

## EN BANC

[ G.R. No. 135083, May 26, 1999 ]

**ERNESTO S. MERCADO, PETITIONER, VS. EDUARDO BARRIOS  
MANZANO AND THE COMMISSION ON ELECTIONS,  
RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

Petitioner Ernesto S. Mercado and private respondent Eduardo B. Manzano were candidates for vice mayor of the City of Makati in the May 11, 1998 elections. The other one was Gabriel V. Daza III. The results of the election were as follows:

Eduardo B. Manzano 103,853

Ernesto S. Mercado 100,894

Gabriel V. Daza III 54,275<sup>[1]</sup>

The proclamation of private respondent was suspended in view of a pending petition for disqualification filed by a certain Ernesto Mamaril who alleged that private respondent was not a citizen of the Philippines but of the United States.

In its resolution, dated May 7, 1998,<sup>[2]</sup> the Second Division of the COMELEC granted the petition of Mamaril and ordered the cancellation of the certificate of candidacy of private respondent on the ground that he is a dual citizen and, under §40(d) of the Local Government Code, persons with dual citizenship are disqualified from running for any elective position. The COMELEC's Second Division said:

What is presented before the Commission is a petition for disqualification of Eduardo Barrios Manzano as candidate for the office of Vice-Mayor of Makati City in the May 11, 1998 elections. The petition is based on the ground that the respondent is an American citizen based on the record of the Bureau of Immigration and misrepresented himself as a natural-born Filipino citizen.

In his answer to the petition filed on April 27, 1998, the respondent admitted that he is registered as a foreigner with the Bureau of Immigration under Alien Certificate of Registration No. B-31632 and alleged that he is a Filipino citizen because he was born in 1955 of a Filipino father and a Filipino mother. He was born in the United States, San Francisco, California, on September 14, 1955, and is considered an American citizen under US Laws. But notwithstanding his registration as an American citizen, he did not lose his Filipino citizenship.

Judging from the foregoing facts, it would appear that respondent

Manzano is both a Filipino and a US citizen. In other words, he holds dual citizenship.

The question presented is whether under our laws, he is disqualified from the position for which he filed his certificate of candidacy. Is he eligible for the office he seeks to be elected?

Under Section 40(d) of the Local Government Code, those holding dual citizenship are disqualified from running for any elective local position.

WHEREFORE, the Commission hereby declares the respondent Eduardo Barrios Manzano DISQUALIFIED as candidate for Vice-Mayor of Makati City.

On May 8, 1998, private respondent filed a motion for reconsideration.<sup>[3]</sup> The motion remained pending even until after the election held on May 11, 1998.

Accordingly, pursuant to Omnibus Resolution No. 3044, dated May 10, 1998, of the COMELEC, the board of canvassers tabulated the votes cast for vice mayor of Makati City but suspended the proclamation of the winner.

On May 19, 1998, petitioner sought to intervene in the case for disqualification.<sup>[4]</sup> Petitioner's motion was opposed by private respondent.

The motion was not resolved. Instead, on August 31, 1998, the COMELEC en banc rendered its resolution. Voting 4 to 1, with one commissioner abstaining, the COMELEC en banc reversed the ruling of its Second Division and declared private respondent qualified to run for vice mayor of the City of Makati in the May 11, 1998 elections.<sup>[5]</sup> The pertinent portions of the resolution of the COMELEC en banc read:

As aforesaid, respondent Eduardo Barrios Manzano was born in San Francisco, California, U.S.A. He acquired US citizenship by operation of the United States Constitution and laws under the principle of jus soli.

He was also a natural born Filipino citizen by operation of the 1935 Philippine Constitution, as his father and mother were Filipinos at the time of his birth. At the age of six (6), his parents brought him to the Philippines using an American passport as travel document. His parents also registered him as an alien with the Philippine Bureau of Immigration. He was issued an alien certificate of registration. This, however, did not result in the loss of his Philippine citizenship, as he did not renounce Philippine citizenship and did not take an oath of allegiance to the United States.

It is an undisputed fact that when respondent attained the age of majority, he registered himself as a voter, and voted in the elections of 1992, 1995 and 1998, which effectively renounced his US citizenship under American law. Under Philippine law, he no longer had U.S. citizenship.

At the time of the May 11, 1998 elections, the resolution of the Second Division, adopted on May 7, 1998, was not yet final. Respondent

Manzano obtained the highest number of votes among the candidates for vice-mayor of Makati City, garnering one hundred three thousand eight hundred fifty three (103,853) votes over his closest rival, Ernesto S. Mercado, who obtained one hundred thousand eight hundred ninety four (100,894) votes, or a margin of two thousand nine hundred fifty nine (2,959) votes. Gabriel Daza III obtained third place with fifty four thousand two hundred seventy five (54,275) votes. In applying election laws, it would be far better to err in favor of the popular choice than be embroiled in complex legal issues involving private international law which may well be settled before the highest court (Cf. Frivaldo vs. Commission on Elections, 257 SCRA 727).

WHEREFORE, the Commission en banc hereby REVERSES the resolution of the Second Division, adopted on May 7, 1998, ordering the cancellation of the respondent's certificate of candidacy.

We declare respondent Eduardo Luis Barrios Manzano to be QUALIFIED as a candidate for the position of vice-mayor of Makati City in the May 11, 1998, elections.

ACCORDINGLY, the Commission directs the Makati City Board of Canvassers, upon proper notice to the parties, to reconvene and proclaim the respondent Eduardo Luis Barrios Manzano as the winning candidate for vice-mayor of Makati City.

Pursuant to the resolution of the COMELEC en banc, the board of canvassers, on the evening of August 31, 1998, proclaimed private respondent as vice mayor of the City of Makati.

This is a petition for certiorari seeking to set aside the aforesaid resolution of the COMELEC en banc and to declare private respondent disqualified to hold the office of vice mayor of Makati City. Petitioner contends that

[T]he COMELEC en banc ERRED in holding that:

A. Under Philippine law, Manzano was no longer a U.S. citizen when he:

1. He renounced his U.S. citizenship when he attained the age of majority when he was already 37 years old; and,
2. He renounced his U.S. citizenship when he (merely) registered himself as a voter and voted in the elections of 1992, 1995 and 1998.

B. Manzano is qualified to run for and or hold the elective office of Vice-Mayor of the City of Makati;

C. At the time of the May 11, 1998 elections, the resolution of the Second Division adopted on 7 May 1998 was not yet final so that, effectively, petitioner may not be declared the winner even assuming that Manzano is disqualified to run for and hold the elective office of Vice-Mayor of the City of Makati.

We first consider the threshold procedural issue raised by private respondent Manzano <sup>¾</sup> whether petitioner Mercado has personality to bring this suit considering that he was not an original party in the case for disqualification filed by Ernesto Mamaril nor was petitioner's motion for leave to intervene granted.

## **I. PETITIONER'S RIGHT TO BRING THIS SUIT**

Private respondent cites the following provisions of Rule 8 of the Rules of Procedure of the COMELEC in support of his claim that petitioner has no right to intervene and, therefore, cannot bring this suit to set aside the ruling denying his motion for intervention:

Section 1. *When proper and when may be permitted to intervene.* <sup>¾</sup> Any person allowed to initiate an action or proceeding may, before or during the trial of an action or proceeding, be permitted by the Commission, in its discretion to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding.

. . . .

Section 3. *Discretion of Commission.* <sup>¾</sup> In allowing or disallowing a motion for intervention, the Commission or the Division, in the exercise of its discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate action or proceeding.

Private respondent argues that petitioner has neither legal interest in the matter in litigation nor an interest to protect because he is "a defeated candidate for the vice-mayorality post of Makati City [who] cannot be proclaimed as the Vice-Mayor of Makati City even if the private respondent be ultimately disqualified by final and executory judgment."

The flaw in this argument is it assumes that, at the time petitioner sought to intervene in the proceedings before the COMELEC, there had already been a proclamation of the results of the election for the vice mayorality contest for Makati City, on the basis of which petitioner came out only second to private respondent. The fact, however, is that there had been no proclamation at that time. Certainly, petitioner had, and still has, an interest in ousting private respondent from the race at the time he sought to intervene. The rule in *Labo v. COMELEC*,<sup>[6]</sup> reiterated in several cases,<sup>[7]</sup> only applies to cases in which the election of the respondent is contested, and the question is whether one who placed second to the disqualified candidate may be declared the winner. In the present case, at the time petitioner filed a "Motion for Leave to File Intervention" on May 20, 1998, there had been no proclamation of the winner, and petitioner's purpose was precisely to have private respondent disqualified "from running for [an] elective local position" under §40(d) of R.A. No. 7160. If Ernesto Mamaril (who originally instituted the disqualification proceedings), a registered voter of Makati City, was competent to bring the action, so was petitioner since the latter was a rival candidate for vice mayor of Makati City.

Nor is petitioner's interest in the matter in litigation any less because he filed a motion for intervention only on May 20, 1998, after private respondent had been shown to have garnered the highest number of votes among the candidates for vice mayor. That petitioner had a right to intervene at that stage of the proceedings for the disqualification against private respondent is clear from §6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987, which provides:

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 guilt is strong.

Under this provision, intervention may be allowed in proceedings for disqualification even after election if there has yet been no final judgment rendered.

The failure of the COMELEC en banc to resolve petitioner's motion for intervention was tantamount to a denial of the motion, justifying petitioner in filing the instant petition for certiorari. As the COMELEC en banc instead decided the merits of the case, the present petition properly deals not only with the denial of petitioner's motion for intervention but also with the substantive issues respecting private respondent's alleged disqualification on the ground of dual citizenship.

This brings us to the next question, namely, whether private respondent Manzano possesses dual citizenship and, if so, whether he is disqualified from being a candidate for vice mayor of Makati City.

## **II. DUAL CITIZENSHIP AS A GROUND FOR DISQUALIFICATION**

The disqualification of private respondent Manzano is being sought under §40 of the Local Government Code of 1991 (R.A. No. 7160), which declares as "disqualified from running for any elective local position: . . . (d) Those with dual citizenship." This provision is incorporated in the Charter of the City of Makati.<sup>[8]</sup>

Invoking the maxim *dura lex sed lex*, petitioner, as well as the Solicitor General, who sides with him in this case, contends that through §40(d) of the Local Government Code, Congress has "command[ed] in explicit terms the ineligibility of persons possessing dual allegiance to hold local elective office."

To begin with, dual citizenship is different from dual allegiance. The former 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.<sup>[9]</sup> For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship: