Republic of the Philippines
Supreme Court
Baguio City

EN BANC

CASAN MACODE MAQUILING,
Petitioner,

- versus -

COMMISSION ON ELECTIONS, ROMMEL ARNADO y CAGOCO, LINOG G. BALUA,
Respondents.

G.R. No. 195649

Present:

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

APRIL 16, 2013

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DECISION

SERENO, *CJ:*

THE CASE

This is a Petition for Certiorari under Rule 64 in conjunction with Rule 65 of the Rules of Court to review the Resolutions of the Commission on Elections (COMELEC). The Resolution[1] in SPA No. 10-109(DC) of the COMELEC First Division dated 5 October 2010 is being assailed for applying Section 44 of the Local Government Code while the Resolution[2] of

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[1] *Rollo*, pp. 38-49.
[2] Id. at 50-67.

the COMELEC En Banc dated 2 February 2011 is being questioned for finding that respondent Rommel Arnado *y* Cagoco (respondent Arnado/Arnado) is solely a Filipino citizen qualified to run for public office despite his continued use of a U.S. passport.

FACTS

Respondent Arnado is a natural born Filipino citizen.[3] However, as a consequence of his subsequent naturalization as a citizen of the United States of America, he lost his Filipino citizenship.

Arnado applied for repatriation under Republic Act (R.A.) No. 9225 before the Consulate General of the Philippines in San Franciso, USA and took the Oath of Allegiance to the Republic of the Philippines on 10 July 2008.[4] On the same day an Order of Approval of his Citizenship Retention and Re-acquisition was issued in his favor.[5]

The aforementioned Oath of Allegiance states:

> I, Rommel Cagoco Arnado, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.[6]

On 3 April 2009 Arnado again took his Oath of Allegiance to the Republic and executed an Affidavit of Renunciation of his foreign citizenship, which states:

> I, Rommel Cagoco Arnado, do solemnly swear that I absolutely and perpetually renounce all allegiance and fidelity to the UNITED STATES OF AMERICA of which I am a citizen, and I divest myself of full employment of all civil and political rights and privileges of the United States of America.
>
> I solemnly swear that all the foregoing statement is true and correct to the best of my knowledge and belief.[7]

On 30 November 2009, Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte, which contains, among others, the following statements:

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[3] Id. at 229, Exhibit "1-MR," Certificate of Live Birth.
[4] Id. at 241, Exhibit "12-MR," Oath of Allegiance.
[5] Id. at 239, Exhibit "10-MR," Order of Approval.
[6] *Ibid*, Note 2 and Annex "1" of Duly Verified Answer, Rollo, p. 160 and Annex "2" of Memorandum for Respondent, Rollo, p. 178.
[7] *Ibid*, p. 160 and 178.

> I am a natural born Filipino citizen / naturalized Filipino citizen.
> I am not a permanent resident of, or immigrant to, a foreign country.
> I am eligible for the office I seek to be elected to.
> I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities.
> I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.[8]

On 28 April 2010, respondent Linog C. Balua (Balua), another mayoralty candidate, filed a petition to disqualify Arnado and/or to cancel his certificate of candidacy for municipal mayor of Kauswagan, Lanao del Norte in connection with the 10 May 2010 local and national elections.[9] Respondent Balua contended that Arnado is not a resident of Kauswagan, Lanao del Norte and that he is a foreigner, attaching thereto a certification issued by the Bureau of Immigration dated 23 April 2010 indicating the nationality of Arnado as "USA-American."[10]

To further bolster his claim of Arnado's US citizenship, Balua presented in his Memorandum a computer-generated travel record[11] dated 03 December 2009 indicating that Arnado has been using his US Passport No. 057782700 in entering and departing the Philippines. The said record shows that Arnado left the country on 14 April 2009 and returned on 25 June 2009, and again departed on 29 July 2009, arriving back in the Philippines on 24 November 2009.

Balua likewise presented a certification from the Bureau of Immigration dated 23 April 2010, certifying that the name "Arnado, Rommel Cagoco" appears in the available Computer Database/Passenger manifest/IBM listing on file as of 21 April 2010, with the following pertinent travel records:

DATE OF Arrival	:	01/12/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700
DATE OF Arrival	:	03/23/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700[12]

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[8] Id. at 139, Annex "B" of Petition for Disqualification; Id. at 177, Annex "1" Memorandum for Respondent.
[9] Id. at 134, Petition to Disqualify Rommel Cagoco Arnado and/or to Cancel his Certificate of Candidacy for Municipal Mayor of Kauswagan, Lanao del Norte in Connection with May 10, 2010 Local and National Elections.
[10] Id. at 140, Certification.
[11] Id. at 191, Exhibit "A" of Memorandum for Petitioner filed before the Commission on Elections.
[12] Id. at 192, Exhibit "C" of Memorandum for Petitioner filed before the Commission on Elections.

On 30 April 2010, the COMELEC (First Division) issued an Order[13] requiring the respondent to personally file his answer and memorandum within three (3) days from receipt thereof.

After Arnado failed to answer the petition, Balua moved to declare him in default and to present evidence ex-parte.

Neither motion was acted upon, having been overtaken by the 2010 elections where Arnado garnered the highest number of votes and was subsequently proclaimed as the winning candidate for Mayor of Kauswagan, Lanao del Norte.

It was only after his proclamation that Arnado filed his verified answer, submitting the following documents as evidence:[14]

1. Affidavit of Renunciation and Oath of Allegiance to the Republic of the Philippines dated 03 April 2009;
2. Joint-Affidavit dated 31 May 2010 of Engr. Virgil Seno, Virginia Branzuela, Leoncio Daligdig, and Jessy Corpin, all neighbors of Arnado, attesting that Arnado is a long-time resident of Kauswagan and that he has been conspicuously and continuously residing in his family's ancestral house in Kauswagan;
3. Certification from the *Punong Barangay* of Poblacion, Kauswagan, Lanao del Norte dated 03 June 2010 stating that Arnado is a bona fide resident of his *barangay* and that Arnado went to the United States in 1985 to work and returned to the Philippines in 2009;
4. Certification dated 31 May 2010 from the Municipal Local Government Operations Office of Kauswagan stating that Dr. Maximo P. Arnado, Sr. served as Mayor of Kauswagan, from January 1964 to June 1974 and from 15 February 1979 to 15 April 1986; and
5. Voter Certification issued by the Election Officer of Kauswagan certifying that Arnado has been a registered voter of Kauswagan since 03 April 2009.

THE RULING OF THE COMELEC FIRST DIVISION

Instead of treating the Petition as an action for the cancellation of a certificate of candidacy based on misrepresentation,[15] the COMELEC First Division considered it as one for disqualification. Balua's contention that

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[13] Records, pp. 76-77.
[14] *Rollo*, p. 42, Resolution dated 5 October 2010, penned by Commissioner Rene V. Sarmiento, and concurred in by Commissioner Armando C. Velasco and Gregorio Y. Larrazabal.
[15] Id.

Arnado is a resident of the United States was dismissed upon the finding that "Balua failed to present any evidence to support his contention,"[16] whereas the First Division still could "not conclude that Arnado failed to meet the one-year residency requirement under the Local Government Code."[17]

In the matter of the issue of citizenship, however, the First Division disagreed with Arnado's claim that he is a Filipino citizen.[18]

> We find that although Arnado appears to have substantially complied with the requirements of R.A. No. 9225, Arnado's act of consistently using his US passport after renouncing his US citizenship on 03 April 2009 effectively negated his Affidavit of Renunciation.
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> x x x x
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> Arnado's continued use of his US passport is a strong indication that Arnado had no real intention to renounce his US citizenship and that he only executed an Affidavit of Renunciation to enable him to run for office. We cannot turn a blind eye to the glaring inconsistency between Arnado's unexplained use of a US passport six times and his claim that he re-acquired his Philippine citizenship and renounced his US citizenship. As noted by the Supreme Court in the Yu case, "[a] passport is defined as an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries." Surely, one who truly divested himself of US citizenship would not continue to avail of privileges reserved solely for US nationals.[19]

The dispositive portion of the Resolution rendered by the COMELEC First Division reads:

> **WHEREFORE**, in view of the foregoing, the petition for disqualification and/or to cancel the certificate of candidacy of Rommel C. Arnado is hereby **GRANTED**. Rommel C. Arnado's proclamation as the winning candidate for Municipal Mayor of Kauswagan, Lanao del Nore is hereby **ANNULLED**. Let the order of succession under Section 44 of the Local Government Code of 1991 take effect.[20]

The Motion for Reconsideration and the Motion for Intervention

Arnado sought reconsideration of the resolution before the COMELEC En Banc on the ground that "the evidence is insufficient to

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[16] Id. at 43.
[17] Id. at 44.
[18] Id.
[19] Id. at 46-47, Resolution dated 5 October 2010.
[20] Id at 48.

justify the Resolution and that the said Resolution is contrary to law."[21] He raised the following contentions:[22]

1. The finding that he is not a Filipino citizen is not supported by the evidence consisting of his Oath of Allegiance and the Affidavit of Renunciation, which show that he has substantially complied with the requirements of R.A. No. 9225;
2. The use of his US passport subsequent to his renunciation of his American citizenship is not tantamount to a repudiation of his Filipino citizenship, as he did not perform any act to swear allegiance to a country other than the Philippines;
3. He used his US passport only because he was not informed of the issuance of his Philippine passport, and that he used his Philippine passport after he obtained it;
4. Balua's petition to cancel the certificate of candidacy of Arnado was filed out of time, and the First Division's treatment of the petition as one for disqualification constitutes grave abuse of discretion amounting to excess of jurisdiction;[23]
5. He is undoubtedly the people's choice as indicated by his winning the elections;
6. His proclamation as the winning candidate ousted the COMELEC from jurisdiction over the case; and
7. The proper remedy to question his citizenship is through a petition for *quo warranto,* which should have been filed within ten days from his proclamation.

Petitioner Casan Macode Maquiling (Maquiling), another candidate for mayor of Kauswagan, and who garnered the second highest number of votes in the 2010 elections, intervened in the case and filed before the COMELEC En Banc a Motion for Reconsideration together with an Opposition to Arnado's Amended Motion for Reconsideration. Maquiling argued that while the First Division correctly disqualified Arnado, the order of succession under Section 44 of the Local Government Code is not applicable in this case. Consequently, he claimed that the cancellation of Arnado's candidacy and the nullification of his proclamation, Maquiling, as the legitimate candidate who obtained the highest number of lawful votes, should be proclaimed as the winner.

Maquiling simultaneously filed his Memorandum with his Motion for Intervention and his Motion for Reconsideration. Arnado opposed all

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[21]Id. at 214, Amended Motion for Reconsideration.
[22]Id. at 193-211, Verified Motion for Reconsideration; id. at 212-246, Amended Motion for Reconsideration; id. at 247-254, Rejoinder to Petitioner's Comment/Opposition to Respondent's Amended Motion for Reconsideration.
[23]Id. at 224, Amended Motion for Reconsideration.

motions filed by Maquiling, claiming that intervention is prohibited after a decision has already been rendered, and that as a second-placer, Maquiling undoubtedly lost the elections and thus does not stand to be prejudiced or benefitted by the final adjudication of the case.

RULING OF THE COMELEC EN BANC

In its Resolution of 02 February 2011, the COMELEC En Banc held that under Section 6 of Republic Act No. 6646, the Commission "shall continue with the trial and hearing of the action, inquiry or protest even after the proclamation of the candidate whose qualifications for office is questioned."

As to Maquiling's intervention, the COMELEC En Banc also cited Section 6 of R.A. No. 6646 which allows intervention in proceedings for disqualification even after elections if no final judgment has been rendered, but went on further to say that Maquiling, as the second placer, would not be prejudiced by the outcome of the case as it agrees with the dispositive portion of the Resolution of the First Division allowing the order of succession under Section 44 of the Local Government Code to take effect.

The COMELEC En Banc agreed with the treatment by the First Division of the petition as one for disqualification, and ruled that the petition was filed well within the period prescribed by law,[24] having been filed on 28 April 2010, which is not later than 11 May 2010, the date of proclamation.

However, the COMELEC En Banc reversed and set aside the ruling of the First Division and granted Arnado's Motion for Reconsideration, on the following premises:

> First:
>
> By renouncing his US citizenship as imposed by R.A. No. 9225, the respondent embraced his Philippine citizenship as though he never became a citizen of another country. It was at that time, April 3, 2009, that the respondent became a pure Philippine Citizen again.
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> x x x x
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> The use of a US passport […] does not operate to revert back his status as a dual citizen prior to his renunciation as there is no law saying such. More succinctly, the use of a US passport does not operate to "un-renounce" what he has earlier on renounced. The First Division's reliance in the case of *In Re: Petition for Habeas Corpus of Willy Yu v. Defensor-*

[24] A verified petition to disqualify a candidate pursuant to Sec. 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation. (Sec. 4.B.1. COMELEC Resolution No. 8696).

> *Santiago, et al.* is misplaced. The petitioner in the said case is a naturalized citizen who, after taking his oath as a naturalized Filipino, applied for the renewal of his Portuguese passport. Strict policy is maintained in the conduct of citizens who are not natural born, who acquire their citizenship by choice, thus discarding their original citizenship. The Philippine State expects strict conduct of allegiance to those who choose to be its citizens. In the present case, respondent is not a naturalized citizen but a natural born citizen who chose greener pastures by working abroad and then decided to repatriate to supposedly help in the progress of Kauswagan. He did not apply for a US passport after his renunciation. Thus the mentioned case is not on all fours with the case at bar.
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> x x x x
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> The respondent presented a plausible explanation as to the use of his US passport. Although he applied for a Philippine passport, the passport was only issued on June 18, 2009. However, he was not notified of the issuance of his Philippine passport so that he was actually able to get it about three (3) months later. Yet as soon as he was in possession of his Philippine passport, the respondent already used the same in his subsequent travels abroad. This fact is proven by the respondent's submission of a certified true copy of his passport showing that he used the same for his travels on the following dates: January 31, 2010, April 16, 2010, May 20, 2010, January 12, 2010, March 31, 2010 and June 4, 2010. This then shows that the use of the US passport was because to his knowledge, his Philippine passport was not yet issued to him for his use. As probably pressing needs might be undertaken, the respondent used whatever is within his control during that time.[25]

In his Separate Concurring Opinion, COMELEC Chairman Sixto Brillantes cited that the use of foreign passport is not one of the grounds provided for under Section 1 of Commonwealth Act No. 63 through which Philippine citizenship may be lost.

> "[T]he application of the more assimilative *principle of continuity of citizenship* is more appropriate in this case. Under said principle, once a person becomes a citizen, either by birth or naturalization, it is assumed that he desires to continue to be a citizen, and this assumption stands until he voluntarily denationalizes or expatriates himself. Thus, in the instant case respondent after reacquiring his Philippine citizenship should be presumed to have remained a Filipino despite his use of his American passport in the absence of clear, unequivocal and competent proof of expatriation. Accordingly, all doubts should be resolved in favor of retention of citizenship."[26]

On the other hand, Commissioner Rene V. Sarmiento dissented, thus:

> [R]espondent evidently failed to prove that he truly and wholeheartedly abandoned his allegiance to the United States. The latter's continued use

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[25] Rollo, pp. 64-66, COMELEC En Banc Resolution dated 2 February 2011.
[26] Id. at 69, Separate Concurring Opinion.

> of his US passport and enjoyment of all the privileges of a US citizen despite his previous renunciation of the afore-mention[ed] citizenship runs contrary to his declaration that he chose to retain only his Philippine citizenship. Respondent's submission with the twin requirements was obviously only for the purpose of complying with the requirements for running for the mayoralty post in connection with the May 10, 2010 Automated National and Local Elections.
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> Qualifications for elective office, such as citizenship, are continuing requirements; once any of them is lost during his incumbency, title to the office itself is deemed forfeited. If a candidate is not a citizen at the time he ran for office or if he lost his citizenship after his election to office, he is disqualified to serve as such. Neither does the fact that respondent obtained the plurality of votes for the mayoralty post cure the latter's failure to comply with the qualification requirements regarding his citizenship.
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> Since a disqualified candidate is no candidate at all in the eyes of the law, his having received the highest number of votes does not validate his election. It has been held that where a petition for disqualification was filed before election against a candidate but was adversely resolved against him after election, his having obtained the highest number of votes did not make his election valid. His ouster from office does not violate the principle of *vox populi suprema est lex* because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity. To apply it is to breath[e] life to the sovereign will of the people who expressed it when they ratified the Constitution and when they elected their representatives who enacted the law.[27]

THE PETITION BEFORE THE COURT

Maquiling filed the instant petition questioning the propriety of declaring Arnado qualified to run for public office despite his continued use of a US passport, and praying that Maquiling be proclaimed as the winner in the 2010 mayoralty race in Kauswagan, Lanao del Norte.

Ascribing both grave abuse of discretion and reversible error on the part of the COMELEC En Banc for ruling that Arnado is a Filipino citizen despite his continued use of a US passport, Maquiling now seeks to reverse the finding of the COMELEC En Banc that Arnado is qualified to run for public office.

Corollary to his plea to reverse the ruling of the COMELEC En Banc or to affirm the First Division's disqualification of Arnado, Maquiling also seeks the review of the applicability of Section 44 of the Local Government Code, claiming that the COMELEC committed reversible error in ruling that "the succession of the vice mayor in case the respondent is disqualified is in order."

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[27] Id. at 72-73, Dissenting Opinion of Commissioner Rene V. Sarmiento, *citing* the cases of *Torayno, Sr. v. COMELEC*, 337 SCRA 574 [2000]; Santos v. COMELEC, 103 SCRA 628 [1981]; Sanchez v. Del Rosario, 1 SCRA 1102 [1961]; and Reyes v. COMELEC, 97 SCRA 500 [1980].

ISSUES

There are three questions posed by the parties before this Court which will be addressed *seriatim* as the subsequent questions hinge on the result of the first.

The first question is whether or not intervention is allowed in a disqualification case.

The second question is whether or not the use of a foreign passport after renouncing foreign citizenship amounts to undoing a renunciation earlier made.

A better framing of the question though should be whether or not the use of a foreign passport after renouncing foreign citizenship affects one's qualifications to run for public office.

The third question is whether or not the rule on succession in the Local Government Code is applicable to this case.

OUR RULING

Intervention of a rival candidate in a disqualification case is proper when there has not yet been any proclamation of the winner.

Petitioner Casan Macode Maquiling intervened at the stage when respondent Arnado filed a Motion for Reconsideration of the First Division Resolution before the COMELEC En Banc. As the candidate who garnered the second highest number of votes, Maquiling contends that he has an interest in the disqualification case filed against Arnado, considering that in the event the latter is disqualified, the votes cast for him should be considered stray and the second-placer should be proclaimed as the winner in the elections.

It must be emphasized that while the original petition before the COMELEC is one for cancellation of the certificate of candidacy and / or disqualification, the COMELEC First Division and the COMELEC En Banc correctly treated the petition as one for disqualification.

The effect of a disqualification case is enunciated in Section 6 of R.A. No. 6646:

> Sec. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Mercado v. Manzano[28] clarified the right of intervention in a disqualification case. In that case, the Court said:

> That petitioner had a right to intervene at that stage of the proceedings for the disqualification against private respondent is clear from Section 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987, which provides: Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong. Under this provision, intervention may be allowed in proceedings for disqualification even after election if there has yet been no final judgment rendered.[29]

Clearly then, Maquiling has the right to intervene in the case. The fact that the COMELEC En Banc has already ruled that Maquiling has not shown that the requisites for the exemption to the second-placer rule set forth in *Sinsuat v. COMELEC*[30] are present and therefore would not be prejudiced by the outcome of the case, does not deprive Maquiling of the right to elevate the matter before this Court.

Arnado's claim that the main case has attained finality as the original petitioner and respondents therein have not appealed the decision of the COMELEC En Banc, cannot be sustained. The elevation of the case by the intervenor prevents it from attaining finality. It is only after this Court has ruled upon the issues raised in this instant petition that the disqualification case originally filed by Balua against Arnado will attain finality.

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[28] 367 Phil. 132 (1999).
[29] Id. at 142-143.
[30] G.R. No. 105919, 6 August 1992, 212 SCRA 309.

The use of foreign passport after renouncing one's foreign citizenship is a positive and voluntary act of representation as to one's nationality and citizenship; it does not divest Filipino citizenship regained by repatriation but it recants the Oath of Renunciation required to qualify one to run for an elective position.

Section 5(2) of The Citizenship Retention and Re-acquisition Act of 2003 provides:

> Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
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> x x x x
>
> (2)Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath. x x x[31]

Rommel Arnado took all the necessary steps to qualify to run for a public office. He took the Oath of Allegiance and renounced his foreign citizenship. There is no question that after performing these twin requirements required under Section 5(2) of R.A. No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003, he became eligible to run for public office.

Indeed, Arnado took the Oath of Allegiance not just only once but twice: first, on 10 July 2008 when he applied for repatriation before the Consulate General of the Philippines in San Francisco, USA, and again on 03 April 2009 simultaneous with the execution of his Affidavit of Renunciation. By taking the Oath of Allegiance to the Republic, Arnado re-acquired his Philippine citizenship. At the time, however, he likewise possessed American citizenship. Arnado had therefore become a dual citizen.

After reacquiring his Philippine citizenship, Arnado renounced his American citizenship by executing an Affidavit of Renunciation, thus completing the requirements for eligibility to run for public office.

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[31] Section 5(2) of R.A. No. 9225.

By renouncing his foreign citizenship, he was deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country.[32]

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[32] *See* excerpts of deliberations of Congress reproduced in *AASJS v. Datumanong*, G.R. No. 160869, 11 May 2007, 523 SCRA 108.

In resolving the aforecited issues in this case, resort to the deliberations of Congress is necessary to determine the intent of the legislative branch in drafting the assailed law. During the deliberations, the issue of whether Rep. Act No. 9225 would allow dual allegiance had in fact been the subject of debate. The record of the legislative deliberations reveals the following:

x x x x

> Pursuing his point, Rep. Dilangalen noted that under the measure, two situations exist — the retention of foreign citizenship, and the reacquisition of Philippine citizenship. In this case, he observed that there are two citizenships and therefore, two allegiances. He pointed out that under the Constitution, dual allegiance is inimical to public interest. He thereafter asked whether with the creation of dual allegiance by reason of retention of foreign citizenship and the reacquisition of Philippine citizenship, there will now be a violation of the Constitution.
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> Rep. Locsin underscored that the measure does not seek to address the constitutional injunction on dual allegiance as inimical to public interest. **He said that the proposed law aims to facilitate the reacquisition of Philippine** citizenship **by speedy means. However, he said that in one sense, it addresses the problem of** dual citizenship **by requiring the taking of an oath. He explained that the problem of** dual citizenship **is transferred from the Philippines to the foreign country because the latest oath that will be taken by the former Filipino is one of allegiance to the Philippines and not to the United States, as the case may be.** He added that this is a matter which the Philippine government will have no concern and competence over.
> Rep. Dilangalen asked why this will no longer be the country's concern, when dual allegiance is involved.
>
> Rep. Locsin clarified that this was precisely his objection to the original version of the bill, which did not require an oath of allegiance. **Since the measure now requires this oath, the problem of** dual **allegiance is transferred from the Philippines to the foreign country concerned**, he explained.
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> Rep. Dilangalen asked whether in the particular case, the person did not denounce his foreign citizenship and therefore still owes allegiance to the foreign government, and at the same time, owes his allegiance to the Philippine government, such that there is now a case of dual citizenship and dual allegiance.
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> Rep. Locsin clarified that **by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign** citizenship. However, he said that this is not a matter that he wishes to address in Congress because he is not a member of a foreign parliament but a Member of the House.
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> Rep. Locsin replied that it is imperative that those who have dual allegiance contrary to national interest should be dealt with by law. However, he said that the dual allegiance problem is not addressed in the bill. He then cited the Declaration of Policy in the bill which states that "It is hereby declared the policy of the State that all citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act." He stressed that **what the bill does is recognize Philippine** citizenship **but says nothing about the other** citizenship.
>
> Rep. Locsin further pointed out that the problem of dual allegiance is created wherein a natural-born citizen of the Philippines takes an oath of allegiance to another country and in that oath says that he abjures and absolutely renounces all allegiance to his country of origin and swears allegiance to that foreign country. The original Bill had left it at this stage, he explained. **In the present measure, he clarified, a person is required to take an oath and the last he utters is one of allegiance to the country. He then said that the problem of** dual **allegiance is no longer the problem of the Philippines but of the other foreign country**. (Emphasis supplied)

However, this legal presumption does not operate permanently and is open to attack when, after renouncing the foreign citizenship, the citizen performs positive acts showing his continued possession of a foreign citizenship.[33]

Arnado himself subjected the issue of his citizenship to attack when, after renouncing his foreign citizenship, he continued to use his US passport to travel in and out of the country before filing his certificate of candidacy

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[33] *See* Discussion of Senators Enrile and Pimentel on Sec. 40(d) of the Local Government Code, reproduced in *Cordora v. COMELEC*, G.R. No. 176947, 19 February 2009, 580 SCRA 12.

> By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment as the following discussion on §40(d) between Senators Enrile and Pimentel clearly shows:
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> SENATOR ENRILE:
>
> Mr. President, I would like to ask clarification of line 41, page 17: "Any person with dual citizenship " is disqualified to run for any elective local position. Under the present Constitution, Mr. President, someone whose mother is a citizen of the Philippines but his father is a foreigner is a natural-born citizen of the Republic. There is no requirement that such a natural-born citizen, upon reaching the age of majority, must elect or give up Philippine citizenship.
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> On the assumption that this person would carry two passports, one belonging to the country of his or her father and one belonging to the Republic of the Philippines, may such a situation disqualify the person to run for a local government position?
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> SENATOR PIMENTEL:
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> To my mind, Mr. President, it only means that at the moment when he would want to run for public office, he has to repudiate one of his citizenships.
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> SENATOR ENRILE:
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> Suppose he carries only a Philippine passport but the country of origin or the country of the father claims that person, nevertheless, as a citizen? No one can renounce. There are such countries in the world.
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> SENATOR PIMENTEL:
>
> Well, the very fact that he is running for public office would, in effect, be an election for him of his desire to be considered a Filipino citizen.
>
> SENATOR ENRILE:
>
> But, precisely, Mr. President, the Constitution does not require an election. Under the Constitution, a person whose mother is a citizen of the Philippines is, at birth, a citizen without any overt act to claim the citizenship.
>
> SENATOR PIMENTEL:
>
> Yes. What we are saying, Mr. President, is: Under the Gentleman's example, if he does not renounce his other citizenship, then he is opening himself to question. So, if he is really interested to run, the first thing he should do is to say in the Certificate of Candidacy that: "I am a Filipino citizen, and I have only one citizenship."
>
> SENATOR ENRILE:
>
> But we are talking from the viewpoint of Philippine law, Mr. President. He will always have one citizenship, and that is the citizenship invested upon him or her in the Constitution of the Republic.
>
> SENATOR PIMENTEL:
>
> That is true, Mr. President. But if he exercises acts that will prove that he also acknowledges other citizenships, then he will probably fall under this disqualification.

on 30 November 2009. The pivotal question to determine is whether he was solely and exclusively a Filipino citizen at the time he filed his certificate of candidacy, thereby rendering him eligible to run for public office.

Between 03 April 2009, the date he renounced his foreign citizenship, and 30 November 2009, the date he filed his COC, he used his US passport four times, actions that run counter to the affidavit of renunciation he had earlier executed. By using his foreign passport, Arnado positively and voluntarily represented himself as an American, in effect declaring before immigration authorities of both countries that he is an American citizen, with all attendant rights and privileges granted by the United States of America.

The renunciation of foreign citizenship is not a hollow oath that can simply be professed at any time, only to be violated the next day. It requires an absolute and perpetual renunciation of the foreign citizenship and a full divestment of all civil and political rights granted by the foreign country which granted the citizenship.

Mercado v. Manzano[34] already hinted at this situation when the Court declared:

> His declarations will be taken upon the faith that he will fulfill his undertaking made under oath. Should he betray that trust, there are enough sanctions for declaring the loss of his Philippine citizenship through expatriation in appropriate proceedings. In *Yu v. Defensor-Santiago*, we sustained the denial of entry into the country of petitioner on the ground that, after taking his oath as a naturalized citizen, he applied for the renewal of his Portuguese passport and declared in commercial documents executed abroad that he was a Portuguese national. A similar sanction can be taken against anyone who, in electing Philippine citizenship, renounces his foreign nationality, but subsequently does some act constituting renunciation of his Philippine citizenship.

While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss of Philippine citizenship,[35] it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

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[34] Supra note 28 at 153.

[35] Under Commonwealth Act No. 63, a Filipino citizen may lose his citizenship:

> (1) By naturalization in a foreign country;
> (2) By express renunciation of citizenship;
> (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;
> (4) By accepting commission in the military, naval or air service of a foreign country;
> (5) By cancellation of the certificate of naturalization;
> (6) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted: and
> (7) In case of a woman, upon her marriage, to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

When Arnado used his US passport on 14 April 2009, or just eleven days after he renounced his American citizenship, he recanted his Oath of Renunciation[36] that he "absolutely and perpetually renounce(s) all allegiance and fidelity to the UNITED STATES OF AMERICA"[37] and that he "divest(s) [him]self of full employment of all civil and political rights and privileges of the United States of America."[38]

We agree with the COMELEC En Banc that such act of using a foreign passport does not divest Arnado of his Filipino citizenship, which he acquired by repatriation. However, by representing himself as an American citizen, Arnado voluntarily and effectively reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport.

This act of using a foreign passport after renouncing one's foreign citizenship is fatal to Arnado's bid for public office, as it effectively imposed on him a disqualification to run for an elective local position.

Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship.[39] Dual citizens by naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.

By the time he filed his certificate of candidacy on 30 November 2009, Arnado was a dual citizen enjoying the rights and privileges of Filipino and American citizenship. He was qualified to vote, but by the express disqualification under Section 40(d) of the Local Government Code,[40] he was not qualified to run for a local elective position.

In effect, Arnado was solely and exclusively a Filipino citizen only for a period of eleven days, or from 3 April 2009 until 14 April 2009, on which date he first used his American passport after renouncing his American citizenship.

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[36] *See* Note 7.
[37] Id.
[38] Id.
[39] See *Cordora v. COMELEC*, G.R. No. 176947, 19 February 2009, 580 SCRA 12.
[40] Sec. 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:

x x x x

(d) Those with dual citizenship; x x x.

This Court has previously ruled that:

> Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. x x x.[41]

The citizenship requirement for elective public office is a continuing one. It must be possessed not just at the time of the renunciation of the foreign citizenship but continuously. Any act which violates the oath of renunciation opens the citizenship issue to attack.

We agree with the pronouncement of the COMELEC First Division that "Arnado's act of consistently using his US passport effectively negated his "Affidavit of Renunciation."[42] This does not mean, that he failed to comply with the twin requirements under R.A. No. 9225, for he in fact did. It was *after* complying with the requirements that he performed positive acts which effectively disqualified him from running for an elective public office pursuant to Section 40(d) of the Local Government Code of 1991.

The purpose of the Local Government Code in disqualifying dual citizens from running for any elective public office would be thwarted if we were to allow a person who has earlier renounced his foreign citizenship, but who subsequently represents himself as a foreign citizen, to hold any public office.

Arnado justifies the continued use of his US passport with the explanation that he was not notified of the issuance of his Philippine passport on 18 June 2009, as a result of which he was only able to obtain his Philippine passport three (3) months later.[43]

The COMELEC En Banc differentiated Arnado from Willy Yu, the Portuguese national who sought naturalization as a Filipino citizen and later applied for the renewal of his Portuguese passport. That Arnado did not apply for a US passport after his renunciation does not make his use of a US passport less of an act that violated the Oath of Renunciation he took. It was still a positive act of representation as a US citizen before the immigration officials of this country.

The COMELEC, in ruling favorably for Arnado, stated "Yet, as soon as he was in possession of his Philippine passport, the respondent already used the same in his subsequent travels abroad."[44] We cannot agree with the COMELEC. Three months from June is September. If indeed, Arnado used

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[41] *Fivaldo v. COMELEC*, 255 Phil. 934, 944 (1989).
[42] Rollo, p. 46, Resolution dated 5 October 2010.
[43] Id. at 219, Amended Motion for Reconsideration.
[44] Id. at 66, Resolution dated 02 February 2011.

his Philippine passport as soon as he was in possession of it, he would not have used his US passport on 24 November 2009.

Besides, Arnado's subsequent use of his Philippine passport does not correct the fact that after he renounced his foreign citizenship and prior to filing his certificate of candidacy, he used his US passport. In the same way that the use of his foreign passport does not undo his Oath of Renunciation, his subsequent use of his Philippine passport does not undo his earlier use of his US passport.

Citizenship is not a matter of convenience. It is a badge of identity that comes with attendant civil and political rights accorded by the state to its citizens. It likewise demands the concomitant duty to maintain allegiance to one's flag and country. While those who acquire dual citizenship by choice are afforded the right of suffrage, those who seek election or appointment to public office are required to renounce their foreign citizenship to be deserving of the public trust. Holding public office demands full and undivided allegiance to the Republic and to no other.

We therefore hold that Arnado, by using his US passport after renouncing his American citizenship, has recanted the same Oath of Renunciation he took. Section 40(d) of the Local Government Code applies to his situation. He is disqualified not only from holding the public office but even from becoming a candidate in the May 2010 elections.

We now resolve the next issue.

Resolving the third issue necessitates revisiting *Topacio v. Paredes*[45] which is the jurisprudential spring of the principle that a second-placer cannot be proclaimed as the winner in an election contest. This doctrine must be re-examined and its soundness once again put to the test to address the ever-recurring issue that a second-placer who loses to an ineligible candidate cannot be proclaimed as the winner in the elections.

The facts of the case are as follows:

> On June 4, 1912, a general election was held in the town of Imus, Province of Cavite, to fill the office of municipal president. The petitioner, Felipe Topacio, and the respondent, Maximo Abad, were opposing candidates for that office. Topacio received 430 votes, and Abad 281. Abad contested the election upon the sole ground that Topacio was ineligible in that he was reelected the second time to the office of the municipal president on June 4, 1912, without the four years required by Act No. 2045 having intervened.[46]

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[45] 23 Phil. 238 (1912).
[46] Id. at 240.

Abad thus questioned the eligibility of *Topacio* on the basis of a statutory prohibition for seeking a second re-election absent the four year interruption.

The often-quoted phrase in *Topacio v. Paredes* is that "the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."[47]

This phrase is not even the *ratio decidendi*; it is a mere *obiter dictum*. The Court was comparing "the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections x x x [with] that produced by declaring a person ineligible to hold such an office."

The complete sentence where the phrase is found is part of a comparison and contrast between the two situations, thus:

> Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections is quite different from that produced by declaring a person ineligible to hold such an office. In the former case the court, after an examination of the ballots may find that some other person than the candidate declared to have received a plura[l]ity by the board of canvassers actually received the greater number of votes, in which case the court issues its mandamus to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a [plurality] of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fails entirely. In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the *real victor*, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as **the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots.** In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual.[48] (Emphasis supplied)

Note that the sentence where the phrase is found starts with "In the other case, there is not, strictly speaking, a contest" in contrast to the earlier statement, "In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy."

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[47] Id. at 255.
[48] Id at 254-255.

The Court in *Topacio v. Paredes* cannot be said to have held that "**the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."**

A proper reading of the case reveals that the ruling therein is that since the Court of First Instance is without jurisdiction to try a disqualification case based on the eligibility of the person who obtained the highest number of votes in the election, its jurisdiction being confined "to determine which of the contestants has been duly elected" the judge exceeded his jurisdiction when he "declared that no one had been legally elected president of the municipality of Imus at the general election held in that town on 4 June 1912" where "the only question raised was whether or not Topacio was eligible to be elected and to hold the office of municipal president."

The Court did not rule that *Topacio* was disqualified and that Abad as the second placer cannot be proclaimed in his stead. The Court therein ruled:

> For the foregoing reasons, we are of the opinion and so hold that the respondent judge exceeded his jurisdiction in declaring *in those proceedings* that no one was elect[ed] municipal president of the municipality of Imus at the last general election; and that said order and all subsequent proceedings based thereon are null and void and of no effect; and, although this decision is rendered on respondents' answer to the order to show cause, unless respondents raised some new and additional issues, let judgment be entered accordingly in 5 days, without costs. So ordered.[49]

On closer scrutiny, the phrase relied upon by a host of decisions does not even have a legal basis to stand on. It was a mere pronouncement of the Court comparing one process with another and explaining the effects thereof. As an independent statement, it is even illogical.

Let us examine the statement:

"x x x t**he wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."**

What prevents the transfer of the wreath of victory from the ineligible candidate to another candidate?

When the issue being decided upon by the Court is the eligibility of the one receiving a plurality of the legally cast ballots and ineligibility is thereafter established, what stops the Court from adjudging another eligible

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[49] Id. at 258

candidate who received the next highest number of votes as the winner and bestowing upon him that "wreath?"

An ineligible candidate who receives the highest number of votes is a wrongful winner. By express legal mandate, he could not even have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public office. The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office.

The popular vote does not cure the ineligibility of a candidate.

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

This has been, in fact, already laid down by the Court in *Frivaldo v. COMELEC*[50] when we pronounced:

> x x x. **The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified.** Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to

[50] Supra note 41.

> this country only, abjuring and renouncing all fealty and fidelity to any other state.[51] (Emphasis supplied)

This issue has also been jurisprudentially clarified in *Velasco v. COMELEC*[52] where the Court ruled that the ruling in *Quizon* and *Saya-ang* cannot be interpreted without qualifications lest "Election victory x x x becomes a magic formula to bypass election eligibility requirements."[53]

> [W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that *while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people*. We so ruled in *Quizon v. COMELEC* and *Saya-ang v. COMELEC:*
>
> The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.
>
> The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptive of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements. (Citations omitted)

What will stop an otherwise disqualified individual from filing a seemingly valid COC, concealing any disqualification, and employing every strategy to delay any disqualification case filed against him so he can submit himself to the electorate and win, if winning the election will guarantee a disregard of constitutional and statutory provisions on qualifications and disqualifications of candidates?

It is imperative to safeguard the expression of the sovereign voice through the ballot by ensuring that its exercise respects the rule of law. To

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[51] Id. at 944-945.
[52] G.R. No. 180051, 24 December 2008, 575 SCRA 590, 614-615.
[53] Id. at 615, citing *Quizon v. COMELEC*, G.R. NO. 177927, 15 February 2008, 545 SCRA 635, *Saya-ang v. COMELEC*, 462 Phil. 373 (2003).

allow the sovereign voice spoken through the ballot to trump constitutional and statutory provisions on qualifications and disqualifications of candidates is not democracy or republicanism. It is electoral anarchy. When set rules are disregarded and only the electorate's voice spoken through the ballot is made to matter in the end, it precisely serves as an open invitation for electoral anarchy to set in.

Maquiling is not a second-placer as he obtained the highest number of votes from among the qualified candidates.

With Arnado's disqualification, Maquiling then becomes the winner in the election as he obtained the highest number of votes from among the qualified candidates.

We have ruled in the recent cases of *Aratea v. COMELEC*[54] and *Jalosjos v. COMELEC*[55] that a void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.

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

There is no need to apply the rule cited in *Labo v. COMELEC*[56] that when the voters are well aware within the realm of notoriety of a candidate's disqualification and still cast their votes in favor said candidate, then the eligible candidate obtaining the next higher number of votes may be deemed elected. That rule is also a mere *obiter* that further complicated the rules affecting qualified candidates who placed second to ineligible ones.

The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very

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[54] G. R. No. 195229, 9 October 2012.
[55] G.R. Nos. 193237/193536, 9 October 2012.
[56] G.R. No. 105111, 3 July 3 1992, 211 SCRA 297, 312.

existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.

Section 6 of R.A. No. 6646 provides:

> Section 6. *Effect of Disqualification Case.* - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

There was no chance for Arnado's proclamation to be suspended under this rule because Arnado failed to file his answer to the petition seeking his disqualification. Arnado only filed his Answer on 15 June 2010, long after the elections and after he was already proclaimed as the winner.

The disqualifying circumstance surrounding Arnado's candidacy involves his citizenship. It does not involve the commission of election offenses as provided for in the first sentence of Section 68 of the Omnibus Election Code, the effect of which is to disqualify the individual from continuing as a candidate, or if he has already been elected, from holding the office.

The disqualifying circumstance affecting Arnado is his citizenship. As earlier discussed, Arnado was both a Filipino and an American citizen when he filed his certificate of candidacy. He was a dual citizen disqualified to run for public office based on Section 40(d) of the Local Government Code.

Section 40 starts with the statement "The following persons are disqualified from running for any elective local position." The prohibition serves as a bar against the individuals who fall under any of the enumeration from participating as candidates in the election.

With Arnado being barred from even becoming a candidate, his certificate of candidacy is thus rendered void from the beginning. It could not have produced any other legal effect except that Arnado rendered it impossible to effect his disqualification prior to the elections because he filed his answer to the petition when the elections were conducted already and he was already proclaimed the winner.

To hold that such proclamation is valid is to negate the prohibitory character of the disqualification which Arnado possessed even prior to the filing of the certificate of candidacy. The affirmation of Arnado's disqualification, although made long after the elections, reaches back to the filing of the certificate of candidacy. Arnado is declared to be not a candidate at all in the May 2010 elections.

Arnado being a non-candidate, the votes cast in his favor should not have been counted. This leaves Maquiling as the qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Resolution of the COMELEC En Banc dated 2 February 2011 is hereby **ANNULLED** and **SET ASIDE.** Respondent **ROMMEL ARNADO y CAGOCO** is disqualified from running for any local elective position. **CASAN MACODE MAQUILING** is hereby **DECLARED** the duly elected Mayor of Kauswagan, Lanao del Norte in the 10 May 2010 elections.

This Decision is immediately executory.

Let a copy of this Decision be served personally upon the parties and the Commission on Elections.

No pronouncement as to costs.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:

See Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

See: Dissent

I join the dissent of Justice Brion:
Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

I join the dissent of J. Brion

MARIANO C. DEL CASTILLO
Associate Justice

See Separate and concurring opinion

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

I join J. Brion in his dissent

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I join the dissent of J. Brion:

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice