

EN BANC

G.R. No. 202202 SILVERIO R. TAGOLINO, *Petitioner*, *versus*
HOUSE OF REPRESENTATIVES and LUCY
MARIE TORRES-GOMEZ, *Respondent*.

Promulgated:

March 19, 2013

X

X

DISSENTING OPINION

LEONARDO - DE CASTRO, J.:

I vote to deny the petition of Silverio R. Tagolino on the ground that after the lapse of the reglementary period of ten (10) days from the date of proclamation of respondent Lucy Marie Torres-Gomez as the duly elected Representative of the Fourth Legislative District of Leyte, the said proclamation can no longer be assailed by an election protest or a petition for *quo warranto*. Moreover, the substitution by said respondent of her husband Richard Gomez cannot be questioned, there being no factual basis to assail the decision of the Commission on Elections (COMELEC) not to cancel the certificate of candidacy of respondent's husband.

The Petition for *Quo Warranto* was filed out of time.

Respondent Gomez was proclaimed as the winning candidate for the position of Member of the House of Representatives on May 12, 2010 whereas the Petition for *Quo Warranto* was filed by petitioner Tagolino on May 24, 2010, or twelve days after the proclamation of respondent Gomez.

The pertinent provisions of the Rules of the House of Representatives Electoral Tribunal (HRET) provide as follows:

RULE 16. *Election Protest*. - A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and

mtu

belief. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

RULE 17. *Quo Warranto*. - A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The rule on verification provided in Section 16 hereof shall apply to petitions for *quo warranto*.

As correctly asserted by respondent Gomez in her Verified Answer filed before the HRET, the Petition for *Quo Warranto* should have been dismissed outright pursuant to Rule 21 of the Rules of the HRET, quoted below:

RULE 21. *Summary Dismissal of Election Contest*. - An election protest or petition for *quo warranto* may be summarily dismissed by the Tribunal without the necessity of requiring the protestee or respondent to answer if, *inter alia*: x x x

- (2) The petition is filed beyond the period provided in Rules 16 and 17 of these Rules[.]

This Court has emphasized the importance of compliance with the HRET Rules prescribing reglementary periods to be observed by the parties in an election contest to expedite the disposition of election controversies so as not to frustrate the will of the electorate. In *Hofer v. House of Representatives Electoral Tribunal*,¹ the Court sustained the dismissal by the HRET of the election protest for failure to comply strictly with the period prescribed by the HRET Rules.

Similarly, *Perez v. Commission on Elections*² held that remedies are unavailing once the prescriptive period to bring the appropriate petition has set in. The pertinent ruling of the Court in *Perez* is quoted as follows:

Petitioner's remedies should have been (1) to reiterate her prayer in the petition for disqualification, and move for the issuance of an order by the COMELEC suspending the proclamation of private respondent pending the hearing of the said petition and, in the event the motion was denied before the proclamation of private respondent, file a petition for *certiorari* in this Court with a prayer for a restraining order to enjoin the proclamation of private respondent; or (2) to file a petition for *quo warranto* in the House of Representatives Electoral Tribunal within ten

¹ G.R. No. 158833, May 12, 2004, 428 SCRA 383, 386-387.
375 Phil. 1106 (1999).



(10) days after the proclamation of private respondent as Representative-elect on May 16, 1998. Obviously, neither of these remedies can be availed of now.³

The HRET and this Court cannot set aside at will the HRET Rules mandating the timely filing of election contests. Otherwise, a dangerous precedent will be set that will cause uncertainty in the application of the HRET Rules and instability in the holding of an elective post by a proclaimed winning candidate that may adversely affect public service.

In view of the foregoing, I submit that the HRET is bereft of jurisdiction to entertain the Petition for *Quo Warranto* filed by Tagolino, after the lapse of the reglementary period prescribed by its own Rules. The proclamation of respondent Gomez has become incontrovertible or unassailable after the expiration of ten (10) days from its date.

No factual basis to cancel the certificate of candidacy.

The lack of jurisdiction on the part of the HRET to entertain the untimely Petition for *Quo Warranto* assailing the proclamation of private respondent Gomez would suffice to dismiss outright the instant petition. Moreover, the substantive issue extensively discussed in the *ponencia* of the Honorable Associate Justice Estela Perlas Bernabe, particularly as to the “divergent effects of disqualification and denial of due course to and/or cancellation of COC (Certificate of Candidacy) cases vis-à-vis candidate substitution” is inappropriate.

Firstly, the certificate of candidacy of Richard Gomez, the husband of respondent Gomez, was not cancelled by the COMELEC.

Secondly, the decision by the COMELEC not to cancel said certificate of candidacy was proper as the COMELEC did not reach any finding that Richard Gomez **deliberately** committed a misrepresentation, which is a requisite for the cancellation of a certificate of candidacy under Section 78 of the Omnibus Election Code. In *Mitra v. Commission on Elections*,⁴ the Court ruled:

Section 74, in relation to **Section 78**, of the Omnibus Election Code (*OEC*) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate’s stated facts in the COC be true, under pain of the COC’s denial or cancellation if any false representation of a material fact is made.
x x x

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate’s qualifications for elective office, such as his or

³ Id. at 1116.

⁴ G.R. No. 191938, July 2, 2010, 622 SCRA 744, 768-770.

mitra

her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

The false representation under Section 78 must likewise be a **"deliberate attempt to mislead, misinform, or hide a fact** that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

Based on these standards, we find that Mitra did not commit any deliberate material misrepresentation in his COC. The COMELEC gravely abused its discretion in its appreciation of the evidence, leading it to conclude that Mitra is not a resident of Aborlan, Palawan. **The COMELEC, too, failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact** that would otherwise render him ineligible for the position of Governor of Palawan. (Emphases supplied and citations omitted.)

The *ponencia* of Justice Bernabe indulged in the legal fiction that the certificate of candidacy of Richard Gomez was cancelled when it in fact was not. Neither can the Court now on its own decree such cancellation in the absence of any factual basis or evidentiary support for a finding that Richard Gomez committed a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render [him] ineligible."

Substitution was valid.

Since the COMELEC did not cancel the certificate of candidacy of Richard Gomez but only disqualified him from running in the elections, the substitution by respondent Gomez of Richard Gomez squarely falls within the ambit of Section 77 of the Omnibus Election Code (OEC), which uses the broad language "disqualification for any cause," as follows:

Section 77. *Candidates in case of death, disqualification or withdrawal of another.* - If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is **disqualified for any cause**, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office

mm

affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission.

Petition for *Quo Warranto* lacked factual basis.


Regarding the issue of whether a Petition for *Quo Warranto* is a proper legal remedy to assail the validity of the substitution of a candidate under Section 77 of the OEC, it suffices here to state that, under Rule 17 of the HRET Rules, the grounds for a Petition for *Quo Warranto* are ineligibility to run for a public office or disloyalty to the Republic of the Philippines.

Pertinently, Section 6, Article VI of the Constitution, which provides for the qualifications of a Member of the House of Representatives, states as follows:

Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereat for a period of not less than one year immediately preceding the day of the election.

The above-quoted provision refers to the personal attributes of a candidate. The *ponencia* did not find any of the above qualifications absent in the case of respondent Gomez. However, the *ponencia* attributed the ineligibility of respondent Gomez to its erroneous assumption that the certificate of candidacy of Richard Gomez, whom she substituted, should have been cancelled. As explained above, the COMELEC correctly did not so cancel said certificate, it having found no factual basis to do so. This being the case and the fact that the Petition for *Quo Warranto* was filed out of time, there is no need to dwell on the issue of whether the Petition for *Quo Warranto* may validly question the validity of the substitution of a candidate and to discuss the constitutional boundaries of the respective jurisdictions of the COMELEC and the HRET.

In view of the foregoing, I reiterate my vote to dismiss the Petition for *Certiorari* filed by Tagolino.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice