] to the Special Committee on Naturalization. His application was approved on November 7, 2000, and, on November 10, 2000, he took his oath as a citizen of the Philippines. Petitioner was issued Certificate of Repatriation No. 000737 on November 10, 2000 and Bureau of Immigration Identification Certificate No. 115123 on November 13, 2000.

On November 21, 2000, petitioner applied for registration as a voter of Butnga, Oras, Eastern Samar. His application was approved by the Election Registration Board on January 12, 2001.^[6] On February 27, 2001, he filed his certificate of candidacy stating therein that he had been a resident of Oras, Eastern Samar for "two (2) years."^[7]

On March 5, 2001, respondent Neil M. Alvarez, who was the incumbent mayor of Oras and who was running for reelection, sought the cancellation of petitioner's certificate of candidacy on the ground that the latter had made a material misrepresentation in his certificate of candidacy by stating that he had been a

resident of Oras for two years when in truth he had resided therein for only about six months since November 10, 2000, when he took his oath as a citizen of the Philippines.

The COMELEC was unable to render judgment on the case before the elections on May 14, 2001. Meanwhile, petitioner was voted for and received the highest number of votes (6,131) against private respondent's 5,752 votes, or a margin of 379 votes. On May 17, 2001, petitioner was proclaimed mayor of Oras by the Municipal Board of Canvassers.^[8] He subsequently took his oath of office.

On July 19, 2001, the Second Division of the COMELEC granted private respondent's petition and ordered the cancellation of petitioner's certificate of candidacy on the basis of the following findings:

Respondent's frequent or regular trips to the Philippines and stay in Oras, Eastern Samar after his retirement from the U.S. Navy in 1985 cannot be considered as a waiver of his status as a permanent resident or immigrant . . . of the U.S.A. prior to November 10, 2000 as would qualify him to acquire the status of residency for purposes of compliance with the one-year residency requirement of Section 39(a) of the Local Government Code of 1991 in relation to Sections 65 and 68 of the Omnibus Election Code. The one (1) year residency requirement contemplates of the actual residence of a Filipino citizen in the constituency where he seeks to be elected.

All things considered, the number of years he claimed to have resided or stayed in Oras, Eastern Samar since 1985 as an American citizen and permanent resident of the U.S.A. before November 10, 2000 when he reacquired his Philippine citizenship by [repatriation] cannot be added to his actual residence thereat after November 10, 2000 until May 14, 2001 to cure his deficiency in days, months, and year to allow or render him eligible to run for an elective office in the Philippines. Under such circumstances, by whatever formula of computation used, respondent is short of the one-year residence requirement before the May 14, 2001 elections.^[9]

Petitioner filed a motion for reconsideration, but his motion was denied by the COMELEC *en banc* on January 30, 2002. Hence this petition.

I.

Two questions must first be resolved before considering the merits of this case: (a) whether the 30-day period for appealing the resolution of the COMELEC was suspended by the filing of a motion for reconsideration by petitioner and (b) whether the COMELEC retained jurisdiction to decide this case notwithstanding the proclamation of petitioner.

A. With respect to the first question, private respondent contends that the petition in this case should be dismissed because it was filed late; that the COMELEC *en banc* had denied petitioner's motion for reconsideration for being pro forma; and that, pursuant to Rule 19, §4 of the COMELEC Rules of Procedure, the said motion did not suspend the running of the 30-day period for filing this petition. He points out that petitioner received a copy of the resolution, dated July 19, 2001, of the COMELEC's Second Division on July 28,

2001, so that he had only until August 27, 2001 within which to file this petition. Since the petition in this case was filed on February 11, 2002, the same should be considered as having been filed late and should be dismissed.

Private respondent's contention has no merit.

Rule 19 of the COMELEC Rules of Procedure provides in pertinent parts:

Sec. 2. Period for Filing Motions for Reconsideration. ^{3/4} A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the decision, resolution, order, or ruling.

Sec. 4. Effect of Motion for Reconsideration on Period to Appeal. ^{3/4} A motion to reconsider a decision, resolution, order, or ruling, when not pro-forma, suspends the running of the period to elevate the matter to the Supreme Court.

The five-day period for filing a motion for reconsideration under Rule 19, §2 should be counted from the receipt of the decision, resolution, order, or ruling of the COMELEC Division.^[10] In this case, petitioner received a copy of the resolution of July 19, 2001 of the COMELEC's Second Division on July 28, 2001. Five days later, on August 2, 2001, he filed his motion for reconsideration. On February 6, 2002, he received a copy of the order, dated January 30, 2002, of the COMELEC *en banc* denying his motion for reconsideration. Five days later, on February 11, 2002, he filed this petition for certiorari. There is no question, therefore, that petitioner's motion for reconsideration of the resolution of the COMELEC Second Division, as well as his petition for certiorari to set aside of the order of the COMELEC *en banc*, was filed within the period provided for in Rule 19, §2 of the COMELEC Rules of Procedure and in Art. IX(A), §7 of the Constitution.

It is contended, however, that petitioner's motion for reconsideration before the COMELEC *en banc* did not suspend the running of the period for filing this petition because the motion was pro forma and, consequently, this petition should have been filed on or before August 27, 2001. It was actually filed, however, only on February 11, 2002. Private respondent cites the finding of the COMELEC *en banc* that —

An incisive examination of the allegations in the Motion for Reconsideration shows that the same [are] a mere rehash of his averments contained in his Verified Answer and Memorandum. Neither did respondent raise new matters that would sufficiently warrant a reversal of the assailed resolution of the Second Division.

This makes the said Motion pro forma.^[11]

We do not think this contention is correct. The motion for reconsideration was not pro forma and its filing did suspend the period for filing the petition for certiorari in this case. The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion pro forma; otherwise, the movant's remedy would not be a reconsideration of the decision but a new trial or some other remedy.^[12] But, as we have held in another case:^[13]

Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court. If a motion for reconsideration may not discuss these issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial.

Indeed, in the cases where a motion for reconsideration was held to be pro forma, the motion was so held because (1) it was a second motion for reconsideration,^[14] or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence,^[15] or (3) it failed to substantiate the alleged errors,^[16] or (4) it merely alleged that the decision in question was contrary to law,^[17] or (5) the adverse party was not given notice thereof.^[18] The 16-page motion for reconsideration filed by petitioner in the COMELEC *en banc* suffers from none of the foregoing defects, and it was error for the COMELEC *en banc* to rule that petitioner's motion for reconsideration was pro forma because the allegations raised therein are a mere "rehash" of his earlier pleadings or did not raise "new matters." Hence, the filing of the motion suspended the running of the 30-day period to file the petition in this case, which, as earlier shown, was done within the reglementary period provided by law.

- B. As stated before, the COMELEC failed to resolve private respondent's petition for cancellation of petitioner's certificate of candidacy before the elections on May 14, 2001. In the meantime, the votes were canvassed and petitioner was proclaimed elected with a margin of 379 votes over private respondent. Did the COMELEC thereby lose authority to act on the petition filed by private respondent?

R.A. No. 6646 provides:

SECTION 6. *Effect of Disqualification Case.*^{3/4} Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. *If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.* (Emphasis added)

SECTION 7. *Petition to Deny Due Course To or Cancel a Certificate of Candidacy.* — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

The rule then is that candidates who are disqualified by final judgment before the election shall not be voted for and the votes cast for them shall not be counted. But those against whom no final judgment of disqualification had been rendered may be voted for and proclaimed, unless, on motion of the complainant, the COMELEC suspends their proclamation because the grounds for their disqualification or

cancellation of their certificates of candidacy are strong. Meanwhile, the proceedings for disqualification of candidates or for the cancellation or denial of certificates of candidacy, which have been begun before the elections, should continue even after such elections and proclamation of the winners. In *Abella v. COMELEC*^[19] and *Salcedo II v. COMELEC*,^[20] the candidates whose certificates of candidacy were the subject of petitions for cancellation were voted for and, having received the highest number of votes, were duly proclaimed winners. This Court, in the first case, affirmed and, in the second, reversed the decisions of the COMELEC rendered after the proclamation of candidates, not on the ground that the latter had been divested of jurisdiction upon the candidates' proclamation but on the merits.

II.

On the merits, the question is whether petitioner had been a resident of Oras, Eastern Samar at least one (1) year before the elections held on May 14, 2001 as he represented in his certificate of candidacy. We find that he had not.

First, §39(a) of the Local Government Code (R.A No. 7160) provides:

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 added)

The term "residence" is to be understood not in its common acceptance as referring to "dwelling" or "habitation,"^[21] but rather to "domicile" or legal residence,^[22] that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."^[23] A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice).^[24]

In the case at bar, petitioner lost his domicile of origin in Oras by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on and until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien.

Indeed, residence in the United States is a requirement for naturalization as a U.S. citizen. Title 8, §1427(a) of the United States Code provides:

Requirements of naturalization .¾ Residence

(a) *No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present*