

EN BANC

[G.R. No. 133944, October 28, 1999]

MARCITA MAMBA PEREZ, PETITIONER, VS. COMMISSION ON ELECTIONS AND RODOLFO E. AGUINALDO, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for *certiorari* to annul the resolution, dated May 10, 1998, of the First Division of the Commission on Elections, dismissing petitioner Marcita Mamba Perez's petition for the disqualification of private respondent Rodolfo E. Aguinaldo as a candidate for Representative of the Third District of Cagayan in the May 11, 1998 elections, as well as the resolution of the COMELEC en banc, dated June 11, 1998, denying petitioner's motion for reconsideration.

The facts are not in dispute.

On March 26, 1998, private respondent filed his certificate of candidacy for Representative of the Third District of Cagayan in the May 11, 1998 elections. Four days later, on March 30, 1998, petitioner, as a voter and citizen, filed in the COMELEC a petition for the disqualification of private respondent as a candidate on the ground that he had not been a resident of the district for at least one (1) year immediately before the day of the elections as required by Art. VI, §6 of the Constitution.

In support of her claim, petitioner presented private respondent's certificates of candidacy^[1] for governor of Cagayan in the 1988, 1992, and 1995 elections; his voter's affidavit^[2] which he used in the 1987, 1988, 1992, 1995, and 1997 elections; and his voter registration record dated June 22, 1997,^[3] in all of which it is stated that he is a resident of Barangay Calaoagan Dackel, Municipality of Gattaran, which is outside the Third District of Cagayan. Petitioner alleged that private respondent filed an application^[4] for the transfer of his registration as voter from Gattaran, Cagayan (First District) to Tuguegarao, Cagayan (Third District) only on December 17, 1997 and that said application was approved only on January 7, 1998. Petitioner prayed that in the event the case was not finally decided before the elections and private respondent obtained the highest number of votes, the latter's proclamation be suspended.

In his answer, private respondent claimed that while he had been a resident of Gattaran, Cagayan in 1990, he transferred his residence to Tuguegarao, Cagayan by renting an apartment at No. 13-E Magallanes St., Tuguegarao, Cagayan, in order to hide his mistress from public view because, at that time, his marriage to his former wife was still subsisting. In support of his claim, he presented the affidavit^[5] of the owner of the apartment, Engineer Alfredo Ablaza, in which it is stated that private respondent had been his lessee since July 1990. In addition, private respondent

presented the contract of lease^[6] of another residential apartment at Kamias Street, Tanza, Tuguegarao, Cagayan, for the period July 1, 1995 to June 30, 1996, between him, as lessee, and Tomas T. Decena, as lessor; his marriage license dated January 7, 1997;^[7] the marriage certificate between him and his present wife, Lerma Dumaguit, dated January 18, 1998;^[8] the birth certificate^[9] of their daughter, Geniah Laureen D. Aguinaldo; and various letters,^[10] all of which show that he had been a resident of Tuguegarao, Cagayan for at least one (1) year before the May 11, 1998 elections.

On May 10, 1998, the First Division of the COMELEC, in a unanimous resolution,^[11] dismissed the petition for disqualification, finding private respondent Aguinaldo qualified to run as representative for the Third District of Cagayan.

On May 11, 1998, private respondent was elected Representative of the Third District of Cagayan, with 65,058 votes over his rival Manuel N. Mamba's 58,507 votes.^[12] Accordingly, on May 16, 1998, he was proclaimed elected and, on May 17, 1998, he was sworn in office.

On May 22, 1998, petitioner filed a motion for reconsideration reiterating her allegation that private respondent lacked the requisite residency in the Third District of Cagayan and arguing that the proclamation of private respondent was not a legal impediment to the continuation of the hearing on her motion in view of R.A. No. 6646, §6. Her motion was, however, denied by the COMELEC en banc in its resolution of June 11, 1998. Hence, this petition.

Petitioner contends that the COMELEC committed grave abuse of discretion in holding that private respondent had been a resident of Tuguegarao, Cagayan since July 1990 when he rented an apartment there in order to hide his mistress. Petitioner contends that transfer of residence to the place where private respondent is keeping his mistress cannot amount to a change of domicile because one's domicile is the place where one and one's legitimate family resides. She also argues that private respondent could not have changed his residence to Tuguegarao in 1990 considering that his certificates of candidacy for governor of Cagayan in the 1988, 1992, and 1995 elections, as well as his voter registration records, the latest of which was made on June 22, 1997, indicate that he is a resident of Gattaran, which is in the First District of Cagayan. Petitioner avers that in the absence of clear and positive proof, one's domicile of origin should be deemed to continue and that to successfully effect a change of domicile, one must prove an actual change of domicile, a bonafide intention of abandoning the former place of residence and of establishing a new one, and unequivocal acts which correspond with the intention.

On the other hand, private respondent asks that the instant petition be dismissed. He argues that after his proclamation on May 16, 1998 and his assumption of office on June 30, 1998, the COMELEC lost jurisdiction to pass upon his qualifications for the office of Representative. He argues further that this case should have been filed with the House of Representatives Electoral Tribunal which has jurisdiction over the subject matter of the case.

In a supplemental pleading,^[13] petitioner replies that the COMELEC retained jurisdiction over the case because she filed the petition for disqualification on March 30, 1998, before the elections on May 11, 1998, and that pursuant to R.A. No.

6646, §6, the COMELEC could continue the proceedings for the determination of the disqualification of private respondent.

The threshold issue, therefore, is whether the Court has jurisdiction to entertain the instant petition for *certiorari* and eventually pass upon private respondent's eligibility for the office of Representative of the Third District of Cagayan. Petitioner, in sustaining the affirmative side of the question, invokes the following provision of R.A. No. 6646:

Sec. 6 Effect of Disqualification Case. : 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 (COMELEC) 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.

As already stated, the petition for disqualification against private respondent was decided by the First Division of the COMELEC on May 10, 1998. The following day, May 11, 1998, the elections were held. Notwithstanding the fact that private respondent had already been proclaimed on May 16, 1998 and had taken his oath of office on May 17, 1998, petitioner still filed a motion for reconsideration on May 22, 1998, which the COMELEC en banc denied on June 11, 1998. Clearly, this could not be done. Sec. 6 of R.A. No. 6646 authorizes the continuation of proceedings for disqualification even after the elections if the respondent has not been proclaimed. The COMELEC en banc had no jurisdiction to entertain the motion because the proclamation of private respondent barred further consideration of petitioner's action. In the same vein, considering that at the time of the filing of this petition on June 16, 1998, private respondent was already a member of the House of Representatives, this Court has no jurisdiction over the same. Pursuant to Art. VI, §17 of the Constitution, the House of Representatives Electoral Tribunal has the exclusive original jurisdiction over the petition for the declaration of private respondent's ineligibility. As this Court held in *Lazatin v. House of Representatives Electoral Tribunal*:^[14]

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

Petitioner's remedies should have been (1) to reiterate her prayer in the petition for disqualification, and move for the issuance of an order by the COMELEC suspending the proclamation of private respondent pending the hearing of the said petition and,