

EN BANC

G.R. No. 207264

**Regina Ongsiako Reyes, *Petitioner, versus*
Commission on Elections and Joseph
Socorro B. Tan, *Respondents.***

Promulgated:

OCTOBER 22, 2013



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CONCURRING OPINION

ABAD, J.:

I would like to explain why I vote to deny petitioner Regina Ongsiako Reyes' motion for reconsideration of the Court's Resolution of June 25, 2013.

When Congress enacted the Omnibus Election Code, among its concerns were persons who, although not qualified, seek public office and mar the orderly conduct of the elections. To address this problem and for the public good, Congress empowered the Commission on Elections (COMELEC) to hear and decide petitions for the cancellation of their certificates of candidacies on the ground of false material representations that such certificates contain.

Section 78 of the Code reads:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

The validity of Section 78 has never been challenged since it simply addresses a reprehensible mischief committed during elections. Anticipating this need, Section 2 of Article IX-C of the Constitution gives the COMELEC the duty and the power to enforce this and other laws relative to the conduct of the elections, thus:

Article IX, Title C, Sec. 2. The Commission on Elections shall exercise the following powers and functions:



(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

x x x x

Clearly then, actions to cancel certificates of candidacies of members of the House of Representatives (the House), allegedly containing material misrepresentation, are within the constitutional and statutory power of the COMELEC to hear and adjudicate.

But related to this is the exclusive power of the House of Representatives Electoral Tribunal (HRET) to hear and decide all contests also relating to the qualifications of the members of the House. The pertinent portion of Section 17, Article VI, of the Constitution provides:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

The problem is that a contest over the qualifications of a candidate for the House often begins in the form of a petition filed with the COMELEC for the cancellation of his certificate of candidacy on ground of false representation regarding his qualifications. At times, the COMELEC case is overtaken by the elections and the subsequent proclamation of the challenged candidate as winner. It is inevitable that, after taking his oath and assuming membership in the House, he would insist that any pending question relating to his qualifications before the COMELEC should now be heard and decided by the HRET.

To avoid a conflict of jurisdiction, the Court recognized and established the rule that the jurisdiction of the COMELEC over the case ceases where the jurisdiction of the HRET begins. Ultimately, this brings about the issue of when this turnover of jurisdiction takes place.

Past precedents appear to be divided into two views: the first is that the proclamation of the winning candidate for the House divests the COMELEC of its jurisdiction over pending disputes relating to his qualifications in favor of the HRET.¹ The second is that the turnover of jurisdiction over a pending action from the COMELEC to the HRET takes place only after the winning candidate has been proclaimed, taken his oath, and assumed office.²

¹ Justice Antonio T. Carpio cites in his dissent the cases of *Jalosjos v. Commission on Elections*, G.R. Nos. 192474, 192704, 193566, June 26, 2012, 674 SCRA 530; *Gonzalez v. Commission on Elections*, G.R. No. 192856, March 8, 2011, 644 SCRA 761; *Limkaichong v. Commission on Elections*, G.R. Nos. 178831-32, April 1, 2009, 583 SCRA 1; *Planas v. Commission on Elections*, 519 Phil. 506 (2006); and *Perez v. Commission on Elections*, 375 Phil. 1106 (1999).

² Exemplified by the rulings in *Marcos v. Commission on Elections*, 318 Phil. 329, 397 (1995) and *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 726 (2007), citing *Aggabao v. Commission on Elections*, 490 Phil. 285, 290 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).



These conflicting views should now be settled with finality. And the solution lies in the provision of the Constitution that defines the jurisdiction of the HRET. It says:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

The above categorically states that the HRET's jurisdiction covers only contests relating, among other things, to "the qualifications of their respective Members." This power is inherent in all organizations as a means of preserving their integrity. For the HRET to have jurisdiction, the case must involve a "member" of the House. The fact alone that one won the elections and has been proclaimed does not, to be sure, make him a "member" of the House. To become a member, the candidate to the position must win the election,³ take an oath,⁴ and assume office when his term begins. The term of a "member" of the House begins on the 30th of June next following his election.

Section 7, Article VI of the Constitution, provides:

Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

Clearly, a proclaimed winner will be a "member" of the House only at noon of June 30 following his election and not earlier when he was merely proclaimed as a winning candidate. The reason is simple. There is no vacancy in that office before noon of June 30. It is implicit that the term of the member whom he would succeed would continue until noon of that day when the term of the new member begins. Consequently, the proclaimed winner in the elections remains an outsider before June 30. Only on June 30 will his term begin. And only then will the COMELEC be divested of its jurisdiction over any unresolved petition for the cancellation of his certificate of candidacy.

Here, on March 27, 2013 the COMELEC's Second Division rendered a decision cancelling petitioner Reyes' certificate of candidacy. She filed a motion for reconsideration but on May 14, 2013 the COMELEC En Banc issued a Resolution denying it. Since her counsel received a copy of the En Banc Resolution on May 16, 2013, she had until May 21, 2013 within which to file a petition before the Court assailing the COMELEC's action. But she did not, thus rendering its decision against her final and executory as of May

³ Section 7, Article VI of the Constitution.

⁴ Section 4, Article IX-B (Civil Service Commission), Constitution of the Philippines: All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.



22, 2013. This prompted the COMELEC to issue a certificate of finality on June 5, 2013.

Consequently, since the COMELEC Decision in petitioner Reyes' case already became final and executory on May 22, 2013, it cannot be said that the HRET can still take over some unfinished COMELEC action in her case. The COMELEC's final decision, rendered pursuant to its constitutional and statutory powers, binds her, the HRET, and the Court. Further, given the cancellation of her certificate of candidacy, she in effect was not validly voted upon as a candidate for the position of Representative of the lone District of Marinduque on May 13, 2010.

Parenthetically, a reading of the COMELEC En Banc's Resolution of July 19, 2013⁵ shows that its process server, Pedro P. Sta. Rosa arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing was being held prior to petitioner Reyes' proclamation to serve a copy of the COMELEC En Banc's Resolution of May 14, 2013 and Order of May 18, 2013 but the Provincial Election Supervisor (PES) refused to accept them. Thus, said the COMELEC:

x x x While the proceedings of the PBOC is suspended or in recess, the process server of this Honorable Commission, who identified himself as PEDRO P. STA. ROSA II ("Sta. Rosa," for brevity), arrived at the session hall of the Sangguniang Panlalawigan of Marinduque where the provincial canvassing is being held.

x x x The process server, Sta. Rosa, was in possession of certified true copies of the *Resolution* promulgated by the Commission on Elections *En Banc* on 14 May 2013 in SPA No. 13-053 (DC) entitled "Joseph Socorro B. Tan vs. Atty. Regina Ongsiako Reyes" and an *Order* dated 15 May 2013 to deliver the same to the Provincial Election Supervisor of Marinduque. The said Order was signed by no less than the Chairman of the Commission on Elections, the Honorable Sixto S. Brillantes, Jr.

x x x Process Server Pedro Sta. Rosa II immediately approached Atty. Edwin Villa, the Provincial Election Supervisor (PES) of Marinduque, upon his arrival to serve a copy of the aforementioned Resolution dated 14 May 2013 in SPA No. 13-053 (DC). Despite his proper identification that he is a process server from the COMELEC Main Office, the PES totally ignored Process Server Pedro Sta. Rosa II.

x x x Interestingly, the PES likewise refused to receive a copy of the Commission on Elections En Banc Resolution dated 14 May 2013 in SPA No. 13-053 (DC) despite several attempts to do so.

x x x Instead, the PES immediately declared the resumption of the proceedings of the PBOC and instructed the Board Secretary to immediately read its Order proclaiming Regina Ongsiako Reyes as winner for the position of Congressman for the Lone District of Marinduque.

⁵ COMELEC En Banc Resolution dated July 19, 2013, pp. 4-5, attached to the Manifestation filed before this Court on August 16, 2013.



The above shows bad faith on the part of the Provincial Election Supervisor and Provincial Board of Canvassers in proclaiming petitioner Reyes despite COMELEC En Banc's resolution denying her motion for reconsideration of the decision cancelling her certificate of candidacy. Such lawless conduct cannot be countenanced by the Court.

In his dissent, Justice Antonio T. Carpio claims that the Court's June 25, 2013 Resolution states that petitioner Reyes could assume office only upon taking her oath before the Speaker in open session when the new Congress convenes in late July. Thus, this would effectively cut her term short by a month since the Constitution provides that the term of office of newly elected members of the House begins "at noon on the thirtieth day of June next following their election."

But the Court's June 25 Resolution did not state that petitioner Reyes can only assume office after taking her oath pursuant to Section 6, Rule II of the Rules of the House. Such statement would have been clearly incorrect. That resolution merely said that she did not yet take the proper oath in accordance with that Section 6. Actually, the Court's June 25 Resolution said that the term of office of a Member of the House begins at noon on the 30th day of June next following their election, thus:

Here the petitioner cannot be considered a Member of the House of Representatives because, primarily, she has not yet assumed office. To repeat what has earlier been said, the term of office of a Member of the House of Representatives begins only "*at noon on the thirtieth day of June next following their election.*" Thus, until such time, the COMELEC retains jurisdiction.

The Court said that petitioner Reyes did not yet take the proper oath as required by the rules of the House of Representatives merely to emphasize the fact that she filed her action with the Court even before Congress had buckled down to work and reorganize the HRET.

Justice Carpio also claims that it could happen that a losing candidate would assail the validity of the proclamation before the Supreme Court while another losing candidate could file an election protest before the HRET within 15 days of the proclamation. When this happens, he says, the jurisdiction of the Supreme Court and the HRET would be in direct clash.

But such supposed clash of jurisdiction between the HRET and the Court is illusory and cannot happen. Any clash of jurisdiction would essentially be between the COMELEC, asserting its power to hear and decide petitions for cancellation of certificates of candidacies of those who seek to be elected to the House, and the HRET, asserting its power to decide all contests relating to the qualifications of its members. The Supreme Court is the final arbiter of the jurisdictional boundaries of all constitutional bodies. The HRET has never claimed this role.



What is more, it is understood that the HRET can take over only those cancellation cases that have remained unresolved by the COMELEC by the time the House member assumes office. Cases that the COMELEC has already decided cannot be taken over by the HRET, even when the challenged winner has already assumed office, if such decision has been elevated to the Supreme Court on *certiorari* as provided under the pertinent portion of Section 7, Article IX of the Constitution.

Section 7. x x x Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

The HRET cannot oust the Supreme Court of its jurisdiction under the Constitution. As the Court held in *Codilla, Sr. v. Hon. De Venecia*,⁶ the HRET cannot assume jurisdiction over a cancellation case involving members of the House that had already been decided by the COMELEC and is under review by the Supreme Court.

It can be said that it is for the above reasons that the Court heard and decided a number of petitions filed by losing party-list organizations that sought membership in the House. The Court did not inhibit itself from deciding their cases even if the winners had already been proclaimed since it was merely exercising its sole power to review the decisions of the COMELEC in their cases. The Court took cognizance of and decided their petitions in *Senior Citizens Party-List v. COMELEC*.⁷

Justice Carpio also claims that if the HRET jurisdiction begins only upon assumption of office of the winning candidate, then any petition filed with it within 15 days from his proclamation can be dismissed on the ground that the respondent is not yet a member of the House.

But, firstly, the HRET of the new Congress can be organized and can discharge its functions only after June 30 following the elections. Consequently, it cannot dismiss any petition filed with it before that date. When that date arrives, the respondent would have already assumed office, enabling the HRET to act on his case.

Secondly, the 15-day period after proclamation is merely the deadline set for the filing of the election contest before the HRET. It enables the parties to immediately take steps to preserve the integrity of the ballots and other election records. It is of course to be assumed that the HRET is admitting the petition filed with it within 15 days from proclamation, conditioned on its having jurisdiction over the subject matter of the action.

⁶ 442 Phil. 139 (2002).

⁷ G.R. No. 207026, August 13, 2013.



For the above reasons, I vote to **DENY** petitioner Regina Ongsiako Reyes' motion for reconsideration.


ROBERTO A. ABAD
Associate Justice