G.R. No. 221538 – RIZALITO Y. DAVID, *Petitioner, v.* SENATE ELECTORAL TRIBUNAL and MARY GRACE POE-LLAMANZARES, *Respondents.*

Promulgated:

September 20, 2016

x----------x

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

I respectfully submit that the Senate Electoral Tribunal (SET) committed grave abuse of discretion in ruling that private respondent Mary Grace Poe-Llamanzares (respondent) was a natural-born citizen and, thus, qualified to hold office as Senator of the Republic of the Philippines.[1]

An act of a court or tribunal can only be considered as committed with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[2] In this relation, "**grave abuse of discretion arises when a** lower court or **tribunal patently violates the Constitution**, the law or existing jurisprudence."[3]

The advent of the 1935 Constitution established the principle of *jus sanguinis* as basis for acquiring Philippine citizenship.[4] Following this principle, citizenship is conferred by virtue of blood relationship to a Filipino parent.[5]

It was admitted that respondent was a foundling with unknown facts of birth and parentage. On its face, Section 1, Article IV of the 1935 Constitution – the applicable law to respondent's case – did not include foundlings in the enumeration of those who are considered Filipino citizens. It reads:

Section 1. The following are citizens of the Philippines:

---

1 See Section 3, Article VI of the 1987 Constitution.

2 *Carpio-Morales v. Court of Appeals,* G.R. Nos. 217126-27, November 10, 2015, citing *Yu v. Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

3 See id., citing *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013).

4 *Valles v. Commission on Elections*, 392 Phil. 327, 336 (2000).

5 Id.

> (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
>
> (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
>
> (3) Those whose fathers are citizens of the Philippines.
>
> (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
>
> (5) Those who are naturalized in accordance with law.

This case was originally a *quo warranto* proceeding before the SET.[6] The initial burden, thus, fell upon petitioner Rizalito Y. David to show that respondent lacked the qualifications of a Senator. However, upon respondent's voluntary admission that she was a foundling, the burden of evidence was shifted to her. In his Dissenting Opinion before the SET, Associate Justice Arturo D. Brion pertinently explains:

> [I]n *quo warranto*, the petitioner who challenges the respondent's qualification to office carries the burden of proving, by preponderance of evidence, the facts constituting the disqualification. Upon such proof, the burden shifts to the respondent who must now present opposing evidence constituting his or her defense or establishing his or her affirmative defense.
>
> x x x x
>
> In the present case, the petitioner has alleged that the respondent is a foundling. He posits that, as a foundling has no known parents from whom to trace the origins of her citizenship, the respondent is not a Filipino citizen and is, therefore, not eligible for the position of senator.
>
> Significantly, the respondent admitted her status as a foundling, thus, lifting the petitioner's burden of proving his claim that she is a foundling. With the admission, the fact necessary to establish the petitioner's claim is considered established.[7]

In this case, respondent failed to present competent and sufficient evidence to prove her blood relation to a Filipino parent which is necessary to determine natural-born citizenship pursuant to the *jus sanguinis* principle. This notwithstanding, the *ponencia* concludes that the following circumstances are substantial evidence justifying the inference that respondent's biological parents are Filipino:[8]

---

6 Docketed as SET Case No. 001-15.

7 See Dissenting Opinion of Justice Brion in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, pp. 12-13.

8 See *ponencia*, pp. 39-40.

(*a*) **Circumstances of abandonment:** Respondent was found as a newborn infant outside the Parish Church of Jaro, Iloilo on September 3, 1968. In 1968, Iloilo, as did most if not all other Philippine provinces, had a predominantly Filipino population. In 1968, there was also no international airport in Jaro, Iloilo.

(*b*) **Physical features:** She is described as having "brown almond-shaped eyes, a low nasal bridge, straight black hair and an oval-shaped face." She stands at only 5 feet and 2 inches tall.

(*c*) **Statistical inference:** in the related case of *Poe-Llamanzares v. Commission on Elections*,[9] former Solicitor General Florin T. Hilbay underscored how it was statistically more probable that respondent was born a Filipino citizen, submitting that out of 900,165 recorded births in the Philippines in 1968, over 1,595 or 0.18% were foreigners. This translates to, roughly, a 99.8% probability that respondent was born a Filipino citizen.

However, the foregoing "circumstantial evidence" do not adequately prove the determination sought to be established: that is, whether or not respondent can trace her parentage to a Filipino citizen. These circumstances can be easily debunked by contrary but likewise rationally-sounding suppositions. Case law holds that "[m]atters dealing with qualifications for public elective office must be strictly complied with."[10] The proof to hurdle a substantial challenge against a candidate's qualifications must therefore be solid. This Court cannot make a definitive pronouncement on a candidate's citizenship when there is a looming possibility that he/she is not Filipino. The circumstances surrounding respondent's abandonment (both as to the milieu of time and place), as well as her physical characteristics, hardly assuage this possibility. By parity of reasoning, they do not prove that she was born to a Filipino: her abandonment in the Philippines is just a restatement of her foundling status, while her physical features only tend to prove that her parents likely had Filipino features and yet it remains uncertain if their citizenship was Filipino. More so, the statistics cited – assuming the same to be true – do not account for all births but only of those recorded. To my mind, it is uncertain how "encompassing" was the Philippine's civil registration system at that time – in 1968 – to be able to conclude that those statistics logically reflect a credible and representative sample size. And even assuming it to be so, 1,595 were reflected as foreigners, rendering it factually possible that respondent belonged to this class. Ultimately, the opposition against respondent's natural-born citizenship claim is simple but striking: the fact that her parents are unknown directly puts into question her Filipino citizenship because she has no *prima facie* link to a Filipino parent from which she could have traced her Filipino citizenship.

---

9 See G.R. Nos. 221697 and 221698-221700, March 8, 2016.

10 See *Arnado v. COMELEC*, G.R. No. 210164, August 18, 2015.

Absent satisfactory proof establishing any blood relation to a Filipino parent, and without any mention in the 1935 Constitution that foundlings are considered or even presumed to be Filipino citizens at birth, it is my view that, under the auspices of the 1935 Constitution, respondent could not be considered a natural-born Filipino citizen. As worded, the provisions of Section 1, Article IV of the 1935 Constitution are clear, direct, and unambiguous. This Court should therefore apply the statutory construction principles of *expressio unius est exclusio alterius* and *verba legis non est recedendum*. Consequently, it would be unnecessary to resort to the constitutional deliberations or to examine the underlying intent of the framers of the 1935 Constitution. In *Civil Liberties Union v. The Executive Secretary*,[11] this Court remarked that:

> Debates in the constitutional convention "are of value **as showing the views of the individual members, and as indicating the reasons for their votes**, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. **We think it [is] safer to construe the constitution from what appears upon its face**."[12]

In fact, it should be pointed out that the 1935 Constitution, as it was adopted in its final form, **never carried over any proposed provision on foundlings being considered or presumed to be Filipino citizens**. Its final exclusion is therefore indicative of the framers' prevailing intent.[13] The *ponencia*'s theorized "harmonization"[14] of the constitutional provisions on citizenship with the provisions on the promotion of children's well-being,[15] equal protection,[16] public service,[17] and even human dignity and human

---

11 272 Phil. 147 (1991).

12 Id. at 169-170.

13 See *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 157 (1991).

14 *Ponencia*, pp. 45-50.

15 Section 13, Article II of the 1987 Constitution provides:

> Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Section 3, Article XV of the 1987 Constitution also provides:

> Section 3. The State shall defend:
>
> x x x x
>
> (3) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;
>
> x x x x

16 Section 1, Article III of the 1987 Constitution reads:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

17 Section 26, Article II of the 1987 Constitution states:

> Section 26. The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

rights[18] appears to be a tailor-fitted advocacy for allowing foundlings to run for key national posts that, quite frankly, stretches the import of these distinct provisions to the separate and unique matter of citizenship. There seems to be an evident logical problem with the argument that since the Constitution protects its children, and respects human rights and equality to run for office, then *ergo*, foundlings should be presumed to be natural-born. It appears that this approach aims to collate all possibly related constitutional text, albeit far-flung, just to divine a presumption when unfortunately, there is none.

Moreover, as Senior Associate Justice Antonio T. Carpio (Justice Carpio) aptly pointed out in his Dissenting Opinion before the SET, it would be insensible to suppose that the framers of the 1935 Constitution intended that foundlings be considered as natural-born citizens:

> [N]one of the framers of the 1935 Constitution mentioned the term natural-born in relation to the citizenship of foundlings. Again, under the 1935 Constitution, only those whose fathers were Filipino citizens were considered natural-born citizens. Those who were born of Filipino mothers and alien fathers were still required to elect Philippine citizenship, preventing them from being natural-born citizens. If, as respondent would like us to believe, the framers intended that foundlings be considered natural-born Filipino citizens, this would create an absurd situation where a child with unknown parentage would be placed in a better position than child whose mother is actually known to be a Filipino citizen. The framers of the 1935 Constitution could not have intended to create such absurdity.[19]

While the predicament of foundlings of having their parents unknown would seem to entail the difficult, if not impossible, task of proving their Filipino parentage, the current state of the law which requires evidence of blood relation to a Filipino parent to establish natural-born citizenship under the *jus sanguinis* principle must be respected at all costs. This is not to say that the position of foundlings in relation to their endeavors for high public offices has been overlooked in this discourse. Rather, the correction of this seeming "misfortune" – as the *ponencia* would suppose[20] – lies in legislative revision, not judicial supplication. For surely, it is not for this Court to step

---

[18] Section 1, Article XIII of the 1987 Constitution provides:

> Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> x x x x

Section 11, Article II of the 1987 Constitution states:

> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

[19] See Dissenting Opinion of Justice Carpio in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, pp. 28-29.

[20] See *ponencia*, pp. 18-19.

in and supply additional meaning when clarity is evoked in the citizenship provisions of the Constitution.

For another, I would also like to express my reservations on the *ponencia*'s reliance on *Tecson v. Commission on Elections*[21] (*Tecson*) wherein this Court resolved that respondent's adoptive father, Ronald Allan Kelley Poe, more popularly known as Fernando Poe Jr. (FPJ), was qualified to run for the presidential post during the 2004 National Elections which, according to the *ponencia*,[22] was based on the basis of "presumptions" that proved his status as a natural-born citizen. In that case, the identity of FPJ's parents, Allan F. Poe and Bessie Kelley, was never questioned. More importantly, there was direct documentary evidence to trace Allan F. Poe's parentage to Lorenzo Pou, whose death certificate identified him to be a Filipino. Thus, by that direct proof alone, there was a substantial trace of Allan F. Poe's parentage to a Filipino (Lorenzo Pou), which in turn, allowed the substantial tracing of FPJ's parentage to a Filipino (Allan F. Poe). As such, FPJ was declared qualified to run for the presidential post in 2004. The Court further explained that while the birth certificate of FPJ's grandfather, Lorenzo Pou, was not presented, it could be assumed that the latter was born in 1870 while the Philippines was still a colony of Spain. This inference was drawn from the fact that Lorezo Pou died at the age of 84 years old in 1954. Thus, absent any evidence to the contrary, and against petitioner therein's bare allegation, Lorenzo Pou was deemed to be a resident of the Philippines and hence, a Filipino citizen by operation of the Philippine Organic Act of 1902,[23] on the premise that the place of residence of a person at the time of his death was also his residence before his death. In any event, the certified true copy of the original death certificate of Lorenzo Pou reflecting that he was a Filipino citizen was enough basis to trace FPJ's Filipino natural-born citizenship. As the Court aptly cited, according to Section 44, Rule 130 of the Rules of Court, "entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are ***prima facie* evidence of the facts therein stated.**"

In contrast, by her admission as a foundling whose parents are unknown, and without presenting any other evidence to show any substantial tracing of Filipino parentage similar to FPJ, the legal and factual nuances of respondent's case should be treated differently. Accordingly, *Tecson* provides no authoritative jurisprudential anchorage to this case.

Finally, it bears stressing that the *jus sanguinis* principle of citizenship established in the 1935 Constitution was subsequently carried over and adopted in the 1973 and 1987 Constitutions.[24] Thus, notwithstanding the

---

21 468 Phil. 421 (2004).

22 See *ponencia*, pp. 42-43.

23 See Section 4 of the Philippine Organic Act of 1902, entitled "AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES."

24 See *Valles v. Commission on Elections*, supra note 4, at 336-337.

existence of any treaty or generally accepted principle of international law which purportedly evince that foundlings are accorded natural-born citizenship in the State in which they are found, the same, nonetheless, could not be given effect as it would contravene the Constitution. To recall, should international law be adopted in this jurisdiction, it would only form part of the sphere of domestic law.[25] Being relegated to the same level as domestic laws, they could not modify or alter, much less prevail, over the express mandate of the Constitution. In this relation, I deem it fitting to echo the point made by Associate Justice Teresita J. Leonardo-De Castro, likewise in her Separate Opinion before the SET:

> Citizenship is not automatically conferred under the international conventions cited but will entail an affirmative action of the State, by a national law or legislative enactment, so that the nature of citizenship, if ever acquired pursuant thereto, is citizenship by naturalization. There must be a law by which citizenship can be acquired. By no means can this citizenship be considered that of a natural-born character under the principle of *jus sanguinis* in the Philippine Constitution.[26]

For all these reasons, I unfortunately depart from the ruling of the majority and perforce submit that the SET committed grave abuse of discretion in declaring respondent a natural-born citizen. The majority ruling runs afoul of and even distorts the plain language of the Constitution which firmly and consistently follows the *jus sanguinis* principle. In the final analysis, since respondent has not presented any competent and sufficient evidence to prove her blood relation to a Filipino parent in these proceedings, she should not be deemed to be a natural-born citizen of the Philippines, which, thus, renders the instant petition meritorious. Nonetheless, it is important to point out that respondent is not precluded from later on proving her natural-born citizenship through such necessary evidence in the appropriate proceeding therefor, considering that a decision determining natural-born citizenship never becomes final.[27] I reach these conclusions solely under the peculiar auspices of this case and through nothing but my honest and conscientious assessment of the facts parallel to the applicable legal principles. As a magistrate of this High Court, I am impelled to do no less than fulfill my duty to faithfully interpret the laws and the Constitution, bereft of any politics or controversy, or of any regard to the tides of popularity or gleam of any personality.

WHEREFORE, I vote to **GRANT** the petition.

ESTELA M. PERLAS-BERNABE
Associate Justice

---

[25] *Pharmaceutical and Health Care Assoc. of the Phils. v. Duque III,* 561 Phil. 386, 397-398 (2007).

[26] See Separate Opinion of Justice De Castro in *David v. Poe-Llamanzares*, SET Case No. 001-15, November 17, 2015, p. 18.

[27] See Dissenting Opinion of Justice Carpio in *David v. Poe-Llamanzares*, SET Case. No. 001-15, p. 35, citing *Kilosbayan Foundation v. Ermita*, 553 Phil. 331, 343-344 (2007).