

G.R. No. 260374 (*Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano, petitioners v. Commission on Elections, Ferdinand Romualdez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives, respondents*); G.R. No. 260426 (*Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr., Arabella Cammagay Balingao, Sr., Cherry M. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla, petitioners v. Commission on Elections, Ferdinand Romualdez Marcos, Jr., The Senate of the Philippines, represented by the Senate President, The House of Representatives, represented by the Speaker of the House of Representatives, respondents*).

Promulgated:

June 28, 2022

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### SEPARATE CONCURRING OPINION

**LOPEZ, J., J.:**

I concur in the disposition of the *ponencia*.

This Court may exercise jurisdiction to resolve the instant petitions. The proclamation of Ferdinand Marcos, Jr. (*Marcos, Jr.*) as the president-elect of the Republic of the Philippines in the recently concluded 2022 National and Local Elections does not serve to put an end to the jurisdiction of this Court on judicial matters, and the commencement of the Court's jurisdiction acting as the Presidential Electoral Tribunal (*PET*). With the same function as the other electoral tribunals, *i.e.*, the Senate Electoral Tribunal (*SET*) and the House of Representatives Electoral Tribunal (*HRET*), the PET serves as the body that decides on issues of election, return and qualifications of the specific government position which pertains to their mandate. Thus, whatever conditions that must be met in order to vest jurisdiction on the other electoral tribunals would necessarily be applicable to the PET before it could exercise jurisdiction. On this matter, the pronouncement of this Court, which extensively discussed the jurisdiction of the HRET, in *Reyes v. COMELEC*,<sup>1</sup> finds application, thus:

<sup>1</sup> 712 Phil. 192 (2013).

At the outset, it is observed that the issue of jurisdiction of respondent COMELEC *vis-a-vis* that of House of Representatives Electoral Tribunal (HRET) appears to be a non-issue. Petitioner is taking an inconsistent, if not confusing, stance for while she seeks remedy before this Court, she is asserting that it is the HRET which has jurisdiction over her. Thus, she posits that the issue on her eligibility and qualifications to be a Member of the House of Representatives is best discussed in another tribunal of competent jurisdiction. It appears then that petitioner's recourse to this Court was made only in an attempt to enjoin the COMELEC from implementing its final and executory judgment in SPA No. 13-053.

Nevertheless, we pay due regard to the petition, and consider each of the issues raised by petitioner. The need to do so, and at once, was highlighted during the discussion *En Banc* on 25 June 2013 where and when it was emphasized that the term of office of the Members of the House of Representatives begins on the thirtieth day of June next following their election.

According to petitioner, the COMELEC was ousted of its jurisdiction when she was duly proclaimed because pursuant to Section 17, Article VI of the 1987 Constitution, the HRET has the exclusive jurisdiction to be the "sole judge of all contests relating to the election, returns and qualifications" of the Members of the House of Representatives.

Contrary to petitioner's claim, however, the COMELEC retains jurisdiction for the following reasons:

*First*, the HRET does not acquire jurisdiction over the issue of petitioner's qualifications, as well as over the assailed COMELEC Resolutions, unless a petition is duly filed with said tribunal. Petitioner has not averred that she has filed such action.

*Second*, the jurisdiction of the HRET begins only after the candidate is considered a Member of the House of Representatives, as stated in Section 17, Article VI of the 1987 Constitution:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective **Members.** x x x

As held in *Marcos v. COMELEC*, the HRET does not have jurisdiction over a candidate who is not a member of the House of Representatives, to wit:

As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins **only after a candidate has become a member of the House of Representatives. Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question.** (Emphasis supplied.)

The next inquiry, then, is when is a candidate considered a Member of the House of Representatives?

In *Vinzons-Chato v. COMELEC*, citing *Aggabao v. COMELEC* and *Guerrero v. COMELEC*, the Court ruled that:

The Court has invariably held that once a winning candidate has been **proclaimed, taken his oath, and assumed office** as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This pronouncement was reiterated in the case of *Limkaichong v. COMELEC*, wherein the Court, referring to the jurisdiction of the COMELEC *vis-a-vis* the HRET, held that:

The Court has invariably held that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. (Emphasis supplied.)

This was again affirmed in *Gonzalez v. COMELEC*, to wit:

After proclamation, taking of oath and assumption of office by Gonzalez, jurisdiction over the matter of his qualifications, as well as questions regarding the conduct of election and contested returns – were transferred to the HRET as the constitutional body created to pass upon the same. (Emphasis supplied.)

From the foregoing, it is then clear that to be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office.<sup>2</sup>

Having established the requisites, this Court further clarified:

Indeed, in some cases, this Court has made the pronouncement that once a proclamation has been made, COMELEC's jurisdiction is already lost and, thus, its jurisdiction over contests relating to elections, returns, and qualifications ends, and the HRET's own jurisdiction begins. However, it must be noted that in these cases, the doctrinal pronouncement was made in the context of a proclaimed candidate who had not only taken an oath of office, but who had also assumed office.

For instance, in the case of *Dimaporo v. COMELEC*, the Court upheld the jurisdiction of the HRET against that of the COMELEC only after the candidate had been proclaimed, taken his oath of office before the

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*Id.* at 210-212.

Speaker of the House, and assumed the duties of a Congressman on 26 September 2007, or after the start of his term on 30 June 2007, to wit:

On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the status quo ante order of the Court, he had already been proclaimed by the PBOC as the duly elected Member of the House of Representatives of the First Congressional District of Lanao del Norte. On that very same day, he had taken his oath before Speaker of the House Jose de Venecia, Jr. and assumed his duties accordingly.

In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). (Emphasis supplied.)

Apparently, the earlier cases were decided after the questioned candidate had already assumed office, and hence, was already considered a Member of the House of Representatives, *unlike in the present case*.<sup>3</sup>

Verily, Section 4, Article VII of the 1987 Constitution provides the jurisdiction of the PET, which is essentially the same as that of the HRET and SET, as follows:

x x x x

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice- President, and may promulgate its rules for the purpose.

Notably, a president-elect, despite his proclamation, does not become the President of the Republic of the Philippines until he begins his term of office. This term of office begins at noon on the thirtieth day of June next following the day of the election.<sup>4</sup> It is only at this instance when the duly elected President assumes office, after being proclaimed and after taking his oath of office.

Thus, as long as the petition remains with this Court before June 30, 2022, this Court retains jurisdiction to resolve the instant petitions.

To recapitulate, the petition for *certiorari* filed by Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano (*Buenafe, et al.*) arose from a **petition to cancel or deny due course** the Certificate of Candidacy (COC) of respondent Ferdinand Marcos, Jr. (*Marcos, Jr.*) under Section 78 of the

<sup>3</sup> *Id.* at 212-213.

<sup>4</sup> See 1987 Constitution, Art. VII, Sec. 4.

Omnibus Election Code (*OEC*), while the petition for *certiorari* filed by Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr., Arabella Cammagay Balingao, Sr., Cherry M. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (*Ilagan, et al.*) arose from a **petition for disqualification** of Marcos, Jr. under Section 12 of the OEC.<sup>5</sup>

As mentioned in the *ponencia*, both of these petitions referred to the same set of criminal cases for violation of the National Internal Revenue Code of 1977, as amended (*1977 NIRC*) involving Marcos, Jr.<sup>6</sup> Ultimately, Marcos, Jr. was acquitted by the Court of Appeals (*CA*) for non-payment of deficiency taxes for the taxable years 1982-1985, but convicted him for failure to file income tax return for the same period. He was then sentenced to pay a fine for these violations. This decision eventually became final and executory.<sup>7</sup>

Noticeably, both the petitions filed by Buenafe, *et al.* and Ilagan, *et al.* were anchored on the same factual basis, albeit being sought to be applied on different provisions of the OEC. Nonetheless, as extensively discussed in the *ponencia*, a petition to deny due course is different from a petition for disqualification. To further highlight the differences between these two remedies, *Fermin v. Comelec*<sup>8</sup> is instructive, *viz.*:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is *not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for*. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.** x x x

x x x x

x x x The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC. Thus, in *Miranda v. Abaya*, this Court made the distinction that a candidate who is

<sup>5</sup> Ponencia, pp. 4-5.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> 595 Phil. 449 (2008).

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disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate.<sup>9</sup>

The differences in the effect of these two remedies, as well as the ground by which these petitions have to be examined, necessitates a clear delineation between these two. The importance of the distinction was illustrated in the case of *Munder v. COMELEC*<sup>10</sup> when this Court examined a petition for disqualification as a petition to deny due course because of the ground relied upon by the petitioner therein, thus:

It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder - the latter's alleged status as unregistered voter in the municipality - was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. Since the two remedies vary in nature, they also vary in their prescriptive period. A petition to cancel a CoC gives a registered candidate the chance to question the qualification of a rival candidate for a shorter period: within 5 days from the last day of their filing of CoCs, but not later than 25 days from the filing of the CoC sought to be cancelled. A petition for disqualification may be filed any day after the last day of the filing of CoC but not later than the date of the proclamation.

The Comelec Second Division stated that the last day of filing of the CoCs was on 21 December 2009. Thus, the period to file a Petition to Deny Due Course or to Cancel Certificate of Candidacy had already prescribed when Sarip filed his petition against Munder.<sup>11</sup>

As such, it is important to examine the ground relied upon in a petition for cancellation of COC and a petition for disqualification. It has been held that the proper characterization of a petition as one for disqualification under the pertinent provisions of laws cannot be made dependent on the designation, correctly or incorrectly, of a petitioner.<sup>12</sup>

As mentioned, a petition for cancellation of COC must revolve around a material representation on the eligibility of a candidate, as set forth in the Constitution and laws. If the ground relied upon does not pertain to a material representation of any of the eligibility requirements of a candidate such as a nickname, the petition would have to be denied. This was aptly discussed by this Court in *Villafuerte v. COMELEC*<sup>13</sup> as follows:

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<sup>9</sup> *Id.* at 465-469.

<sup>10</sup> 675 Phil. 300 (2011).

<sup>11</sup> *Id.* at 313-314.

<sup>12</sup> *Amora, Jr. v. COMELEC, et al.*, 655 Phil. 467, 477 (2011).

<sup>13</sup> 728 Phil. 74 (2014).

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x x x This case is a petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. Here, respondent's nickname is not a qualification for a public office which affects his eligibility. Notably, respondent's father, who won 3 consecutive terms as Governor of the Province of Camarines Norte, is popularly known as "LRAY," so when respondent wrote in his COC, "LRAY JR. MIGZ" as his nickname, he differentiated himself from Governor "LRAY," which negates any intention to mislead or misinform or hide a fact which would otherwise render him ineligible. Also, the appellation LRAY JR. was accompanied by the name MIGZ which was not so in the *Villarosa* case.

It bears stressing that Section 74 requires, among others, that a candidate shall use in a COC the name by which he has been baptized, unless the candidate has changed his name through court-approved proceedings, and that he may include one nickname or stagename by which he is generally or popularly known in the locality, which respondent did. As we have discussed, the name which respondent wrote in his COC to appear in the ballot, is not considered a material misrepresentation under Section 78 of the Omnibus Election Code, as it does not pertain to his qualification or eligibility to run for an elective public office. By invoking the case of *Villarosa* which is in the nature of an election protest relating to the proclamation of Villarosa, petitioner should have instead filed an election protest and prayed that the votes for respondent be declared as stray votes, and not a petition to deny due course or cancel the COC.<sup>14</sup>

With respect to the presidency, the eligibility requirements therefor are set forth under Section 2, Article VII of the 1987 Constitution, which reads:

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Under this provision, the basic eligibility requirements that a presidential candidate must satisfy pertains to: (1) citizenship, (2) status as a voter, (3) ability to read and write, (4) age, and (5) residency. It is when any of these requirements are materially misrepresented in a COC when a COC may be denied due course.

In addition to Section 2, Article VII of the Constitution, other grounds pertaining to eligibility of a presidential candidate, which may be raised in a petition to deny due course or cancel COC are: (1) the provisions on term limitation, and (2) perpetual disqualification. These two additional grounds serve as a bar to a person who intends to run for public office and thereby affects eligibility of a candidate, as it limits the persons who can run for public office. Moreover, in the same manner as the basic eligibility requirements

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<sup>14</sup> *Id.* at 88.

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under Section 2, Article VII of the Constitution could readily be ascertained at the time of the filing of the COC, these grounds could likewise be determined by the candidate him/herself.

The term limitation for those running for president is provided in Section 4, Article VII of the Constitution, which states:

SECTION 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

Indeed, in the case of *Albania v. COMELEC*,<sup>15</sup> this Court upheld the COMELEC's ruling that a violation of the three term-limit rule for a mayoralty candidate is a ground for a petition for cancellation of COC, and not a petition for disqualification, *viz.*:

Section 74 of the OEC provides that 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. The word "eligible" in Section 74 means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office. And We had held that a violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Section 78 of the Omnibus Election Code, x x x.<sup>16</sup>

The illustrative cases on term limitations were enumerated in *Aratea v. COMELEC*<sup>17</sup> as follows:

In *Latasa v. Commission on Elections*, petitioner Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in 1992, 1995, and 1998. The Municipality of Digos was converted into the City of Digos during Latasa's third term. Latasa filed his certificate of candidacy for city mayor for the 2001 elections. Romeo Sunga, Latasa's opponent, filed before the COMELEC a "petition to deny due course, cancel certificate of candidacy and/or disqualification" under Section 78 on the ground that Latasa falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City. Latasa argued that he did not make any false representation. In his certificate of candidacy, Latasa inserted a footnote after the phrase "I am eligible" and indicated "\*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor." The COMELEC First Division cancelled Latasa's certificate of

<sup>15</sup> 810 Phil. 470 (2017).

<sup>16</sup> *Id.* at 481.

<sup>17</sup> 696 Phil. 700 (2012).



candidacy for violation of the three-term limit rule but not for false material representation. This Court affirmed the COMELEC En Banc's denial of Latasa's motion for reconsideration.

We cancelled Marino Morales' certificate of candidacy in *Rivera III v. Commission on Elections (Rivera)*. We held that Morales exceeded the maximum three-term limit, having been elected and served as Mayor of Mabalacat for four consecutive terms (1995 to 1998, 1998 to 2001, 2001 to 2004, and 2004 to 2007). We declared him ineligible as a candidate for the same position for the 2007 to 2010 term. Although we did not explicitly rule that Morales' violation of the three-term limit rule constituted false material representation, we nonetheless granted the petition to cancel Morales' certificate of candidacy under Section 78. We also affirmed the cancellation of Francis Ong's certificate of candidacy in *Ong v. Alegre*, where the "petition to disqualify, deny due course and cancel" Ong's certificate of candidacy under Section 78 was predicated on the violation of the three-term limit rule.<sup>18</sup>

With respect to perpetual disqualification as a ground for cancellation of COC, *Jalosjos, Jr. v. COMELEC*<sup>19</sup> expounded on the following:

Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

x x x x

The penalty of *prisión mayor* automatically carries with it, by operation of law, the accessory penalties of temporary absolute disqualification and perpetual special disqualification. Under Article 30 of the Revised Penal Code, temporary absolute disqualification produces the effect of "deprivation of the right to vote in any election for any popular elective office *or to be elected to such office*." The duration of the temporary absolute disqualification is the same as that of the principal penalty. On the other hand, under Article 32 of the Revised Penal Code[,] perpetual special disqualification means that "the offender shall not be permitted to hold any public office during the period of his disqualification," *which is perpetually*. Both temporary absolute disqualification and perpetual special disqualification constitute ineligibilities to hold elective public office. A person suffering from these ineligibilities is ineligible to run for elective public office, and commits a false material representation if he states in his certificate of candidacy that he is eligible to so run.

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<sup>18</sup> *Id.* at 732-733.

<sup>19</sup> 696 Phil. 601 (2012).

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Perpetual special disqualification is a ground for a petition under Section 78 of the Omnibus Election Code because this accessory penalty is an ineligibility, which means that the convict is not eligible to run for public office, contrary to the statement that Section 74 requires him to state under oath. As used in Section 74, the word “eligible” means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for public office. x x x<sup>20</sup>

Reiterating the foregoing, *Dimapilis v. COMELEC*<sup>21</sup> applied perpetual disqualification as a ground for cancellation of a CoC, when said accessory penalty is imposed in an administrative case, to wit:

A CoC is a formal requirement for eligibility to public office. Section 74 of the OEC provides that the CoC of the person filing it shall state, among others, that he is eligible for the office he seeks to run, and that the facts stated therein are true to the best of his knowledge. To be “eligible” relates to the capacity of holding, as well as that of being elected to an office. Conversely, “ineligibility” has been defined as a “disqualification or legal incapacity to be elected to an office or appointed to a particular position.” In this relation, **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, but must also possess none of the grounds for disqualification under the law.**

In this case, petitioner had been found guilty of Grave Misconduct by a final judgment, and punished with dismissal from service with all its accessory penalties, including perpetual disqualification from holding public office. Verily, **perpetual disqualification to hold public office is a material fact involving eligibility** which rendered petitioner's CoC void from the start since he was not eligible to run for any public office at the time he filed the same.

x x x x

In this case, the OMB rulings dismissing petitioner for Grave Misconduct had already attained finality on May 28, 2010, which date was even prior to his first election as Punong Barangay of Brgy. Pulung Maragul in the October 2010 Barangay Elections. As above-stated, “[t]he penalty of dismissal [from service] shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision.” Although the principal penalty of dismissal appears to have not been effectively implemented (since petitioner was even able to run and win for two [2] consecutive elections), the corresponding accessory penalty of perpetual disqualification from holding public office had already rendered him ineligible to run for any elective local position. Bearing the same sense as its criminal law counterpart, the term perpetual in this administrative penalty should likewise connote a lifetime restriction and is not dependent on the term of any principal penalty. It is undisputable that this accessory penalty sprung from the same final OMB rulings, and therefore had already

<sup>20</sup> *Id.* at 624-629.

<sup>21</sup> 808 Phil. 1108 (2017).

attached and consequently, remained effective at the time petitioner filed his CoC on October 11, 2013 and his later re-election in 2013. x x x<sup>22</sup>

While the other grounds in a petition for cancellation of COC may very well be differentiated from the grounds for a petition for disqualification, perpetual disqualification, as a ground for the cancellation of COC, presents a conundrum in this delineation. This is because perpetual disqualification is imposed based on the act committed by a person, whether it be a crime or an administrative infraction.

Verily, under Section 12 of the OEC, there are certain crimes, the conviction of which, would be a ground for disqualification of a candidate. The provision reads:

SECTION 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 or granted amnesty.

[These] 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.

With this, there may be a situation where a person who has been sentenced to final judgment of a crime, which carries the penalty of perpetual disqualification, and which crime likewise involves moral turpitude, may be disqualified or his/her COC be cancelled. Indeed, this Court has already recognized that there is an overlap in the grounds for eligibility and ineligibility *vis-à-vis* qualifications and disqualifications.<sup>23</sup> In cases of such overlap, “the petitioner should not be constrained in [his/her] choice of remedy when the Omnibus Election Code explicitly makes available multiple remedies.”<sup>24</sup> Such is the present case, with the petition filed by Buenafe, *et al.* as a petition for cancellation of COC of Marcos, Jr. and with the petition filed by Ilagan, *et al.* as a petition for disqualification.

While the arguments of the two petitions overlap, specifically pointing out the conviction of Marcos, Jr. for failure to file his income tax return, the basis of the analysis on these two petitions should be delineated.

<sup>22</sup> *Id.* at 1117-1123. (Citations omitted)

<sup>23</sup> *Aratea v. COMELEC*, *supra* note 17, at 733.

<sup>24</sup> *Id.*

With respect to the petition filed by Buenafe, *et al.*, being a petition for cancellation of COC, the same should be analyzed as to whether the conviction of Marcos, Jr. carried perpetual disqualification. On the other hand, the petition filed by Ilagan, *et al.*, being a petition for disqualification, should be analyzed based on the issue of whether the conviction of Marcos, Jr. involved moral turpitude.

Examining the petition filed by Buenafe, *et al.*, the same was correctly denied by the COMELEC for failure to prove that the conviction of Marcos, Jr. by the CA for failure to file income tax return carried perpetual disqualification.

The accompanying effects of perpetual disqualification are very well defined under the RPC as follows:

**Article 30.** *Effects of the Penalties of Perpetual or Temporary Absolute Disqualification.* - The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

**Article 31.** *Effect of the Penalties of Perpetual or Temporary Special Disqualification.* - The penalties of perpetual or temporary special disqualification for public office, profession or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected;
2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of such disqualification.

**Article 32.** *Effect of the Penalties of Perpetual or Temporary Special Disqualification for the Exercise of the Right of Suffrage.* - The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

The effect of perpetual disqualification on the deprivation of the public office to which it relates serves as a bar to one who is seeking for public office. It may be imposed as a principal or an accessory penalty. Under the RPC, perpetual disqualification is automatically imposed as an accessory to certain principal penalties, as follows:

Article 40. Death – Its Accessory Penalties. – The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.

Article 41. Reclusion Perpetua and Reclusion Temporal – Their accessory penalties. - The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Article 42. Prison Mayor – Its Accessory Penalties. – The penalty of prison mayor, shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Article 43. Prison Correccional – Its Accessory Penalties. – The penalty of prison correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Similarly, under the 2017 Rules on Administrative Cases in the Civil Service (*RACCS*), perpetual disqualification is automatically imposed as an accessory to the principal penalty of dismissal, as follows:

Section 57. Administrative Disabilities Inherent in Certain Penalties. The following rules shall govern in the imposition of accessory penalties:

- a. The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of benefits.

Noticeably, both the RPC and the RACCS specify the principal penalty to which the accessory penalty of perpetual disqualification attaches. Verily, being an accessory penalty, it is important to determine the principal penalty to which it attaches in order to guide the proper authority as to the inherent penalties that accompanies the principal penalty.

In the instant case, the petition filed by Buenafe, *et al.* relies on Section 286 of the 1997 National Internal Revenue Code, which was introduced as an amendment thereto by Presidential Decree No. 1994. The provision reads:

Chapter II – Crimes, Other Offenses  
And Forfeitures

SEC. 286. General provisions. - (a) Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

(b) Any person who willfully aids or abets in the commission of a crime penalized herein or who causes the commission of any such offense by another, shall be liable in the same manner as the principal.

(c) If the offender is not a citizen of the Philippines, he shall be adopted immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election.** If the offender is a certified public accountant, his certificate as a certified public [accountant] shall, upon conviction, be automatically revoked or cancelled.

(d) In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

A reading of paragraph (c), Section 286 would show that it contained a general statement as to the imposition of perpetual disqualification, without however specifying the principal penalty to which it attaches to. This run against the nature of an accessory penalty, which is a penalty that is inherent to, and made dependent on the existence of a principal penalty. Further, this goes against due process considerations as it would appear that a mere conviction of any crime penalized by the NIRC, when committed by a public officer, would automatically carry perpetual disqualification. It bears noting that the provisions of the NIRC carry different penalties that correspond to the act that is being penalized. In the same way that the RPC and the RACCS imposes perpetual disqualification to penalties that are grave and correctional, the NIRC must necessarily adapt to the same principle. It cannot simply be imposed as an accessory penalty against any violation without specifying the principal penalty to which it attaches to.

Should the penalty of perpetual disqualification be treated as a principal penalty and not as an accessory penalty, then with more reason should the

petition of *Buenafe, et al.* be denied. As a principal penalty, it should be explicitly stated in the CA decision that convicted Marcos, Jr. for non-filing of his income tax return. In the absence of an express imposition, it cannot be said that Marcos, Jr. was perpetually disqualified from public office.

Withal, petitioners *Buenafe, et al.* failed to point out any provision of law imposing an accessory penalty to the penalty of fine as imposed by the CA. This CA decision, which has already become final and executory, did not carry in its dispositive portion, any wordings of perpetual disqualification. Thus, Marcos, Jr. did not commit material misrepresentation when he stated in his COC that he is eligible to run as president of the Republic of the Philippines.

With respect to the petition filed by *Ilagan, et al.*, the same must be examined on the basis of moral turpitude.

Moral turpitude has been defined as “everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.”<sup>25</sup> *Zari v. Flores*<sup>26</sup> is one case that has provided jurisprudence its own list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.<sup>27</sup>

While the concept of moral turpitude has been viewed as a flexible concept that cuts across crimes for which morality may be invoked, it is my view that the most important consideration in determining whether a crime involves moral turpitude is the responsibility imposed upon the actor and whether his/her actions that led to the commission of a wrong resulted into a clear and grave loss to another individual.

In this case, the crime to which Marcos, Jr. has been adjudged guilty of pertains to non-filing of his income tax return during his term as the Vice-Governor and as Governor of Ilocos Norte in the years 1982-1985. While the CA Decision convicting him of the crime could no longer be modified, determining whether said crime involves moral turpitude would necessitate a review of the provisions of the NIRC which served as a basis for his conviction.

<sup>25</sup> *Teves v. COMELEC*, 604 Phil. 717, 726 (2009).

<sup>26</sup> 183 Phil. 27, 32 (1979).

<sup>27</sup> Concurring Opinion of Justice Arturo D. Brion in *Teves v. COMELEC*, *supra* note 25, at 742.

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Here, the developments in the NIRC would show that the responsibility to file a return falls on the withholding agent and not the taxpayer. Further, being an elected official at the time, Marcos, Jr. was a government employee. The provisions on these are as follows:

***Amendments to the NIRC Re: Income Tax, Republic Act No. 590,  
[September 22, 1950]***

*SECTION 12. Supplement to Title II of Code.* — There is hereby added to Title II of the National Internal Revenue Code, as amended, as a supplement to, and an integral part of, the said Title, the following provisions to be known as “Supplement A”:

x x x x

*Art. 4. Return and payment to the Government of taxes withheld.* — Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or; in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers. The Collector of Internal Revenue may, with the approval of the Secretary of Finance, require employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government.

*Art. 5. Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose

***Section 80 and 82 of the 1997 NIRC***

*SEC. 80. Liability for Tax.* —

*(A) Employer.* - The employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld under this Chapter. If the employer fails to withhold and remit the correct amount of tax as required to be withheld under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.

x x x x



**SEC. 82. *Return and Payment in Case of Government Employees.*** - If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wage shall be made by the officer or employee having control of the payment of such wage, or by any officer or employee duly designated for the purpose.

***Section 51 of the 1997 NIRC, and Section 51-A, introduced by the TRAIN Law***

## **CHAPTER IX. RETURNS AND PAYMENT OF TAX**

### **SEC. 51. *Individual Return.*** -

#### **(A) *Requirements.*** -

- (1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
- (a) Every Filipino citizen residing in the Philippines;
  - (b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
  - (c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
  - (d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

- (2) The following individuals shall not be required to file an income tax return:

(a) An individual whose taxable income does not exceed Two hundred fifty thousand pesos (P250,000) under Section 24(A)(2)(a): *Provided*, That a citizen of the Philippines and any alien individual engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income;

(b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided*, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return.

**SEC. 51-A. *Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income.*** - Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped 'received' by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

Significantly, a perusal of the developments in the provisions of our tax code would reveal the intention of the legislature to exempt a government employee, much less those who are receiving purely compensation income

from filing their income tax return. This is because of the withholding system of taxes that has already been in effect for those working in the government. Verily, there is no responsibility on the part of the government employees to file an income tax return when the appropriate amount of withholding tax has already been deducted from their salary.

As in the case of Marcos, Jr. being the then Vice-Governor and Governor of Ilocos Norte, his payroll falls under the payroll for government employees. Thus, his taxes would have to be withheld by the appropriate office before receiving his salary. As the legislative intent shows that it is the officer that has already withheld the taxes who should file the income tax return, the taxpayer, as in the case of Marcos, Jr., would have no such responsibility. Consequently, his inaction on the matter, and for not having shown to have caused a clear and grave loss to another individual, would not involve moral turpitude.

With the ground relied upon by the petition of Ilagan, *et al.* for the disqualification of Marcos, Jr. not having been proven, the COMELEC did not commit grave abuse of discretion in denying their petition.

Withal, the votes given to a winning candidate, especially when pertaining to the highest office of the land, could not simply be disregarded. The Philippines, as a republican and democratic State, relies on the voters' exercise of their right to choose the leaders whom they want them to represent. The pending petitions could not simply be left hanging until the president-elect takes his oath and assume office, as this would already take away the jurisdiction of this Court. Thus, I commend the efforts exerted by my colleague, Associate Justice Rodil V. Zalameda for his prompt action on the petitions, as reflected in his well-written *ponencia*.

In view of the foregoing, I vote to **DISMISS** the petitions filed by Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano in G.R. No. 260374 and Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerilla Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari Dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Senturias, Sr., Arabella Cammagay Balingao, Sr., Cherry M. Ibardolaza, CSSJB, Sr., Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla in G.R. No. 260426.

  
**JOSEP V. LOPEZ**  
Associate Justice

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