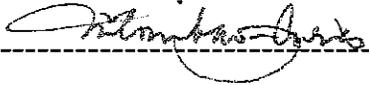


*EN BANC*

G.R. No. 261344 – (FRANK ONG SIBUMA, Petitioner V. COMMISSION ON ELECTIONS, ALMA L. PANELO and STEFANIE ANN ERIGUEL CALONGCAGON, Respondents).

Promulgated: January 24, 2023

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**CONCURRENCE**

**LAZARO-JAVIER, J.:**

Sovereignty resides in the people and all government authority emanates from them.<sup>1</sup> *Malabaguio v. COMELEC*<sup>2</sup> paints a clear picture of what should be the overriding policy of Commission on Election (COMELEC) as a Constitutional Commission and guardian of the most hallowed right of a Filipino—the right to vote and be voted upon:

This Court has repeatedly stressed that the **importance of giving effect to the sovereign will of the people as expressed through the ballot must be given fullest effect.** In case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, in *Pangandaman v. COMELEC, et al.*, this Court emphatically stated that:

**[U]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said.** Corollarily, laws and statutes governing election contests especially the appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. (Emphases supplied, citations omitted)<sup>3</sup>

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At balance, the question really boils down to a **choice of philosophy and perception of how to interpret and apply the laws relating to elections;** literal or liberal; the letter or the spirit; the naked provision or the ultimate purpose; legal syllogism or substantial justice; in isolation or in context of social conditions; harshly against or gently in favor of the voter's obvious

<sup>1</sup> Const., Art. II, Sec. 1.

<sup>2</sup> *Malabaguio v. COMELEC*, 400 Phil. 551 (2000) [Per. J. Ynares-Santiago, *En Banc*]

<sup>3</sup> Id. at 555-556.



of popular sovereignty than to be right in complex but little understood legalisms.”<sup>4</sup> (Emphases supplied)

In keeping with the sovereign will of the electorate, I register my assent to the excellent *ponencia* of Associate Justice Henri Jean Paul B. Inting and discuss the specifics of my concurrence.

As I have stressed in my separate concurrence in *Buenafe v. COMELEC*,<sup>5</sup> doubts cannot unseat the clear popular choice. The sovereign will should be respected:

Here, the fact of consequence is the *overwhelming choice* of the sovereign will. It *shapes* how election laws are to be explained and enforced.

Mere *doubts* arising from asserted interpretations of election laws cannot unseat the *clear popular choice*, his duly elected government *cannot be thwarted*. It is *not within this Court's power* to found a government enabled only by *complex but little understood legalisms*.

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In G.R. No. 260374 and G.R. No. 260426, the choice of leaders of the sovereign-of-the-day *cannot be overturned* by speculative and far-fetched arguments. In case of *doubt*, as here, the Court will for sure allow the sovereign will to be respected. This is to be expected. The election of our leaders is *the greatest of all political questions*. It has been committed *not just textually but as a matter of long-standing and unassailable practice* to the conviction and belief of our electors since time immemorial. Therefore, *in applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms*. Win or lose as regards the candidates we have highly esteemed, the clear choice *nonetheless binds us all*.<sup>6</sup> (Emphases and italics supplied)

*There is no material misrepresentation of residency.*

The COMELEC Second Division ruled that petitioner Frank Ong Sibuma's (Sibuma) representation of residency in his certificate of candidacy (COC) pertains to his qualification for local elective official under Section 39(a) of Republic Act No. 7160 or "The Local Government Code of 1991," *viz.*:

<sup>4</sup> Id. at 567.

<sup>5</sup> G.R. No. 260374, June 28, 2022 - See *Separate Concurrence of Associate Justice Amy C. Lazaro-Javier* [Per J. Zalameda, *En Banc*]

<sup>6</sup> Id.

Section 39. Qualifications. —

- (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; **a resident therein for at least one (1) year immediately preceding the day of the election**; and able to read and write Filipino or any other local language or dialect.<sup>7</sup> (Emphasis supplied)

The COMELEC ruled that Sibuma must establish both his: (a) physical presence in the Municipality of Agoo, La Union; and (b) intention to make it his domicile. On this score, however, he failed to establish his actual physical presence at the place where he sought to be elected as mayor. Thus, it cancelled his COC under Section 78 of the Batas Pambansa Bilang 881 or “The Omnibus Election Code of the Philippines.”

SECTION 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.<sup>8</sup>

Was there a material misrepresentation? *There was none.*

There is no doubt that *eligibility* may be *falsely represented* in a COC for which a petition under Section 78 of the Omnibus Election Code of the Philippines may be triggered. This is the ruling of the Court in a host of cases including *Halili v. Commission on Elections*.<sup>9</sup> To be clear, however, the false representation is not simply about the legal conclusion of a candidate’s eligibility. Rather, the misrepresentation includes the *facts* from which the legal conclusion of eligibility or ineligibility is to be inferred. Hence, Section 78 is not just penalizing the expression of the legal opinion or belief by the candidates about their eligibility, which would be unfair if it were just that, but rather the *false statements of fact* that the candidates know or ought to know from which their ineligibility arises.

<sup>7</sup> Republic Act No. 7160, The Local Government Code of 1991, Approved on October 10, 1991.

<sup>8</sup> Batas Pambansa Bilang 881, The Omnibus Election Code of the Philippines, Approved on December 3, 1985

<sup>9</sup> G.R. No. 231643, January 15, 2019. [Per J. Carpio, *En Banc*]

Arguably, a *misrepresentation* about the candidates' eligibility in cases where the factual basis for the claim is *not egregiously absent*, as in this case, while still an instance of a false material representation under Section 78, would *not* be *actionable* under this provision since the element of *malicious intent* or *mens rea* would be absent.

In *Abang Lingkod Party-List v. COMELEC*,<sup>10</sup> to be a ground to deny due course or cancel a certificate of candidacy, material misrepresentation must be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible:

Declaration of an untruthful statement in a petition for registration, or in any other document pertinent to the registration and/or accreditation under the party-list system, as a ground for the refusal or cancellation of registration under Section 6(6) of R.A. No. 7941, is akin to material misrepresentation in the certificate of candidacy filed by an individual candidate under **Section 78 of the Omnibus Election Code**. Both provisions **disallow prospective candidates from participating in an election for declaring false statements in their eligibility requirements**.

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Elucidating on what constitutes material misrepresentation in a certificate of candidacy under Section 78 of the Omnibus Election Code, the Court, in *Lluz v. Commission on Elections*, explained that:

From these two cases several conclusions follow. *First*, a **misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility**. x x x *Third*, a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy under Section 78. In other words, for a candidate's certificate of candidacy to be denied due course or cancelled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate. (Emphasis ours)

In *Velasco v. Commission on Elections*, the Court further clarified that a false representation under Section 78 of the Omnibus Election Code, in order to be a ground to deny due course or cancel a certificate of candidacy, must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Thus:

The false representation that [Sections 74 and 78 of the Omnibus Election Code] mention must necessarily pertain to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualification for elective office, such as his or her

<sup>10</sup> 720 Phil. 120 (2013) [Per J. Reyes, *En Banc*]

The false representation that [Sections 74 and 78 of the Omnibus Election Code] mention must necessarily pertain to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualification for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the local government under which he is running.

Separately from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.<sup>11</sup> (Emphases supplied)

As the *ponencia* wrote, false representation under Section 78 requires a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." The false material representation "must be made with a malicious intent to deceive the electorate as to the potential candidate's qualifications for public office."

To the best of his (Sibuma) knowledge, when he filed his COC, he represented that he was eligible for the Office of the Mayor of Agoo, La Union. Sibuma alleged that he had established his residency in the Municipality of Agoo, Province of La Union since birth. He contended that while he may have been absent there for some time, his intention to return (*animus revertendi*) has always been shown. He thus submitted in evidence the following documents: (a) Certificate of Live Birth showing that he was born in Agoo, La Union; (b) Secondary Student's Record from the Don Mariano Marcos State University of Agoo, as well as a certification attesting that he completed his secondary education therein; (c) Copies of his telephone bills and a Ledger Inquiry from the La Union Electric Company, all issued in his name, indicating Sta. Barbara, Agoo, La Union as his address; (d) Tax Declaration of Real Property issued in his name and his spouse covering a property situated in Sta. Barbara, Agoo, La Union; and (e) Affidavit of Residency dated November 29, 2021, signed by for 41 residents of Barangay Sta. Barbara, Agoo, attesting that he has resided in Agoo from January 2021.

For the COMELEC Second Division, however, these pieces of evidence were not enough. It ruled against Sibuma and accorded much weight to Alma L. Panelo's (Panelo) evidence, to wit: (a) Certification of Punong Barangay Erwina C. Eriguel and Aunt of Stephanie Ann Eriguel

<sup>11</sup> Id. at 141-143.

Based thereon, has Panelo mustered the requisite quantum of substantial evidence, or such *relevant evidence as a reasonable mind will accept* as adequate to support a conclusion? *She did not.* For aside from the fact that Panelo failed to clearly demonstrate that Sibuma “*intentionally deceived*” the electorate, her documentary evidence do not inspire credence. *For one*, the certification of Erwina C. Eriguel, aunt of Stephanie Ann Eriguel Calongcagon, is in the nature of a self-serving evidence in view of her close relationship with the person who would be most benefited by the disqualification of Sibuma. Hence, this certification should be taken with a grain of salt. *For another*, 41 affiants minus 8, leaves 33 affiants and residents of Barangay Sta. Barbara, Agoo attesting that Sibuma has resided in Agoo from January 2021. Verily, the COMELEC Second Division could and should not have cancelled Sibuma’s COC based only on the 8 affiants who recanted their sworn statements of residency in favor of Sibuma. How about the overwhelming majority of 33 affiants who did not recant? In any event, we reckon back with the dismal failure of Panelo to prove that Sibuma knowingly committed a material misrepresentation in his COC.

In *Papandayan, Jr. v. COMELEC*,<sup>12</sup> the COMELEC Second Division disqualified Mauyag B. Papandayan, Jr., (Papandayan) as a candidate for municipal mayor of Tubaran, Province of Lanao del Sur in the May 14, 2001 elections, as he was not a resident of Barangay Tangcal in Tubaran with more or less similar pieces of evidence.<sup>13</sup> In resolving the petition in favor of Papandayan, the Court recited the various jurisprudence and rules relative to residency:

. . . *Second.* Petitioner alleges that the COMELEC gravely abused its discretion in declaring him disqualified on the ground that he is not a resident of Tubaran.

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**With due regard for the expertise of the COMELEC, we find the evidence to be insufficient to sustain its resolution. We agree with the Solicitor General, to the contrary, that petitioner has duly proven that, although he was formerly a resident of the Municipality of Bayang, he later transferred residence to Tangcal in the Municipality of Tubaran as shown by his actual and physical presence therein for 10 years prior to the May 14, 2001 elections.**

<sup>12</sup> 430 Phil. 754 (2013) [Per J. Mendoza, *En Banc*]

<sup>13</sup> *Id.* In support of her allegation, respondent submitted a) the joint affidavit dated February 14, 2001 of Barangay Chairman Hadji Bashir Ayonga and two members of the Sangguniang Barangay of Tangcal, Tubaran, Hadji Taher Batawe and Saadori Buat, stating that petitioner never resided in Barangay Tangcal, Tubaran as they personally knew all the registered voters of the said barangay; that petitioner omitted to own nor lease any house in Barangay Tangcal; and that petitioner’s father, the late Mauyag Papandayan, Sr., who was a school superintendent, and his family were permanent residents of Bayang, Lanao del Sur; b) Respondent also submitted a similar affidavit, dated February 17, 2001, of Samoranao Sarip, a member of the Sangguniang Barangay of Tangcal; and c) She averred that petitioner did not state in his Voter Registration Record, 4 accomplished on May 8, 1999, the number of years and months (Annex D-1) he had been a resident of the Municipality of Tubaran.

With due regard for the expertise of the COMELEC, we find the evidence to be insufficient to sustain its resolution. We agree with the Solicitor General, to the contrary, that petitioner has duly proven that, although he was formerly a resident of the Municipality of Bayang, he later transferred residence to Tangcal in the Municipality of Tubaran as shown by his actual and physical presence therein for 10 years prior to the May 14, 2001 elections.

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Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an "intention to return" to the place where he seeks to be elected. Corollary to this is a determination whether there has been an "abandonment" of his former residence which signifies an intention to depart therefrom. . .

In *Co v. Electoral Tribunal of the House of Representatives*, respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing *Faypon v. Quirino*, applied the concept of *animus revertendi* or "intent to return," stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoang revealed that he always had *animus revertendi*.

In *Abella v. Commission on Elections* and *Larrazabal v. Commission on Elections*, it was explained that the determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. . .

In *Romualdez v. RTC*, Br. 7, Tacloban City, the Court held that "domicile" and "residence" are synonymous. The term "residence," as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980's in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People's Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary so as to constitute an abandonment of residence. The Court explained that in order to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence



must be voluntary; and the residence at the place chosen for the new domicile must be actual.

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Indeed, it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the Constitution's residency qualification requirement. . .

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When the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters. To successfully challenge petitioner's disqualification, respondent must clearly demonstrate that petitioner's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. Respondent failed to substantiate her claim that petitioner is ineligible to be mayor of Tubaran.<sup>14</sup> (Emphases supplied)

*The determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances.* Sibuma has clearly presented pieces of evidence that he had established his residency in the Municipality of Agoo, Province of La Union since his birth. He contended that while he may have been absent there for some time, his intention to return (*animus revertendi*) has always been shown.

Notably, *the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.*<sup>15</sup> Even the remote possibility that evidence between parties are at equal or doubtful, jurisprudence calls for the COMELEC to rule in favor of Sibuma.

The equipoise rule for preponderance of evidence, a higher standard of evidence that substantial evidence even provides such basic rule—*When the evidence on an issue of fact is in equipoise or there is doubt as to which side the evidence preponderates, the party having the burden of proof fails upon that issue. Where neither party is able to establish its cause of action and prevail with the evidence it has, the courts have no choice but to leave them as they are and dismiss the complaint/petition.*<sup>16</sup>

<sup>14</sup> Id. at 767-774.

<sup>15</sup> Id. at 773.

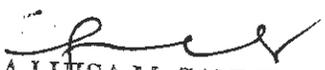
<sup>16</sup> *Sabellina v. Buray*, 768 Phil. 224, 239 (2015) [Per J. Brion, Second Division]

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In keeping with the sovereign will of the electorate, I therefore, register my concurrence.

  
AMY C. LAZARO-JAVIER

CERTIFIED TRUE COPY

  
MARIA LUISA M. SANTILLA  
Deputy Clerk of Court and  
Executive Officer  
OCC-En Banc, Supreme Court

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<sup>17</sup> Supra note 9.