EN BANC

G.R. No. 221697 ***(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections and Estrella C. Elamparo)***

G.R. Nos. 221698-700 ***(Mary Grace Natividad S. Poe-Llamanzares v. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras and Amado D. Valdez)***

Promulgated:
April 5, 2016

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

SEPARATE DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

The Decision dated March 8, 2016 annulled and set aside the Commission on Elections (COMELEC) December 1, 2015 and December 23, 2015 Resolutions in SPA Nos. 15-001 (DC); and, the December 11, 2015 and December 23, 2015 Resolutions in 15-002 (DC), 15-007 (DC), and 15-139 (DC), which denied due course to and/or cancelled petitioner Poe's Certificate of Candidacy (COC) for the position of President of the Republic of the Philippines. Said COMELEC resolutions were declared to have been issued with grave abuse of discretion. At the outset, it must be emphasized that the citizenship qualification of petitioner Poe failed to get the required majority vote of eight (8) Justices, out of the fifteen (15) Justices, none of whom inhibited or recused himself or herself from the cases. I am constrained to refer to the "Decision" penned by Justice Jose Portugal Perez as his *ponencia*, considering that not all the grounds adduced in the said *ponencia* were concurred in by a majority of the Justices.

After perusing the reasoned and meritorious arguments set forth by the respondents in their motions for reconsideration[1] in this case, I find that compelling reasons exist for the Court to take a second hard look at this case and confront head on the lingering questions raised against the *ponencia's* factual and legal underpinnings, instead of dismissing the motions in a minute resolution.

I, therefore, reiterate my previous dissent and offer here a brief rumination on several significant points raised in respondents' motions for reconsideration.

---

[1] Private respondents Estrella C. Elamparo, Francisco S. Tatad, and Antonio P. Contreras jointly filed an Urgent Plea for Reconsideration on March 21, 2016; while public respondent COMELEC filed its Motion for Reconsideration on March 22, 2016. Amado D. Valdez subsequently filed his own Motion for Reconsideration on March 29, 2016.

The Supreme Court's Jurisdiction on Cases Involving Qualifications and Eligibility of Presidential Candidates

I cannot subscribe to the view posited in the *ponencia* that under the last paragraph of Article VII, Section 4 of the 1987 Constitution[2] it is this Court alone, acting as the Presidential Electoral Tribunal, that has jurisdiction on the qualifications and eligibility of candidates for President (and Vice-President) and only after the elections. It is true that it is the Court that has **sole original jurisdiction** on contests relating to the qualifications of the President elect and the Vice-President elect **after** the conduct of the elections in its capacity as the Presidential Electoral Tribunal. However, this Court has jurisdiction to rule on the qualifications of candidates **prior** to the elections within the **strict parameters of review** under a *certiorari* petition from a decision of the COMELEC on that same subject of qualifications or eligibility of candidates, regardless of whether they are candidates for national or local office. This has been the long standing state of the law and jurisprudence in this jurisdiction and no justification is offered by the *ponencia* why the Court should depart from established doctrine.

The Jurisdiction of the COMELEC to Rule on a Candidate's Qualifications and Eligibility

One of the most controversial and radical pronouncements in the *ponencia* is that the COMELEC is *not allowed* and is *not vested with jurisdiction* to make a finding on a candidate's qualification in Section 78 proceedings except when there is a prior judgment by a competent court or in case of self-evident facts of unquestioned or unquestionable veracity and judicial confessions.

In Respondent Elamparo, et al.'s motion for reconsideration, they rightly contend that there is no legal basis to consider this pronouncement as a *majority decision* considering that nine (9) of the fifteen (15) Justices of the Court found the COMELEC to have jurisdiction to rule on these qualifications. In addition to the six Justices who dissented from the *ponencia*, Justice Caguioa (who is joined by Justice Peralta) and Justice Jardeleza issued opinions that the COMELEC **should** rule on these qualifications. According to Justice Caguioa, the COMELEC has jurisdiction to check the accuracy of the material representations made in the certificate of candidacy, but added that it also had jurisdiction to determine

---

[2] The last paragraph of Article VII, Section 4 of the1987 Constitution states:

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.

the existence of an intent to mislead. Justice Jardeleza's position on this matter addresses the dire consequences of ruling otherwise:

> We have already recognized that a Section 78 petition is one instance – the only instance – where the qualifications of a candidate for elective office can be challenged before an election. Although the denial of due course to or the cancellation of the COC is ostensibly based on a finding that the candidate made a material representation that is false, the determination of the factual correctness of the representation necessarily affects eligibility. Essentially, the ground is lack of eligibility under the pertinent constitutional and statutory provisions on qualifications or eligibility for public office, similar to a petition for *quo warranto* which is a species of election contest. "The only difference between the two proceedings is that, under Section 78, the qualifications for elective office are misrepresented in the COC and the proceedings must be initiated before the elections, whereas a petition for *quo warranto* under Section 253 may be brought on the basis of two grounds – (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results." Put simply, the main distinction is the time the action is filed. If a person fails to file a Section 78 petition within the 25-day period prescribed in the OEC, the election laws afford him another chance to raise the ineligibility of the candidate by filing a petition for *quo warranto.*
>
> The reason why the COMELEC, pursuant to a valid law, is allowed to determine a candidate's constitutional and statutory eligibility prior to the election is not difficult to fathom. As earlier alluded to, there is legitimate value in shielding the electorate from an ineligible candidate. In addition, there are sound fiscal considerations supporting this remedy. These include the more efficient allocation of COMELEC's resources, ultimately funded by taxpayers' money, and a check on unnecessary campaign spending, an activity with minimal economic utility. A contrary ruling could lead to the *de facto* disenfranchisement of those who voted for a popular but ineligible candidate. The possibility of a constitutional and political crisis arising from such a result is one we dare not risk.[3]

Respondents likewise correctly assert that the jurisdiction of the COMELEC in a Section 78 proceeding to make a finding on the presence or absence of a candidate's qualifications has been repeatedly established in a long line of cases, at the very least, preliminarily, which glaringly includes the recent *Ongsiako-Reyes v. COMELEC*[4] and *Cerafica v. COMELEC*[5] that are **both penned by Justice Perez.** Not one of these cases require a prior finding by a competent authority as to the said qualifications before the COMELEC can rule on them.

Respondents further elucidate the meaninglessness of the exceptions adduced by the *ponencia* with respect to the jurisdiction of the COMELEC to rule on the qualifications of the candidate. If we were to adhere to the *ponencia's* theory that there is no authorized proceeding to pass upon the

---

3 Justice Jardeleza's Concurring Opinion, pp. 8-9.
4 G.R. No. 207264, June 25, 2013.
5 G.R. No. 205136, December 2, 2014.

qualifications of candidates for President prior to an election and that the COMELEC may not pass upon such question unless there is a prior judgment of disqualification, how then can such a prior judgment of disqualification be secured to support an action under Section 78? If the competent authority which is supposed to make a prior finding on said qualifications has not been established by any law or jurisprudence, there is no way such a prior final determination of ineligibility can be obtained. Notably, the *ponencia* of Justice Perez did not identify the competent authority and appropriate remedy where the citizenship and residence qualifications of petitioner Poe can be determined prior to the filing of a petition to deny due course to or cancel her certificate of candidacy before the COMELEC.

Furthermore, self-evident facts are legally defined as those needing no demonstration or explanation. All material representations properly covered by Section 78 cannot be self-evident, according to respondents. They cite as an example a representation as to a candidate's age which needs proof of the date of birth such as a Certificate of Live Birth. Thus, I fully agree with respondents that the conditions laid out in the *ponencia* prior to the exercise of the COMELEC's constitutional mandate to enforce election laws, particularly laws on qualifications and eligibility of candidates, are unrealistic and ineffectual for their utter lack of basis in law, rules of procedure and jurisprudence. On this point, the *ponencia* of Justice Perez ventured on unprecedented doctrines without any explanation how they can be applied to the specific issues of citizenship and residence of petitioner Poe.

In any event, it should be clarified that, notwithstanding the pronouncements made in the *ponencia* on this point, a close scrutiny of the votes and separate opinions of the Members of the Court show that a decisive majority of nine voted to uphold the COMELEC's jurisdiction to pass upon the qualifications and eligibility of candidates prior to the elections without the imposition of the above-mentioned preconditions to its exercise of jurisdiction.

Natural-born Citizenship by Statistical Probability

I also cannot but passionately stress my disagreement from the ruling of the *ponencia* that petitioner Poe's citizenship can be established by resorting to the use of statistical probabilities. While this resort to statistical probabilities could be brushed aside for lack of legal foundation, I am compelled to point out the absurdity of this ruling, which has been relied upon to support the natural-born citizenship of petitioner Poe.

As argued by the respondents, the *ponencia* inappropriately relied on statistical probability to justify the finding that petitioner Poe is a natural-

born Filipino. Statistical probability cannot be used to directly establish a controverted material fact in issue, more so in an issue as significant as natural-born citizenship. Justice Perez inappropriately invoked Section 4, Rule 128 of the Rules of Court. There is no natural-born citizenship by probability under the Constitution. Citizenship must be established as a fact. Statistics are not even matters that may be subject to judicial notice. Most importantly, the statistics cited in the *ponencia* are wholly immaterial to the case at bar since they pertained to children born in the Philippines or children born specifically in the province of Iloilo during the years between 1960 and 1975, as well as the adult male and female populations of Filipinos and foreigners in the said province. Anent the statistics cited on the number of children born in the Philippines, the same should not have been applied to petitioner Poe as there is no evidence in this case that she was in fact **born** in this country. As pointed out by the respondents, petitioner Poe never even alleged that she was born in the Philippines because her birthplace was admittedly not known to her. All that she alleged was that she was **found** in the Philippines with unknown parents.

The *ponencia's* reliance on statistical probability cannot ever be made a judicial precedent in deciding future cases involving the natural-born citizenship of a foundling. For sure, the statistics vary from place to place and across different periods of time. And so the question to be asked is: what specific percentage of the factors alluded to would be acceptable before a foundling born in a specific location can be considered a natural-born citizen? Would it also be 99.83% as ruled in this case or perhaps a specific range of percentage values? Would 90%-95% be sufficient? Even stretching the illustration further, should we grant a foundling's claim to natural-born citizenship if there is a 70% probability of being born to at least one Filipino parent? What if the foundling belonged to the 0.17% or 5% or 10% or 30% of those not born to Filipino parents, which is also a possibility or a probability that cannot be discounted? Statistical probability is just that – a probability, which the Constitution never contemplated. Quite apart from the absurd consequences that may arise from the use of statistics to establish blood relationship or filiation, the *ponencia* plainly failed to present a definite standard by which its ruling on the use of statistics can be applied in similar cases. This is so as it is beyond the ambit of the Court's constitutional authority or competence to do. Hence, I affirm my previous position on this matter that statistical probability should not be used to determine natural-born citizenship for its sheer preposterousness.

Moreover, I am of the same mind as respondents that it is the height of unfairness to ascribe grave abuse of discretion on the part of the COMELEC on the basis of the statistical evidence that was not presented before it. The COMELEC, along with the other respondents, were not given an opportunity to adequately impeach said evidence, which was only brought to the attention of the Court during the oral arguments of this case.

No Majority Vote on the Citizenship Qualification of Petitioner

There is undeniable merit to respondents' position that there was no majority vote on the issue of petitioner Poe's natural-born citizenship. Only seven (7) of the fifteen (15) Justices of the Court declared her to be a natural-born Filipino citizen. Justice Del Castillo, Justice Caguioa and Justice Peralta voted to defer making a definitive determination on the issue of petitioner Poe's citizenship. A vote can take different forms and it is not limited to an affirmative or a negative vote. The said Justices did not recuse nor inhibit themselves from voting on the substantive issue of citizenship. Considering that all the fifteen (15) Justices – not twelve (12) – took part in the deliberations of the issues and voted thereon, it is pure dissembling to assert that only a majority of seven (7) is required to resolve the issue.

The net effect of the lack of a majority vote on petitioner's citizenship is a decision that disposes only the issue of whether petitioner **may run** but nonetheless leaves her natural-born citizenship still open to question. Verily, the *ponencia* has no doctrinal value on the matter of petitioner's citizenship. Any reference in the *ponencia* on citizenship is *obiter dictum* since the primary premise of the *ponencia* is that the COMELEC had no jurisdiction to pass upon the qualifications of a candidate for President unless there is a prior determination of the qualifications of the candidate by a competent authority and/or that the issue of qualifications should be resolved by the Presidential Electoral Tribunal after the elections. Ergo, the *ponencia* could not have ruled on the merits of the citizenship or residence qualifications of petitioner Poe.

Following the *ponencia's* premise, it was premature to pass upon the said qualifications before the elections. Still, the *ponencia* went on to rule on the qualifications of petitioner Poe, which is in direct contradiction of the main proposition relied upon by the *ponencia* that the COMELEC and this Court cannot pass upon the qualifications of petitioner Poe before the elections.

I see no legal or practical purpose for postponing the categorical resolution of this issue until after the elections since under existing jurisprudence[6] where the winning candidate is found to be disqualified or ineligible to hold office, an election victory will not erase such disqualification or ineligibility. The delay in the disposition of the citizenship issue will only invite uncertainty and instability in the conduct of the coming elections.

In sum, I reiterate my previous Dissenting Opinion that petitioner Poe, who was a foundling with unknown parents is not a natural-born citizen. To hold otherwise as the *ponencia* submits is a patent violation of the clear

---

6 *Frivaldo v. Commission on Elections*, 255 Phil. 934 (1989).

language of the Constitution and would amount to an unwarranted amendment of the provision of the Constitution on citizenship. Moreover, petitioner Poe has not complied with the 10-year residence requirement to run for the highest political office in the land. Her representation that she was **born to** Filipino parents when she applied for her reacquisition of Philippine citizenship, which became her basis for claiming natural-born citizenship when she filed her certificate of candidacy was false and was intended to mislead to enable her to avail herself of the benefits of Republic Act No. 9225 and to be qualified to run for President. The same conclusion holds true with respect to her representation under oath as to her 10-year residency, which contradicts her own representations in two previous instances.

I therefore maintain my dissent and vote to **GRANT** the Motions for Reconsideration of the Decision dated March 8, 2016.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

CERTIFIED TRUE COPY
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT