



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

ARLENE LLENA EMPAYNADO
CHUA,

Petitioner,

G.R. No. 216607

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,*
LEONEN,
JARDELEZA, and
CAGUIOA, JJ.

-versus-

COMMISSION ON
ELECTIONS, IMELDA E.
FRAGATA, and KRYSTLE
MARIE C. BACANI,

Respondents.

Promulgated:

April 5, 2016

X-----
[Signature]-----X

DECISION

LEONEN, J.:

Dual citizens are disqualified from running for any elective local position. They cannot successfully run and assume office because their

* On leave.

[Handwritten mark]

ineligibility is inherent in them, existing prior to the filing of their certificates of candidacy. Their certificates of candidacy are void ab initio, and votes cast for them will be disregarded. Consequently, whoever garners the next highest number of votes among the eligible candidates is the person legally entitled to the position.

This resolves a Petition for Certiorari and Prohibition¹ assailing the Commission on Elections Resolutions dated October 17, 2013² and January 30, 2015.³ The Commission on Elections annulled the “proclamation of . . . Arlene Llena Empaynado Chua as Councilor for the Fourth District of Manila[,]”⁴ and directed the Board of Canvassers to reconvene and proclaim Krystle Marie C. Bacani (Bacani) as Councilor for having garnered the next highest number of votes.⁵

On October 3, 2012, Arlene Llena Empaynado Chua (Chua) filed her Certificate of Candidacy⁶ for Councilor for the Fourth District of Manila during the May 13, 2013 National and Local Elections. The Fourth District of Manila is entitled to six (6) seats in the Sangguniang Panlungsod.⁷

After the conduct of elections, Chua garnered the sixth highest number of votes.⁸ She was proclaimed by the Board of Canvassers on May

¹ *Rollo*, pp. 3–19.

² *Id.* at 32–52. The Resolution was signed by Presiding Commissioner Elias R. Yusoph and Commissioners Maria Gracia Cielo M. Padaca and Luie Tito F. Guia of the Second Division.

³ *Id.* at 22–31. The Resolution was signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, and Arthur D. Lim of the COMELEC En Banc.

⁴ *Id.* at 51, COMELEC Second Division Resolution dated October 17, 2013.

⁵ *Id.*

⁶ *Id.* at 100.

⁷ Rep. Act. No. 7166 (1991), sec. 3(c), in relation to Rep. Act No. 6636 (1987), sec. 2. Rep. Act No. 7166 (1991), sec. 3(c) provides:

Section 3. *Election of Members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan.* - The elective members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan shall be elected as follows:

.....

c. The number and election of elective members of the Sangguniang Panlungsod and Sangguniang Bayan in the Metro Manila Area, City of Cebu, City of Davao and any other city with two (2) or more legislative districts shall continue to be governed by the provisions of Sections 2 and 3 of Republic Act No. 6636: Provided, That, the Municipalities of Malabon, Navotas, San Juan, Mandaluyong, Muntinlupa, Las Piñas and Taguig shall have twelve (12) councilors, and Pateros, ten (10): Provided, further, That, the Commission shall divide each of the municipalities in Metro Manila Area into two (2) districts by barangay for purposes of representation in the Sangguniang Bayan as nearly as practicable according to the number of inhabitants, each comprising a compact, contiguous and adjacent territory[.]

Rep. Act No. 6636 (1987), sec. 2 provides:

Section 2. *Metro Manila Area.* - For purposes of the Local Elections on January 18, 1988, the City of Manila, Quezon City and the City of Caloocan shall have six (6) councilors for each of their representative districts who shall be residents thereof to be elected by the qualified voters therein. The City of Pasay and the Municipalities of Makati, Parañaque, Pasig, Marikina, and Valenzuela, each of which comprises a representative district, shall have twelve (12) councilors each to be elected at large by the qualified voters of the said city or municipality. All the other municipalities within the Metropolitan Manila area shall have ten (10) councilors each, with the exception of the Municipality of Pateros which shall have eight (8) councilors, to be elected at large by their respective qualified voters.

⁸ *Rollo*, p. 23, COMELEC En Banc Resolution dated January 30, 2015.

15, 2013.⁹

On the date of Chua's proclamation, however, Imelda E. Fragata (Fragata) filed a Petition¹⁰ captioned as a "petition to declare [Chua] as a nuisance candidate"¹¹ and "to deny due course and/or cancel [Chua's] Certificate of Candidacy."¹² Fragata was allegedly a registered voter in the Fourth District¹³ who claimed that Chua was unqualified to run for Councilor on two grounds: Chua was not a Filipino citizen, and she was a permanent resident of the United States of America.¹⁴ Fragata specifically alleged the following in her Petition:

3. [Chua] is not a Filipino Citizen.
4. Prior to the filing of her candidacy, [Chua] has been living in the United States of America (USA) for at least 33 years.
5. [Chua] is an immigrant and was validly issued a Green Card by the Government of the USA.
6. She resided and continues to reside [in Georgia, USA].
7. [Chua] has been a Registered Professional Nurse in the State of Georgia, USA since November 17, 1990.
8. . . . [Chua's] Professional License in the USA is still to expire in 31 January 2014.¹⁵

The last paragraph of the Petition prayed that Chua "be disqualified as a candidate for the position of councilor in the Fourth District of the City of Manila[.]"¹⁶

Answering the Petition, Chua contended that she was a natural-born Filipino, born to Filipino parents in Cabanatuan City, Nueva Ecija.¹⁷ With respect to her residency, Chua alleged that she had been residing in Sampaloc, Manila since 2008¹⁸ and had more than complied with the one-year period required to run for Councilor.¹⁹

According to Chua, Fragata's Petition was belatedly filed,²⁰ whether it

⁹ Id.

¹⁰ Id. at 95–98.

¹¹ Id. at 95.

¹² Id.

¹³ Id.

¹⁴ Id. at 96.

¹⁵ Id.

¹⁶ Id. at 97.

¹⁷ Id. at 104, Verified Answer.

¹⁸ Id. at 118, Barangay Certification dated May 21, 2010.

¹⁹ Id. at 110, Verified Answer.

²⁰ Id. at 106–107.

was treated as one for declaration of a nuisance candidate²¹ or for denial of due course or cancellation of certificate of candidacy.²² Fragata filed her Petition on May 15, 2013, which was beyond five (5) days from October 5, 2012, the last day of the filing of certificates of candidacy.²³ The Petition was also filed beyond 25 days from October 3, 2012,²⁴ the date Chua filed her Certificate of Candidacy.²⁵

Chua stressed that she had already been proclaimed on May 15, 2013, the same date that Fragata filed her Petition; hence, Fragata's proper remedy was to file a petition for quo warranto²⁶ under Section 253 of the Omnibus Election Code. Chua prayed that the Commission dismiss Fragata's Petition.²⁷

On June 19, 2013, Bacani filed a Motion to Intervene with Manifestation and Motion to Annul Proclamation.²⁸ Bacani alleged that she likewise ran for Councilor in the Fourth District of Manila, and that after the canvassing of votes, she ranked seventh among all the candidates, next to Chua.²⁹ Should Chua be disqualified, Bacani claimed that she should be proclaimed Councilor³⁰ following this Court's ruling in *Maquiling v. Commission on Elections*.³¹

Bacani argued that Chua, being a dual citizen, was unqualified to run for Councilor.³² Based on an Order of the Bureau of Immigration, Chua was allegedly naturalized as an American citizen on December 7, 1977.³³ She was issued an American passport³⁴ on July 14, 2006.

Chua took an Oath of Allegiance to the Republic of the Philippines on September 21, 2011.³⁵ Nonetheless, Chua allegedly continued on using her

²¹ COMELEC Rules of Procedure, as amended by Resolution No. 9523, rule 24, sec. 3 provides: Section 3. *Period to File the Petition.* – The Petition shall be filed personally or through an authorized representative, within five (5) days from the last day for the filing of certificates of candidacy. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

²² COMELEC Rules of Procedure, as amended by Resolution No. 9523, rule 23, sec. 2 provides: Section 2. *Period to File Petition.* – The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

²³ *Rollo*, p. 107, Verified Answer.

²⁴ *Id.* at 100, Certificate of Candidacy.

²⁵ *Id.* at 109, Verified Answer.

²⁶ *Id.* at 111.

²⁷ *Id.* at 112.

²⁸ *Id.* at 133–140.

²⁹ *Id.* at 133.

³⁰ *Id.* at 136–137.

³¹ 709 Phil. 408 (2013) [Per C.J. Sereno, En Banc].

³² *Rollo*, p. 134, Motion to Intervene with Manifestation and Motion to Annul Proclamation.

³³ *Id.*

³⁴ *Id.* at 129.

³⁵ *Id.* at 134, Motion to Intervene with Manifestation and Motion to Annul Proclamation.

American passport, specifically on the following dates:

October 16, 2012	Departure for the United States
December 11, 2012	Arrival in the Philippines
May 30, 2013	Departure for the United States ³⁶

Moreover, Chua did not execute an oath of renunciation of her American citizenship.³⁷

With Chua being a dual citizen at the time she filed her Certificate of Candidacy, Bacani prayed that the Commission on Elections annul Chua's proclamation.³⁸

In her Comment/Opposition (to the Motion to Intervene of Krystle Marie Bacani),³⁹ Chua argued that the Motion was a belatedly filed petition to deny due course or cancel a certificate of candidacy, having been filed after the day of the elections.⁴⁰ According to Chua, the Motion should not even be considered since she was already proclaimed by the Board of Canvassers.⁴¹ Thus, Chua prayed that the Motion to Intervene be denied and expunged from the records of the case.⁴²

The Commission on Elections then ordered the parties to file their respective memoranda.⁴³

In her Memorandum,⁴⁴ Chua maintained that Fragata's Petition was filed out of time and should have been outright dismissed.⁴⁵ Reiterating that she had already been proclaimed, Chua argued that Fragata's proper remedy was a petition for quo warranto.⁴⁶

Countering Chua's claims, Fragata and Bacani restated in their Joint Memorandum⁴⁷ that Chua was a dual citizen disqualified from running for any elective local position.

The Commission on Elections Second Division resolved Fragata's

³⁶ Id. at 135.

³⁷ Id.

³⁸ Id. at 137.

³⁹ Id. at 146–153.

⁴⁰ Id. at 149–152.

⁴¹ Id. at 151.

⁴² Id. at 152.

⁴³ Id. at 24, COMELEC En Banc Resolution dated January 30, 2015.

⁴⁴ Id. at 175–196.

⁴⁵ Id. at 186.

⁴⁶ Id. at 190–191.

⁴⁷ Id. at 154–169.

Petition. Ruling that Bacani had a legal interest in the matter in litigation, it allowed Bacani's Motion to Intervene.⁴⁸ The Commission said that should Fragata's Petition be granted, the votes for Chua would not be counted.⁴⁹ In effect, Bacani would garner the sixth highest number of votes among the qualified candidates, which would earn her a seat in the Sangguniang Panlungsod of Manila.⁵⁰

With respect to the nature of Fragata's Petition, the Commission on Elections held that it was one for disqualification, regardless of the caption stating that it was a petition to declare Chua a nuisance candidate.⁵¹ The Petition alleged a ground for disqualification under Section 40 of the Local Government Code,⁵² specifically, that Chua was a permanent resident in the United States.

Since Fragata filed a petition for disqualification, Rule 25, Section 3 of the Commission on Elections Rules of Procedure governed the period for its filing.⁵³ Under the Rules, a petition for disqualification should be filed "any day after the last day for filing of certificates of candidacy, but not later than the date of the proclamation." Fragata filed the Petition within this period, having filed it on the date of Chua's proclamation on May 15, 2013.⁵⁴

The Commission no longer discussed whether Chua was a permanent resident of the United States. Instead, it found that Chua was a dual citizen when she filed her Certificate of Candidacy.⁵⁵ Although she reacquired her Filipino citizenship in 2011 by taking an Oath of Allegiance to the Republic of the Philippines, petitioner failed to take a sworn and personal renunciation of her American citizenship required under Section 5(2) of the Citizenship Retention and Re-acquisition Act of 2003.⁵⁶

Considering that Chua is a dual citizen, the Commission held that Chua was disqualified to run for Councilor pursuant to Section 40 of the Local Government Code.⁵⁷ Consequently, Chua's Certificate of Candidacy was void ab initio, and all votes casted for her were stray.⁵⁸ Chua's proclamation was likewise voided, and per *Maquiling*, Bacani was declared to have garnered the sixth highest number of votes.⁵⁹

⁴⁸ Id. at 39–41, COMELEC Second Division Resolution dated October 17, 2013.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id. at 41–42.

⁵² Id.

⁵³ Id.

⁵⁴ Id. at 42, COMELEC Second Division Resolution dated October 17, 2013.

⁵⁵ Id. at 46.

⁵⁶ Id. at 43–44.

⁵⁷ Id. at 50–51.

⁵⁸ Id. at 51.

⁵⁹ Id. at 47–51.

Thus, in the Resolution dated October 17, 2013, the Commission on Elections Second Division ruled in favor of Fragata and Bacani.⁶⁰ The dispositive portion of the October 17, 2013 Resolution reads:

WHEREFORE, premises considered, the Commission (Second Division) **RESOLVES**, as it hereby **RESOLVED**:

1. To **ANNUL** the proclamation of respondent Arlene Llena Empaynado Chua as Councilor for the Fourth District of Manila;
2. To **DIRECT** the Board of Canvassers of the City of Manila to **CONVENE** and **PROCLAIM** Intervenor Krystle Marie C. Bacani as the duly elected Councilor of the Fourth District of the City of Manila, having obtained the sixth highest number of votes for said position.

Let the Deputy Executive Director for Operations implement this Resolution.

SO ORDERED.⁶¹

Chua moved for reconsideration,⁶² but the Commission on Elections En Banc denied the Motion in the Resolution dated January 30, 2015.

Arguing that the Commission issued its October 17, 2013 and January 30, 2015 Resolutions with grave abuse of discretion, Chua filed before this Court a Petition for Certiorari and Prohibition with prayer for issuance of temporary restraining order and/or writ of preliminary injunction.⁶³ Fragata and Bacani jointly filed their Comment,⁶⁴ while the Commission on Elections filed its Comment⁶⁵ through the Office of the Solicitor General.

Chua emphasizes that she was already proclaimed as a duly elected Councilor.⁶⁶ Assuming that she was ineligible to run for office, this created a permanent vacancy in the Sangguniang Panlungsod, which was to be filled according to the rule on succession under Section 45 of the Local Government Code, and not by proclamation of the candidate who garnered the next highest number of votes.⁶⁷

⁶⁰ Id. at 51.

⁶¹ Id.

⁶² Id. at 53–69.

⁶³ Id. at 3–4, Urgent Petition for Certiorari and Prohibition.

⁶⁴ Id. at 205–215.

⁶⁵ Id. at 219–238.

⁶⁶ Id. at 13, Urgent Petition for Certiorari and Prohibition.

⁶⁷ Id. at 9–11.

Chua maintains that Fragata belatedly filed her Petition before the Commission on Elections.⁶⁸ Since Fragata filed a Petition to deny due course or cancel certificate of candidacy, it should have been filed within five (5) days from the last day for filing of certificates of candidacy, but not later than 25 days from the time of the filing of the certificate of candidacy assailed.⁶⁹ Fragata filed the Petition on May 15, 2013, more than 25 days after Chua filed her Certificate of Candidacy on October 3, 2012.⁷⁰ The Commission on Elections, therefore, should have outright dismissed Fragata's Petition.⁷¹

With her already proclaimed, Chua argues that the Commission on Elections should have respected the voice of the people.⁷² Chua prays that the Resolutions annulling her proclamation and subsequently proclaiming Bacani be set aside.⁷³

As for Fragata and Bacani as well as the Commission on Elections, all maintain that Fragata's Petition was a petition for disqualification assailing Chua's citizenship and status as a permanent resident in the United States.⁷⁴ The Petition, which Fragata filed on the date of Chua's proclamation, was filed within the reglementary period.⁷⁵

The Commission on Elections stresses that Chua was a dual citizen at the time she filed her Certificate of Candidacy.⁷⁶ Consequently, she was ineligible to run for Councilor and was correctly considered a non-candidate.⁷⁷ All the votes casted in Chua's favor were correctly disregarded, resulting in Bacani garnering the next highest number of votes.⁷⁸ Following *Maquiling*, the Commission argues that Bacani was validly proclaimed as Councilor, and, contrary to Chua's claim, the rule on succession under Section 45 of the Local Government Code did not apply, with the disqualifying circumstance existing prior to the filing of the Certificate of Candidacy.⁷⁹

Although Chua was already proclaimed, the Commission on Elections argues that "[t]he will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed that the

⁶⁸ Id. at 11.

⁶⁹ Id. at 13.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. at 13–15.

⁷³ Id. at 16–17.

⁷⁴ Id. at 210, Fragata and Bacani's Joint Comment, and 231, COMELEC's Comment.

⁷⁵ Id.

⁷⁶ Id. at 227–228, COMELEC's Comment.

⁷⁷ Id. at 228 and 235.

⁷⁸ Id. at 235.

⁷⁹ Id. at 233–235.

candidate was qualified.”⁸⁰ Fragata, Bacani, and the Commission on Elections pray that the Petition for Certiorari and Prohibition be dismissed.⁸¹

The issues for this Court’s resolution are the following:

First, whether private respondent Imelda E. Fragata filed a petition for disqualification or a petition to deny due course or cancel certificate of candidacy; and

Second, whether the rule on succession under Section 45 of the Local Government Code applies to this case.

We dismiss the Petition. The allegations of private respondent Fragata’s Petition before the Commission on Elections show that it was a timely filed petition for disqualification. Moreover, the Commission on Elections did not gravely abuse its discretion in disqualifying petitioner Arlene Llena Empaynado Chua, annulling her proclamation, and subsequently proclaiming private respondent Krystle Marie C. Bacani, the candidate who garnered the sixth highest number of votes among the qualified candidates.

I

As this Court has earlier observed in *Fermin v. Commission on Elections*,⁸² members of the bench and the bar have “indiscriminately interchanged”⁸³ the remedies of a petition to deny due course or cancel certificate of candidacy and a petition for disqualification, thus “adding confusion to the already difficult state of our jurisprudence on election laws.”⁸⁴

The remedies, however, have different grounds and periods for their filing. The remedies have different legal consequences.

A person files a certificate of candidacy to announce his or her candidacy and to declare his or her eligibility for the elective office indicated in the certificate.⁸⁵ Section 74 of the Omnibus Election Code on the contents of a certificate of candidacy states:

⁸⁰ Id. at 236.

⁸¹ Id. at 212, Fragata and Bacani’s Joint Comment, and 237, COMELEC’s Comment.

⁸² 595 Phil. 449 (2008) [Per J. Nachura, En Banc].

⁸³ Id. at 457.

⁸⁴ Id.

⁸⁵ ELECTION CODE, sec. 74.

Sec. 74. *Contents of certificate of candidacy.* – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or section which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his *Hadji* name after performing the prescribed religious pilgrimage: *Provided*, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

The Commission on Elections has the ministerial duty to receive and acknowledge receipt of certificates of candidacy.⁸⁶ However, under Section 78 of the Omnibus Election Code,⁸⁷ the Commission may deny due course or cancel a certificate of candidacy through a verified petition filed *exclusively* on the ground that “any material representation contained therein as required under Section 74 hereof is false.” The “material representation” referred to in Section 78 is that which involves the eligibility or qualification for the office sought by the person who filed the certificate.⁸⁸ Section 78 must, therefore, be read “in relation to the constitutional and statutory

⁸⁶ ELECTION CODE, sec. 76.

⁸⁷ ELECTION CODE, sec. 78 provides:

Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

⁸⁸ *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323 [Per J. Peralta, En Banc].

provisions on qualifications or eligibility for public office.”⁸⁹ Moreover, the false representation “must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.”⁹⁰

A person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run. The candidate must also possess none of the grounds for disqualification under the law. As Justice Vicente V. Mendoza said in his Dissenting Opinion in *Romualdez-Marcos v. Commission on Elections*,⁹¹ “that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice-versa.”⁹²

Section 68 of the Omnibus Election Code provides for grounds in filing a petition for disqualification:

Sec. 68 *Disqualifications*. – Any candidate who, in action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Apart from the grounds provided in Section 68, any of the grounds in Section 12 of the Omnibus Election Code as well as in Section 40 of the Local Government Code may likewise be raised in a petition for disqualification. Section 12 of the Omnibus Election Code states:

Sec. 12. *Disqualifications*. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon

⁸⁹ *Fermin v. Commission on Elections*, 595 Phil. 449, 465–466 (2008) [Per J. Nachura, En Banc].

⁹⁰ *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323 [Per J. Peralta, En Banc].

⁹¹ 318 Phil. 329 (1995) [Per J. Kapunan, En Banc].

⁹² J. Mendoza, Dissenting Opinion in *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329, 464–465 (1995) [Per J. Kapunan, En Banc].

or granted amnesty.

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Disqualifications specifically applicable to those running for local elective positions are found in Section 40 of the Local Government Code:

SECTION 40. *Disqualifications*. – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

Private respondent Fragata alleges in her Petition that petitioner is a permanent resident in the United States, a green card holder who, prior to the filing of her Certificate of Candidacy for Councilor, has resided in the State of Georgia for 33 years. She anchors her Petition on Section 40 of the Local Government Code, which disqualifies permanent residents of a foreign country from running for any elective local position.

It is true that under Section 74 of the Omnibus Election Code, persons who file their certificates of candidacy declare that they are not a permanent resident or immigrant to a foreign country. Therefore, a petition to deny due course or cancel a certificate of candidacy may likewise be filed against a permanent resident of a foreign country seeking an elective post in the Philippines on the ground of material misrepresentation in the certificate of candidacy.⁹³

⁹³ See *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 632 (2012) [Per J. Carpio, En Banc].

What remedy to avail himself or herself of, however, depends on the petitioner. If the false material representation in the certificate of candidacy relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course or cancel a certificate of candidacy or a petition for disqualification, so long as the petition filed complies with the requirements under the law.⁹⁴

Before the Commission on Elections, private respondent Fragata had a choice of filing either a petition to deny due course or cancel petitioner's certificate of candidacy or a petition for disqualification. In her Petition, private respondent Fragata did not argue that petitioner made a false material representation in her Certificate of Candidacy; she asserted that petitioner was a permanent resident disqualified to run for Councilor under Section 40 of the Local Government Code. Private respondent Fragata's Petition, therefore, was a petition for disqualification.

It follows that private respondent Fragata timely filed her Petition before the Commission on Elections. Under Rule 25, Section 3 of the Rules of Procedure of the Commission, a petition for disqualification "shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation." Private respondent Fragata filed her Petition on the date of petitioner's proclamation on May 15, 2013. The Commission on Elections did not gravely abuse its discretion in taking cognizance of private respondent Fragata's Petition.

In addition, the Commission on Elections correctly admitted private respondent Bacani's pleading-in-intervention.

An adverse decision against petitioner would require a pronouncement as to who should assume the position of Councilor. Hence, those who believe that they are entitled to the position may prove their legal interest in the matter in litigation⁹⁵ and may properly intervene for a complete disposition of the case.

Private respondent Bacani claims that she is entitled to the position of Councilor. In her Motion to Intervene, she argues for petitioner's disqualification and alleges the circumstances surrounding petitioner's dual citizenship. She then cites *Maquilang*, arguing that she should be proclaimed

⁹⁴ Id.

⁹⁵ COMELEC Rules of Procedure, rule 8, sec. 1 provides:

Section 1. *When Proper and Who may be Permitted to Intervene.* – 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.

in lieu of petitioner because she obtained the sixth highest number of votes among the qualified candidates. Private respondent Bacani's intervention was, therefore, proper.

II

The Commission on Elections did not gravely abuse its discretion in disqualifying petitioner, annulling her proclamation, and subsequently proclaiming private respondent Bacani as the duly elected Councilor for the Fourth District of Manila.

Petitioner was born to Filipino parents in 1967, which makes her a natural-born Filipino under the 1935 Constitution.⁹⁶ Ten years later, on December 7, 1977, petitioner became a naturalized American. Hence, she lost her Filipino citizenship pursuant to Section 1 of Commonwealth Act No. 63.⁹⁷

It was on September 21, 2011 when petitioner took an Oath of Allegiance to the Republic of the Philippines, thus reacquiring her Filipino citizenship.⁹⁸ From September 21, 2011 up to the present, however, petitioner failed to execute a sworn and personal renunciation of her foreign citizenship particularly required of those seeking elective public office. Section 5(2) of the Citizenship Retention and Re-acquisition Act of 2003 provides:

SECTION 5. *Civil and Political Rights and Liabilities.* – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy

⁹⁶ CONST. (1935), art. IV, sec. 1 provides:

Sec. 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

⁹⁷ Com. Act No. 63 (1936), sec. 1 provides:

Sec. 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

(1) By naturalization in a foreign country[.]

⁹⁸ Rep. Act No. 9225 (2003), sec. 3 provides:

Sec. 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

....

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath[.]

Petitioner cannot claim that she has renounced her American citizenship by taking the Oath of Allegiance. The oath of allegiance and the sworn and personal renunciation of foreign citizenship are separate requirements, the latter being an *additional* requirement for qualification to run for public office. In *Jacot v. Dal*:⁹⁹

[T]he oath of allegiance contained in the Certificate of Candidacy, which is substantially similar to the one contained in Section 3 of Republic Act No. 9225, does not constitute the personal and sworn renunciation sought under Section 5(2) of Republic Act No. 9225. It bears to emphasize that the said oath of allegiance is a general requirement for all those who wish to run as candidates in Philippine elections; while the renunciation of foreign citizenship is an additional requisite only for those who have retained or reacquired Philippine citizenship under Republic Act No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship.¹⁰⁰

With petitioner's failure to execute a personal and sworn renunciation of her American citizenship, petitioner was a dual citizen at the time she filed her Certificate of Candidacy on October 3, 2012. Under Section 40 of the Local Government Code, she was disqualified to run for Councilor in the Fourth District of Manila during the 2013 National and Local Elections.

Petitioner, however, argues that the Commission on Elections gravely abused its discretion in proclaiming private respondent Bacani, the mere seventh placer among the candidates for Councilor and, therefore, not the electorate's choice. Petitioner maintains that the vacancy left by her disqualification should be filled according to the rule on succession under Section 45(a)(1) of the Local Government Code, which provides:

SECTION 45. *Permanent Vacancies in the Sanggunian.* – (a) Permanent vacancies in the sanggunian where automatic successions provided above do not apply shall be filled by appointment in the following manner:

⁹⁹ 592 Phil. 661 (2008) [Per J. Chico-Nazario, En Banc].

¹⁰⁰ Id. at 673.

- (1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities[.]

The permanent vacancies referred to in Section 45 are those arising “when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.”¹⁰¹ In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing “but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy.”¹⁰²

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void ab initio. Specifically with respect to dual citizens, their certificates of candidacy are void ab initio because they possess “a substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy.”¹⁰³ Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.¹⁰⁴

In cases of vacancies caused by those with void ab initio certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible.¹⁰⁵ In this case, it is private respondent Bacani who is legally entitled to the position of Councilor, having garnered the sixth highest number of votes among the eligible candidates. The Commission on Elections correctly proclaimed private respondent Bacani in lieu of petitioner.

Petitioner may have garnered more votes than private respondent Bacani. She may have already been proclaimed. Nevertheless, elections are more than a numbers game. Hence, in *Maquiling*:

The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective

¹⁰¹ LOCAL GOVT. CODE, sec. 44.

¹⁰² See *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 633 (2012) [Per J. Carpio, En Banc].

¹⁰³ *Maquiling v. Commission on Elections*, 709 Phil. 408, 448 (2013) [Per C.J. Sereno, En Banc].

¹⁰⁴ Id. at 450.

¹⁰⁵ Id. at 447–450.

public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.

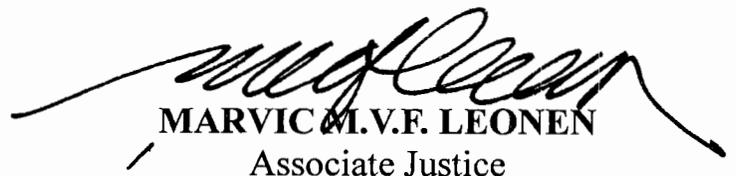
....

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.¹⁰⁶

All told, petitioner Arlene Llena Empaynado Chua is a dual citizen correctly disqualified from running for the position of Councilor in the Fourth District of Manila during the 2013 National and Local elections. With her dual citizenship existing prior to the filing of the certificate of candidacy, her Certificate of Candidacy was void ab initio. She was correctly considered a non-candidate. All votes casted for her were stray, and the person legally entitled to the position is private respondent Krystle Marie C. Bacani, the candidate with the next highest number of votes among the eligible candidates. The Commission on Elections did not gravely abuse its discretion in annulling Chua's proclamation and subsequently proclaiming private respondent Bacani.

WHEREFORE, the Petition for Certiorari and Prohibition is **DISMISSED**. This Decision is immediately executory.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

¹⁰⁶ Id. at 444-447.



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice

I concur in the result:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Arturo D. Brion
ARTURO D. BRION
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Mariano C. del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

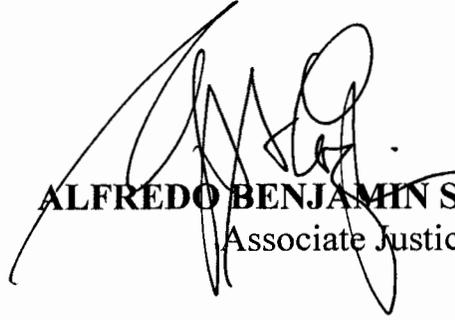
Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Jose Cabral Mendoza
JOSE CABRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

On leave
ESTELA M. PERLAS-BERNABE
Associate Justice

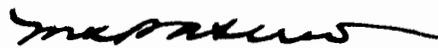
Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.



MARIA LOURDES P. A. SERENO
Chief Justice