

## EN BANC

G.R. No. 202202

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SILVERIO R. TAGOLINO, *Petitioner,*  
*versus* HOUSE OF REPRESENTATIVES  
and LUCY MARIE TORRES-GOMEZ,  
*Respondents.*

Promulgated:

March 19, 2013



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### *DISSENTING OPINION*

ABAD, J.:

On November 30, 2009 Richard Gomez (Richard) filed his certificate of candidacy (CoC) for Congressman of Leyte's 4<sup>th</sup> District under the Liberal Party (LP) in the May 10, 2010 elections. He gave his residence as 910 Carlota Hills, Barangay Can-Adieng, Ormoc City. After a week, Buenaventura O. Juntilla, a registered voter of the district, filed a *Verified Petition to Disqualify Candidate for Lack of Qualification*<sup>1</sup> before the Commission on Elections (COMELEC) in SPA 09-059 (DC) on the ground that Richard was not an Ormoc City resident. Juntilla asked the COMELEC two things: a) disqualify Richard and b) deny due course to or cancel his CoC for material misrepresentation regarding his residence since he in fact resided in Greenhills, Mandaluyong City.

On February 17, 2010 the COMELEC First Division issued a resolution disqualifying Richard for failing to present "sufficient proof that would establish his ties to Ormoc." The resolution failed, however, to order the denial of due course or cancellation of his CoC. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Commission  
RESOLVED, as it hereby RESOLVES, to GRANT the Petition to  
Disqualify Candidate for Lack of Qualification filed by  
BUENAVENTURA O. JUNTILLA against RICHARD I. GOMEZ.  
Accordingly, RICHARD I. GOMEZ is **DISQUALIFIED as a candidate**

<sup>1</sup> Rollo, pp. 246-253.



for the Office of Congressman, Fourth District of Leyte, **for lack of residency requirement.**<sup>2</sup> (Emphasis supplied.)

On February 20, 2010 Richard moved for reconsideration of the above resolution. Juntilla, on the other hand, did not file a similar motion even when the COMELEC failed to grant his other prayer for denial of due course or cancellation of Richard's CoC.

On May 4, 2010 the COMELEC *En Banc* issued a Resolution<sup>3</sup> dismissing Richard's motion for reconsideration. On the same day, Richard filed with the COMELEC a Manifestation<sup>4</sup> informing it of his acceptance of its decision in his case to enable a substitute to take his place. Acting on the Manifestation, the COMELEC *En Banc* issued an Order on May 5 declaring its May 4 Resolution final and executory.

On May 5, 2010 the LP Secretary-General wrote the Provincial Election Supervisor of Leyte, nominating respondent Lucy Gomez as a substitute candidate for her husband, Richard. Lucy Gomez promptly filed her CoC with COMELEC as substitute candidate. On the same date, Juntilla filed with the COMELEC a Counter-Manifestation,<sup>5</sup> followed by a letter to the COMELEC Law Department, opposing Lucy Gomez's substitution of her husband, claiming that the substitution was invalid since she had no one to substitute in view of the COMELEC's disqualification of Richard by final order.

On May 8, 2010, the COMELEC *En Banc* issued Resolution 8890<sup>6</sup> approving and adopting, among other things, its Law Department's study and recommendation that Lucy Gomez be allowed to substitute for Richard, given that the 1<sup>st</sup> Divisions ruling which did not cancel Richard's CoC but merely "disqualified" him, had already become final and executory. The pertinent portion of the study and recommendation that the *En Banc* adopted states:

**The crux of the opposition stemmed from the issue that there should be no substitution because there is no candidate to substitute for.**

It must be stressed that the **resolution** of the First Division, this Commission, in SPA No. 09-059 **speaks of disqualification** of candidate Richard I. Gomez and **not of cancellation** of his Certificate of Candidacy:

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<sup>2</sup> Id. at 259-265.

<sup>3</sup> Id. at 266-277.

<sup>4</sup> Id. at 278-279.

<sup>5</sup> Id. at 281-86.

<sup>6</sup> Id. at 303-310.



"Wherefore, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to GRANT the Petition to Disqualify Candidate for Lack of Qualification filed against RICHARD I. GOMEZ. Accordingly, RICHARD I. GOMEZ is **DISQUALIFIED** as a candidate for the Office of Congressman, Fourth District of Leyte, for lack of residency requirement."

The said resolution was affirmed by the Commission *En Banc* on May 4, 2010.

x x x x

In view of the foregoing, the Law Department RECOMMENDS the following:

x x x x

2. TO ALLOW CANDIDATE LUCY MARIE TORRES GOMEZ AS A SUBSTITUTE CANDIDATE FOR RICHARD GOMEZ;  
(Emphasis supplied)

On the same day the COMELEC *En Banc* issued its May 8, 2010 resolution allowing the substitution, Juntilla filed an Extremely Urgent Motion for Reconsideration<sup>7</sup> of the same but the motion remained unacted upon, obviously owing to the supervening May 10 elections. Juntilla never elevated or questioned the matter before the Supreme Court.

On May 12, 2010 the Leyte Provincial Board of Canvassers proclaimed Lucy Gomez as Congresswoman-elect to represent the 4<sup>th</sup> District of Leyte, having obtained 101,250 votes. Petitioner Silvestre R. Tagolino and another candidate, Eufrocino C. Codilla, Jr., garnered 493 votes and 76,549 votes, respectively.


In due time, Tagolino brought a *quo warranto* action<sup>8</sup> against Lucy Gomez with the House of Representatives Electoral Tribunal (HRET) pursuant to its Rule 17 which allows the filing of a petition for *quo warranto* contesting the election of a member of the House of Representatives "on the ground of ineligibility or disloyalty to the Republic." Juntilla did not join Tagolino in this action.

Tagolino alleged in his petition (1) that Lucy Gomez was not a resident of Ormoc City at least one year immediately preceding the election;

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<sup>7</sup> Id. at 311-324.

<sup>8</sup> Id. at 85-92.



(2) that she was not a registered voter in the 4<sup>th</sup> District of Leyte; and (3) that her CoC was void for failing to comply with the requirements of Section 2 of the 2004 Notarial Law.<sup>9</sup> Tagolino did not raise in his petition the question of the validity of Lucy Gomez's substitution of her husband Richard.

In her Answer,<sup>10</sup> Lucy Gomez averred: (a) that the petition was filed beyond 10 days from proclamation; (b) that the petition assails the validity of her CoC, which is outside the jurisdiction of the HRET and should have been assailed before the COMELEC through a petition to deny due course to or cancel her CoC; (c) that the COMELEC had already resolved her substitution of Richard with finality in its Resolution 8890; (d) that she did not have to present proof of her identity when her CoC was notarized the notary public personally knew her; and (e) she never abandoned her domicile in Ormoc City despite her change of residence and transfer of voting registration to San Rafael, Bulacan, arising from her marriage to Richard.

On March 22, 2010 the HRET rendered a Decision<sup>11</sup> dismissing the *quo warranto* petition and declaring Lucy Gomez a qualified candidate during the May 2010 election for the subject position, her substitution of her disqualified husband being valid and legal. HRET ruled that Lucy Gomez's domicile continued to be Ormoc City despite her marriage to Richard. Tagolino moved for reconsideration but HRET denied the same on May 28, 2012, hence, this petition.

### Question Presented

As the *ponencia* would have it, the issue boils down to the question of whether or not Lucy Gomez validly substituted Richard whom the COMELEC declared disqualified for lack of residency.

But the above is not an accurate statement of the real issue in this case. The real issue in this case is whether or not the HRET can review and reverse a COMELEC Decision involving a member of the House of Representatives that had become final and executory.

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<sup>9</sup> SEC. 2. *Affirmation or Oath*. – The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; x x x

<sup>10</sup> *Rollo*, pp. 23-39.

<sup>11</sup> Annex "A," Petition, *id.* at 48-64.



### Discussion

The election of Lucy Gomez as Congresswoman of the 4<sup>th</sup> District of Leyte was preceded by two separate incidents before the COMELEC:

The first incident involved Richard. It consists in Juntilla's self-titled Verified Petition to Disqualify Candidate for Lack of Qualification. Juntilla asked for Richard's disqualification, consistent with the substance of his petition, but added in his prayer that the candidate's CoC be also cancelled or denied due course. The COMELEC First Division granted the petition and disqualified Richard but did not cancel or deny due course to his CoC.


The second incident involved Lucy Gomez. Juntilla opposed her substitution of Richard on the ground that the substitution was invalid since she had no one to substitute in view of the COMELEC First Division's disqualification of Richard by final order. But the COMELEC *En Banc* denied the opposition and allowed the substitution, given that the First Division's resolution, which merely disqualified Richard, had already become final and executory.

The key issue in this case is actually whether or not the HRET was correct in ruling that the COMELEC First Division's February 17, 2010 Resolution that disqualified Richard but did not cancel his CoC or deny it due course had already become final and executory. For, if it had indeed become final and executory, that resolution would, as the COMELEC *En Banc* held in its May 8, 2010 Resolution, provide legal basis for Lucy Gomez's substitution of Richard.

It is clear from the facts that the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel or deny due course to his CoC, became final and executory. That resolution may be in error, as the *ponencia* would have it, but it certainly became final and executory for the following reasons:

**First.** Juntilla never filed a motion for reconsideration of that resolution. Consequently, he could not help its becoming final and executory as to him.

**Second.** Only Richard filed a motion for reconsideration of the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified him. When the COMELEC *En Banc* dismissed that motion for reconsideration on May 4, 2010, Richard filed a manifestation on the same day, accepting its validity. On May 5 the COMELEC *En Banc* declared its



May 4, 2010 Resolution final and executory. Consequently, what remained the last window of opportunity to review and possibly reverse the COMELEC First Division's February 17, 2010 Resolution closed down.

**Third.** Juntilla attempted to revive the issue concerning the COMELEC First Division's February 17, 2010 Resolution when he opposed Lucy Gomez's substitution of Richard. He claimed that the First Division's resolution resulted in the COMELEC denying due course to Richard's CoC with the effect that, without a valid one, he could not be substituted. But Juntilla is clearly in error since the COMELEC *En Banc* already declared on May 5 that the First Division's February 17 Resolution merely ordered Richard's disqualification and such resolution had irreversibly become final and executory.

Juntilla of course filed on May 8, 2010 a motion for reconsideration of the COMELEC *En Banc*'s Resolution of the same date that allowed Lucy Gomez's substitution of Richard, but the motion remained unacted upon, obviously owing to the supervening May 10, 2010 elections. At any rate, Juntilla may be deemed to have abandoned that motion for reconsideration for he never insisted that it be resolved. And he never raised before this Court the issue of the validity of that COMELEC *En Banc*'s May 8 Resolution that allowed the substitution. Unchallenged, that resolution became final and executory as well.

The Court has of course ruled In *Guerrero v. Commission on Elections*<sup>12</sup> that, since the Constitution makes the HRET "the sole judge of all contests relating to the election, returns and qualifications" of its members, it has the jurisdiction to pass upon the validity of substitution involving such members. Said the Court:

Whether respondent [Rodolfo] Fariñas **validly substituted** Chevylle V. Farinas and whether respondent became a legitimate candidate, in our view, **must likewise be addressed to the sound judgment of the Electoral Tribunal.** Only thus can we demonstrate fealty to the Constitutional provision that the Electoral Tribunal of each House of Congress shall be the "*sole judge* of all contests relating to the election, returns and qualifications of their respective members."<sup>13</sup> (Emphasis supplied)

But the above ruling should be understood in the context of the facts of the *Fariñas* case. Guillermo Ruiz, a registered voter, filed a petition with the COMELEC's Second Division seeking the perpetual disqualification of

<sup>12</sup> 391 Phil. 344 (2000).

<sup>13</sup> Id. at 354.





Rodolfo Fariñas as candidate for Congressman for the May 11, 1998 elections on the ground that he had been campaigning for that position despite his failure to file a CoC. Eventually, Fariñas filed his CoC on May 8, 1998 in substitution of Chevylle Fariñas who withdrew earlier on April 3. Because of this supervening event, on May 10 the Second Division dismissed Ruiz's petition for lack of merit.

Fariñas won the elections and was promptly proclaimed. On May 16, 1998, however, Ruiz filed a motion for reconsideration of the Second Division's May 10 Resolution, contending that Fariñas could not validly substitute for Chevylle, since the latter was not the official candidate of the *Lakas ng Makabayan Masang Pilipino* but was an independent candidate. Meantime, on June 3, 1998 Fariñas took his oath as member of the House of Representatives.


On June 10, 1998 petitioner Arnold Guerrero, a rival candidate, filed a petition-in-intervention with the COMELEC, assailing Fariñas' substitution of Chevylle. On January 6, 1999, the COMELEC *En Banc* dismissed Ruiz's motion for reconsideration and Guerrero's petition-in-intervention for lack of jurisdiction since Fariñas had in the meantime assumed office.

Upon Guerrero's petition, this Court held that while the COMELEC has the power to declare a CoC valid or invalid, its refusal to exercise that power, following Fariñas' proclamation and assumption of office, simply recognized the jurisdictional boundaries between the COMELEC and the HRET. The Court said that whether Fariñas validly substituted Chevylle must now be addressed to the sound judgment of the HRET. The COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

Tagolino cannot invoke the *Fariñas* ruling for three reasons:

*First*, the Court's thesis in *Fariñas* is that the HRET can take over a pending matter before the COMELEC since the latter may be considered ousted of its jurisdiction over the same upon the winner's assumption of office. The HRET takes over the authority to resolve such pending matter.

Here, however, the key issue of whether or not the COMELEC First Division's February 17, 2010 Resolution, which merely disqualified Richard but did not cancel his CoC, is no longer a pending matter. It became final and executory since, as pointed out above, Juntilla did not file a motion for its reconsideration and the COMELEC *En Banc* had found it to be the case.



Second, Guerrero had the right to raise the issue of Fariñas' disqualification before the HRET since he intervened and joined cause with Guillermo in his action before the COMELEC. This gave Guerrero a stake in the resolution of Guillermo's motion for reconsideration after the COMELEC declined to further act on the same.

Here, Tagolino never intervened in Juntilla's actions before the COMELEC. He stayed out of it. Consequently, he has no right to ask the HRET to resolve Juntilla's May 8, 2010 motion for reconsideration of the COMELEC *En Banc*'s order of the same date. The right to press for the resolution of that May 8 motion for reconsideration belonged to Juntilla who alone filed it. But, as it happened, he abandoned his motion when he did not come up either to the Supreme Court or to the HRET to cause it to be resolved.

And third, Tagolino is barred from claiming that, in disqualifying Richard, the COMELEC's First Division in effect caused the cancellation of his CoC. Tagolino made a binding admission during the Preliminary Conference before the HRET that the COMELEC did not in fact order such cancellation of Richard's CoC.<sup>14</sup> Thus, Tagolino admitted that:

x x x x

3. By Resolution of February 17, 2010, the Comelec disqualified Richard I. Gomez as candidate for Representative of the Fourth District of Leyte for lack of residency;

4. Gomez filed a motion for reconsideration, which the Comelec En Banc dismissed for lack of merit by Resolution of May 4, 2010;

**5. Said May 4, 2010 Resolution of the Comelec did not order the cancellation of Gomez' certificate of candidacy;** (Emphasis supplied)

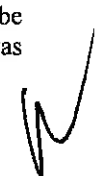
x x x x

Tagolino's admission in paragraph 5 above—that the COMELEC did not order the cancellation of Richard Gomez's certificate of candidacy—is binding on him, especially since he makes no allegation that he made such admission through palpable mistake.<sup>15</sup>

True, the parties raised before the HRET the issue of "whether the substitution of respondent is valid." But this merely accords with Lucy

<sup>14</sup> HRET Records, Vol. 1, p. 504

<sup>15</sup> Section 4, Rule 139, Rules of Evidence, *Judicial admissions*. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)





Gomez's defense in her answer that the COMELEC had already resolved her substitution of Richard with finality in its Resolution 8890. It did not mean that the parties were submitting to the HRET for resolution the issue of the final and executory nature of the COMELEC First Division's resolution that enabled her to substitute for Richard.

So the Court comes to the real issue in this case: whether or not the HRET can review and reverse a COMELEC decision, involving a member of the House of Representatives, that had already become final and executory.

The HRET has no authority to review final and executory resolutions or decisions of the COMELEC that it rendered pursuant to its powers under the Constitution, no matter if such resolutions or decisions are erroneous. The parties cannot by agreement confer such authority on HRET. Neither the HRET nor the Court can set aside the COMELEC's final and executory resolutions that paved the way for Lucy Gomez to substitute her husband.

As for Lucy Gomez's residency qualification, the evidence presented in the case amply supports HRET's conclusion that she met such qualification.

For all of the above reasons, I vote to deny the petition.



**ROBERTO A. ABAD**  
Associate Justice