

EN BANC

G.R. No. 221697: MARY GRACE NATIVIDAD S. POE LLAMANZARES, *petitioner*, v. COMMISSION ON ELECTIONS and ESTRELLA C. ELAMPARO, *respondents*.

G.R. Nos. 221698-700: MARY GRACE NATIVIDAD S. POE LLAMANZARES, *petitioner*, v. COMMISSION ON ELECTIONS, FRANCISCO S. TATAD, ANTONIO P. CONTRERAS and AMADO D. VALDEZ, *respondents*.

Promulgated:

April 5, 2016

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DISSENTING OPINION

CARPIO, J.:

I maintain my dissent.

I reiterate my position that petitioner Mary Grace Natividad S. Poe Llamanzares (petitioner) is indeed a Filipino citizen. However, petitioner is not a natural-born Filipino citizen. In addition, petitioner fails to comply with the minimum ten-year residency requirement. Accordingly, petitioner is not eligible to run for President of the Philippines pursuant to Section 2, Article VII of the 1987 Constitution.<sup>1</sup>

This brief discussion focuses only on the voting during the 8 March 2016 Court *En Banc* session and the jurisdiction of the Commission on Elections (COMELEC) to determine initially the qualifications of a candidate in resolving a petition to deny due course to or cancel a certificate of candidacy (COC) under Section 78 of the Omnibus Election Code.<sup>2</sup>

In the resolution of the motions for reconsideration on 5 April 2016, all Justices maintained their respective votes and opinions. Thus, the voting

<sup>1</sup> This provision 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.

<sup>2</sup> This provision reads:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course to or 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.

on 8 March 2016 has not been affected by the subsequent voting on 5 April 2016.

### *No majority*

In disposing of the consolidated petitions, nine Justices voted to grant the petitions while six Justices voted to dismiss the petitions. While a majority of the Court *En Banc* – nine out of fifteen Justices – voted to grant the petitions, there is no ruling by a majority on the citizenship status of petitioner. As admitted by the Chief Justice, only seven Justices voted to declare petitioner a natural-born Filipino citizen. Five Justices voted to declare petitioner not a natural-born Filipino citizen. Three Justices, who took part in the deliberations and voted to grant the petitions, did not have an opinion on the issue of petitioner's citizenship.

The Court *En Banc* voted as follows during the 8 March 2016 session.

#### *(1) Issue of whether to grant or dismiss the consolidated petitions*

As stated by the Chief Justice in her Concurring Opinion of 8 March 2016,<sup>3</sup> the **sole** issue that was voted upon by the *En Banc* was whether to grant or dismiss the consolidated petitions.

Nine Justices, composed of the *ponente* Justice Perez, Chief Justice Sereno, Justice Velasco, Justice Peralta, Justice Bersamin, Justice Mendoza, Justice Leonen, Justice Jardeleza, and Justice Caguioa, voted to grant the petitions and annul the assailed COMELEC resolutions that cancelled the COC of petitioner. Six Justices, namely, Justice Carpio, Justice Leonardo-De Castro, Justice Brion, Justice Del Castillo, Justice Reyes, and Justice Perlas-Bernabe, voted to dismiss the petitions.

In short, all the fifteen Justices took part in the deliberations and voted on the sole issue presented for voting – whether to grant or dismiss the petitions.

#### *(2) Issue of whether petitioner complied with the residency requirement*

The Court *En Banc* did not vote on the issue of whether petitioner complied with the residency requirement. However, in their separate opinions, the Justices expressed their personal opinions on this issue.

<sup>3</sup> In her Concurring Opinion, the Chief Justice stated that “the *fallo* needed only to dispose of the grant or denial of the petitions and nothing more.” (Page 2 of Chief Justice Sereno's Concurring Opinion)



As the Chief Justice noted in her Concurring Opinion of 8 March 2016, seven Justices, namely, the *ponente* Justice Perez, Chief Justice Sereno, Justice Velasco, Justice Bersamin, Justice Mendoza, Justice Leonen, and Justice Jardeleza, found petitioner a resident of the Philippines for at least ten years immediately preceding the 9 May 2016 elections. Six Justices, namely, Justice Carpio, Justice Leonardo-De Castro, Justice Brion, Justice Del Castillo, Justice Reyes, and Justice Perlas-Bernabe maintained that petitioner failed to comply with the minimum ten-year residency requirement.

Justice Caguioa, with whom Justice Peralta concurred, stated that he would leave the resolution of the issues of petitioner's qualifications to the Presidential Electoral Tribunal and would confine his views on the issue of whether the COMELEC committed grave abuse of discretion when it cancelled petitioner's COC. Justice Caguioa stated that "this Court's jurisdiction and its exercise neither hinge on nor require a final determination of the petitioner's qualifications."<sup>4</sup>

In his Separate Concurring Opinion resolving the motions for reconsideration, Justice Peralta explained that "[he] then joined Justice Caguioa in his view that the Court should have limited itself to determining whether grave abuse of discretion attended the finding of the COMELEC that Poe committed material misrepresentation as to the facts required to be stated in her [COC], per Section 78 of the Omnibus Election Code, and nothing more."<sup>5</sup> Justice Peralta also stated that he "opted to join Justice Caguioa in his view that a more thorough discussion of and ruling on [petitioner's] qualifications, specifically as to her natural-born citizenship, as well as her 10-year residency, are premature, the same being cognizable only after she had been proclaimed as winner of the presidential elections and through a petition filed in the PET, not in the COMELEC, x x x."<sup>6</sup>

(3) *Issue of whether petitioner is a natural-born Filipino citizen*

Again, the Court *En Banc* did not put to a vote the issue of whether petitioner is a natural-born Filipino citizen. However, in their separate opinions, the Justices expressed their personal opinions on this issue.

Seven Justices, namely, the *ponente* Justice Perez, Chief Justice Sereno, Justice Velasco, Justice Bersamin, Justice Mendoza, Justice Leonen, and Justice Jardeleza opined that petitioner is a natural-born Filipino citizen. Five Justices, namely, Justice Carpio, Justice Leonardo-De Castro, Justice Brion, Justice Reyes, and Justice Perlas-Bernabe considered petitioner not a

<sup>4</sup> Page 3 of Justice Caguioa's Separate Concurring Opinion.

<sup>5</sup> Page 3 of Justice Peralta's Separate Concurring Opinion.

<sup>6</sup> Page 5 of Justice Peralta's Separate Concurring Opinion.

natural-born Filipino citizen. Justice Del Castillo refrained from giving an opinion on the citizenship issue, invoking the Doctrine of Constitutional Avoidance, among others. Justice Caguioa, joined by Justice Peralta, disagreed with the majority when it proceeded to rule on the question of petitioner's citizenship. According to Justice Caguioa, "this Court need not have made a definitive ruling on petitioner's status as a natural-born Filipino citizen."<sup>7</sup>

The 1987 Constitution clearly provides that **any case which is heard by the Court *en banc* shall be decided by a majority of the members of the *En Banc* who took part in the deliberations on the issues and voted on the issues.** Section 4(2), Article VIII of the Constitution reads:

2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the ***concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.*** (Emphasis supplied)

Section 1(a) of Rule 12 of the Internal Rules of the Supreme Court provides:

Section 1. Voting requirements.— (a) All decisions and actions in Court *en banc* cases shall be made up upon the concurrence of the majority of the Members of the Court who actually took part in the deliberation on the issues or issues involved and voted on them.

Indisputably, a majority vote is 50 percent plus one of the 15-member Court *En Banc*, which means that the concurrence of at least eight Justices is required to achieve a majority ruling if all the fifteen (15) Justices vote, as in the present case.

In any decision or resolution rendered by the Court, one or more members of the Court (*En Banc* or Division) may concur wholly or partially, or dissent from the majority opinion, or take no part in the resolution of the case. Sometimes, one or more Justices concur in part and dissent in part from the majority opinion.

In this case, during the 8 March 2016 *En Banc* session, all fifteen members of the Court *En Banc* actually took part in the deliberations and

<sup>7</sup> Page 9 of Justice Caguioa's Separate Concurring Opinion.

voted on the **sole** issue of whether to grant or dismiss the petitions. No Justice inhibited himself or herself from voting on this sole issue.

Eight justices concurred with the *ponente* to grant the petitions, thus a total of nine Justices voted to grant the petitions. Six Justices dissented and voted to dismiss the petitions. Five Justices (Chief Justice Sereno, Justice Velasco, Justice Leonen, Justice Jardeleza, and Justice Caguioa) wrote concurring opinions. Five Justices (Justice Carpio, Justice Leonardo-De Castro, Justice Brion, Justice Del Castillo, and Justice Perlas-Bernabe) wrote dissenting opinions. Justice Reyes joined Justice Perlas-Bernabe's dissenting opinion while Justice Peralta joined Justice Caguioa's concurring opinion. Justice Bersamin and Justice Mendoza merely affixed their signatures to the *ponencia* signifying their unqualified concurrence.

While Justice Caguioa, with whom Justice Peralta joined, concurred with the *ponencia* to grant the petitions, he deviated from the majority in ruling on petitioner's citizenship, resulting in a separate or qualified concurrence. Justice Del Castillo refrained from giving an opinion on petitioner's citizenship.

In computing the majority vote on the citizenship issue, the Chief Justice inexplicably excluded Justices Del Castillo, Peralta and Caguioa. To repeat, although Justice Del Castillo had no opinion on the citizenship issue, he voted on the sole issue presented for voting. Justice Caguioa, joined by Justice Peralta, also voted on the sole issue presented for voting, and even submitted a qualified concurrence expressly refraining from issuing an opinion on the citizenship issue. In his Separate Concurring Opinion on the motions for reconsideration, Justice Peralta explained that a ruling on petitioner's citizenship and residency qualifications is premature since the same is proper "only after she had been proclaimed as winner of the presidential elections and through a petition filed in the PET, not in the COMELEC, x x x."<sup>8</sup> The Chief Justice construed such "silence" on the citizenship issue on the part of Justices Peralta, Del Castillo, and Caguioa as non-participation and non-voting.

This is egregious error.

In determining whether there is a majority, the votes of all the Justices who actually took part in the deliberations on the issues and voted on the issues should be counted. All fifteen Justices of this Court took part in the deliberations and voted on the sole issue presented for voting – whether the petitions should be granted or dismissed. Consequently, the votes of all the fifteen Justices, including those of Justices Peralta, Del Castillo, and Caguioa, should be counted. The Chief Justice cannot validly exclude the

<sup>8</sup> Page 5 of Justice Peralta's Separate Concurring Opinion.



three Justices, who took part in the deliberations and voted on the sole issue presented for voting but had no opinion on the citizenship issue. Notably, the Chief Justice offered no justification, as there is none, for excluding the three Justices in determining the majority.

Since there is no dispute that there are only seven Justices who declared that petitioner is a natural-born Filipino citizen, there is clearly no majority vote on the issue of petitioner's citizenship. Seven votes is less than a majority. Accordingly, there is no majority sustaining petitioner's status as a natural-born Filipino citizen. **In short, the issue of petitioner's citizenship remains hanging and unsettled.**

This ruling of the majority will lead to an absurd result. The majority allows a presidential candidate with uncertain citizenship status to be elected to the Presidency. In effect, the majority wants the Court to resolve the citizenship status of a presidential candidate only after the candidate is elected. If the winning candidate is later on determined by this Court not to be a natural-born Filipino citizen, then those who voted for the winning, but later disqualified, candidate would have utterly wasted their votes. To allow a presidential candidate to run and be voted for despite the uncertainty of his or her citizenship status makes a mockery of the electoral process. This is not how the Constitution should be interpreted – allowing an absurd result to happen.

### ***COMELEC's jurisdiction***

On the jurisdiction of the COMELEC, the *ponencia* posits that “[t]he COMELEC cannot itself, in the same cancellation case, decide the qualification or lack thereof of the candidate.”<sup>9</sup> The *ponencia* states that “[t]he facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction.”<sup>10</sup> The *ponencia* maintains that this prior determination of a candidate's qualification may be by statute, by executive order, or by a judgment of a competent court or tribunal,<sup>11</sup> without however identifying which body is a competent authority to resolve questions on qualifications of candidates.

In essence, the *ponencia* holds that the COMELEC lacks jurisdiction to rule on a candidate's qualifications prior to the elections in a petition to deny due course to or cancel a COC under Section 78 of the Omnibus Election Code. With this ruling, the *ponencia* should have logically granted the petitions on the sole ground of the COMELEC's lack of jurisdiction to determine a candidate's qualifications, **without proceeding to decide the**

<sup>9</sup> Page 16 of the *ponencia*.

<sup>10</sup> Page 21 of the *ponencia*.

<sup>11</sup> Page 21 of the *ponencia*.

**qualifications of the candidate.** If the COMELEC has no jurisdiction, then this Court has also no jurisdiction on appeal to rule on the merits and decide the qualifications of a candidate. Once the Court rules that the COMELEC is devoid of jurisdiction, the Court can only annul the decision of the COMELEC. The Court cannot rule on the merits, that is, decide the qualifications of a candidate, because there is no COMELEC decision to review on the merits, the annulled decision of the COMELEC being non-existent.

However, despite ruling that the COMELEC is devoid of jurisdiction, the *ponencia* proceeded to rule on the citizenship and residency qualifications of petitioner, vesting in the Supreme Court the primary jurisdiction to decide the qualifications of presidential and vice-presidential candidates **before** the elections. Consequently, the *ponencia* declared that "petitioner is a QUALIFIED CANDIDATE for President in the 9 May 2016 National Elections." There is, however, no constitutional or statutory provision empowering this Court to initially decide the qualifications of presidential and vice-presidential candidates before the elections. Under Section 4, Article VII of the Constitution,<sup>12</sup> the jurisdiction of the Court vests only if there is an "election contest," which means after the elections as held in *Tecson v. COMELEC*.<sup>13</sup> In *Tecson*, the Court expressly ruled:

Petitioners Tecson, et al., in G. R. No. 161434, and Velez, in G. R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:

"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."

x x x x

Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a quo warranto which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal," promulgated by the Supreme Court en banc on 18 April 1992, would support this premise -

<sup>12</sup> The pertinent provision reads:

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.

<sup>13</sup> 468 Phil. 421 (2004).

X X X X

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.

**It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.**

Accordingly, G. R. No. 161434, entitled "Maria Jeanette C. Tecson, et al., vs. Commission on Elections et al.," and G. R. No. 161634, entitled "Zoilo Antonio Velez vs. Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr." would have to be dismissed for want of jurisdiction.<sup>14</sup> (Boldfacing and underscoring supplied)

Justices Bersamin and Mendoza fully concurred in the *ponencia* without any qualifications. Justice Velasco limited his concurring opinion on the citizenship and residency issues without discussing the jurisdiction of the COMELEC, which silence amounts to an unqualified concurrence in the *ponencia* with respect to the issue of jurisdiction.

The Chief Justice advanced the view that "Section 78 of x x x the Omnibus Election Code x x x, does not allow the COMELEC to rule on the qualifications of candidates."<sup>15</sup> She maintained that "a Section 78 proceeding must deal solely with 'patent defects in the certificates' and not the question of eligibility or ineligibility."<sup>16</sup> She further declared that the COMELEC "exceeded [its] limited authority x x x when it determined petitioner's intrinsic qualifications, not on the basis of uncontroverted fact, but on questions of law."<sup>17</sup> However, noting the "factual milieu of this case and its significance to the upcoming electoral exercise<sup>18</sup>" and the fact that "the dissents have already gone to the intrinsic qualifications of petitioner,"<sup>19</sup> the Chief Justice nevertheless addressed lengthily the citizenship and residency issues as well.

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<sup>14</sup> Id. at 460-462.

<sup>15</sup> Page 4 of Chief Justice Sereno's Concurring Opinion.

<sup>16</sup> Page 22 of Chief Justice Sereno's Concurring Opinion.

<sup>17</sup> Page 22 of Chief Justice Sereno's Concurring Opinion.

<sup>18</sup> Page 22 of Chief Justice Sereno's Concurring Opinion.

<sup>19</sup> Page 23 of Chief Justice Sereno's Concurring Opinion.

Justice Leonen maintained that “should the [COMELEC] be allowed to take cognizance of all petitions questioning the eligibility of a candidate, [t]he provisions of the Constitution on the jurisdiction of the electoral tribunals over election contests would be rendered useless.”<sup>20</sup> Justice Leonen further declared that the COMELEC “had no jurisdiction under Section 78 of the Omnibus Election Code to rule on the nature of citizenship of petitioner.”<sup>21</sup>

The six dissenting Justices, namely, Justice Carpio, Justice Leonardo-De Castro, Justice Brion, Justice Del Castillo, Justice Reyes, and Justice Perlas-Bernabe upheld the jurisdiction of the COMELEC to cancel or deny due course to a COC which necessarily entails a preliminary determination of a candidate's qualifications. While concurring with the *ponencia*, Justice Jardeleza asserted that the COMELEC possesses such jurisdiction.

Justice Leonardo-De Castro opined that the COMELEC has jurisdiction over petitions to deny due course to or cancel COCs, and not the electoral tribunals, which exercise jurisdiction “over election contests only after a candidate has already been proclaimed winner in an election.”<sup>22</sup> If we were to follow the *ponencia*'s reasoning, “the Court is as good as amending the [Omnibus Election Code] by deleting Section 78 thereof – there can no longer be a petition [to deny] due course to or [cancel a] COC because the COMELEC has now been disallowed to look into the issue of whether or not a candidate has made a false claim as to her/his material qualifications for the elective office that she/he aspires for. That a Section 78-petition would naturally look into the candidate's qualification is expected of the nature of such petition.”<sup>23</sup>

Justice Brion explained that “[i]f we were to follow the *ponencia*'s limitation on the COMELEC's function to determine Poe's eligibility to become President in a Section 78 proceeding, the logical result would be that even this Court itself cannot rule on Poe's citizenship and residence eligibilities in the course of reviewing a Section 78 COMELEC ruling; any declaration regarding these issues would be *obiter dictum*.”<sup>24</sup>

Justice Del Castillo opined that a “petition under Section 78 seeks to cancel a candidate's CoC before there has been an election and proclamation. Such a petition is within the Comelec's jurisdiction as it is 'the sole judge of all pre-proclamation controversies.’”<sup>25</sup>

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<sup>20</sup> Page 37 of Justice Leonen's Concurring Opinion.

<sup>21</sup> Page 46 of Justice Leonen's Concurring Opinion.

<sup>22</sup> Page 9 of Justice Leonardo-De Castro's Separate Dissenting Opinion.

<sup>23</sup> Pages 9 and 10 of Justice Leonardo-De Castro's Separate Dissenting Opinion.

<sup>24</sup> Page 17 of Justice Brion's Dissenting Opinion.

<sup>25</sup> Page 26 of Justice Del Castillo's Dissenting Opinion.

Justice Perlas-Bernabe, with whom Justice Reyes concurred, stated that based on the Constitution and jurisprudence, “there is no perceivable restriction which qualifies the exercise of the COMELEC's adjudicatory power to declare a candidate ineligible and thus, cancel his/her CoC with the need of a prior determination coming from a 'proper authority.’”<sup>26</sup>

Justice Jardeleza stated that “[t]he reason why the COMELEC x x x is allowed to determine a candidate's constitutional and statutory eligibility prior to the election is not difficult to fathom.”<sup>27</sup> There is a “legitimate value in shielding the electorate from an ineligible candidate.”<sup>28</sup> Besides, there are fiscal considerations for such a remedy.

In holding that the COMELEC lacked jurisdiction to determine in the same cancellation case the qualifications of a candidate, a view shared by the Chief Justice, Justice Velasco, Justice Peralta, Justice Bersamin, Justice Mendoza, Justice Leonen, and Justice Caguioa, the *ponencia* unceremoniously ignores established jurisprudence<sup>29</sup> and unreasonably restricts the COMELEC's jurisdiction vested by the Constitution.

Section 2(1), Article IX-C of the Constitution empowered the COMELEC to “enforce and administer all laws and regulations relative to the conduct of elections x x x.” Section 2(3), Article IX-C of the Constitution authorized the COMELEC to “decide x x x all questions affecting elections, x x x.”

Pursuant to its constitutional mandate, the COMELEC can initially determine the qualifications of all candidates and disqualify those found lacking any of such qualifications before the conduct of the elections. In fact, under Section 69 of the Omnibus Election Code, the COMELEC is empowered to *motu proprio* cancel COCs of nuisance candidates. To divest the COMELEC of its power to purge the electoral process of ineligible candidates renders the COMELEC inutile to “enforce and administer all laws and regulations relative to the conduct of elections” and to “decide all questions affecting elections.”

In *Tecson v. COMELEC*,<sup>30</sup> the Court upheld the COMELEC's jurisdiction to determine preliminarily the eligibility of presidential candidates in a Section 78 proceeding. In sustaining the COMELEC's

<sup>26</sup> Page 3 of Justice Perlas-Bernabe's Dissenting Opinion.

<sup>27</sup> Page 8 of Justice Jardeleza's Concurring Opinion.

<sup>28</sup> Page 8 of Justice Jardeleza's Concurring Opinion.

<sup>29</sup> In his Dissenting Opinion, Justice Brion stated that “[t]he *ponencia*'s conclusion would wreak havoc on existing jurisprudence recognizing the COMELEC's jurisdiction to determine a candidate's eligibility in the course of deciding a Section 78 proceeding before it.” He listed the cases, thus: *Aratea v. Comelec*, G.R. No. 195229, 9 October 2012; *Maquiling v. Comelec*, G.R. No. 195649, 16 April 2013; *Ongsiako-Reyes v. Comelec*, G.R. No. 207264, 25 June 2013; *Cerafica v. Comelec*, G.R. No. 205136, 2 December 2014; *Luna v. Comelec*, G.R. No. 165983, 24 April 2007.

<sup>30</sup> *Supra* note 13.

jurisdiction, the Court dismissed for lack of jurisdiction and prematurity the petitions filed directly by Tecson, et al. with the Court since the Court's jurisdiction over presidential election contests can only be invoked after the elections. The Court held:

(2) The Court must dismiss, for lack of jurisdiction and prematurity, the petitions in G. R. No. 161434 and No. 161634 both having been directly elevated to this Court in the latter's capacity as the only tribunal to resolve a presidential and vice-presidential election contest under the Constitution. Evidently, the primary jurisdiction of the Court can directly be invoked only after, not before, the elections are held.

In *Ongsiako Reyes v. COMELEC*,<sup>31</sup> Justice Perez, who was the *ponente* in that case and the same *ponente* in this case, affirmed the COMELEC's jurisdiction to determine the qualifications of a candidate in a Section 78 proceeding. In upholding the COMELEC's cancellation of the COC of *Ongsiako Reyes*, Justice Perez stated:

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:

x x x x (Emphasis supplied)

Clearly, with his *ponencia* in this case, Justice Perez contradicted his own conclusion in *Ongsiako Reyes* on the COMELEC's jurisdiction to initially determine the eligibility of candidates prior to the elections.

There is no conflict of jurisdiction since the powers of the COMELEC and the electoral tribunals are exercised on different occasions and for different purposes. The jurisdiction of the electoral tribunals can only be invoked once the winning presidential, vice presidential, senatorial or

<sup>31</sup> G.R. No. 207264, 25 June 2013, 699 SCRA 522.



congressional candidates have been proclaimed.<sup>32</sup> Obviously, this involves an election contest which contemplates a post-election scenario.

Prior to the elections, any question on a presidential candidate's qualifications must necessarily be resolved by the COMELEC to safeguard the sanctity of the electoral process and protect the electorate from ineligible candidates. Otherwise, all the nuisance presidential candidates, who were disqualified by this Court for being nuisance candidates, should now be allowed to run and their qualifications to run for President can only be determined after the elections by the Presidential Electoral Tribunal. Likewise, any presidential candidate, claiming to be a natural-born Filipino citizen, regardless of his or her dubious nationality, can now run for President as his or her citizenship qualification can only be questioned after he or she wins the elections. This is the inevitable absurd result of the majority's faulty reasoning.

**ACCORDINGLY**, I vote to **GRANT** the motions for reconsideration.



**ANTONIO T. CARPIO**  
Associate Justice

**CERTIFIED TRUE COPY**



**FELIPA B. ANAMA**  
**CLERK OF COURT, EN BANC**  
**SUPREME COURT**

<sup>32</sup> See *BANAT Party List v. COMELEC*, 612 Phil. 793 (2009).