EN BANC

G.R. No. 257453 – MARIZ LINDSEY TAN GANA-CARAIT y VILLEGAS, *petitioner,* v. COMMISSION ON ELECTIONS, ROMMEL MITRA LIM, and DOMINIC NUÑEZ, *respondents.*

Promulgated:

August 9, 2022

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CONCURRING OPINION

LEONEN, *J.*:

I concur. The requirements of Republic Act No. 9225 do not apply to dual citizens by reason of birth. Despite the mootness of the issue on petitioner's eligibility for public office, I join the *ponente's* interpretation of the rules regarding dual citizens seeking elected public positions, as this issue is capable of repetition yet evading review. In addition, I join my colleagues' discussion on harmonizing the provisions regarding the allowable period for seeking review of resolutions issued by the Commission on Elections.

For resolution is the Petition for Certiorari[1] filed by Mariz Lindsey Tan Gana-Carait (Gana-Carait) assailing the Resolution of the Commission on Elections En Banc, which affirmed the First Division's finding that Gana-Carait materially misrepresented her eligibility to run as a member of the Sangguniang Panlungsod of Biñan City, Laguna.[2]

The case originated from a petition for disqualification filed by Rommel Mitra Lim (Lim) before the Commission on Elections against Gana-Carait based on her dual citizenship. Lim cited Gana-Carait's failure to renounce her United States citizenship as well as her repeated travels using her United States passport as basis for her supposed disqualification.[3]

Dominic Nuñez (Nuñez) also brought a separate petition for the cancellation of or denial of due course to Gana-Carait's certificate of candidacy because of her alleged misrepresentation of her eligibility to run for public office. Nuñez argued that Gana-Carait's dual citizenship made her ineligible for public office when she failed to renounce her foreign

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1 Filed under Rule 65, pursuant to Rule 64.
2 Ponencia, p. 2.
3 Id.

citizenship and take a concurrent oath of allegiance to the Republic of the Philippines, as required by Republic Act No. 9225.[4]

In Gana-Carait's Answers to both petitions, she argued that her dual citizenship did not preclude her from running for public office because: (1) dual citizenship is not a ground for disqualification, unlike dual allegiance; and (2) her acquisition of United States citizenship by reason of her birth did not involve any voluntary act on her part, which placed her beyond the scope of Republic Act No. 9225.

The Commission on Elections First Division consolidated both petitions and dismissed the petition for disqualification, but granted the petition for cancellation of Gana-Carait's certificate of candidacy. It held that Gana-Carait acquired her dual citizenship by way of "a positive act" when her parents presented documentary requirements to the United States Consular Service for the issuance of her Consular Report of Birth Abroad. The First Division then construed the text of Act 320 and 322 of the United States Immigration Nationality Act as both requiring "a positive act" to acquire United States citizenship, and thus, tantamount to naturalization.[5] Without renunciation of her foreign citizenship and an oath of allegiance to the Republic of the Philippines, the First Division deemed Gana-Carait ineligible to run for public office.[6]

Gana-Carait moved for partial reconsideration of the First Division's Resolution, but was denied relief by the Commission on Elections En Banc. Instead, the Commission En Banc affirmed Republic Act No. 9225's applicability to Gana-Carait as a dual citizen by reason of naturalization. Since Gana-Carait did not renounce her United States citizenship and take an oath of allegiance, the Commission En Banc deemed her certificate of candidacy to have falsely declared her eligibility to run for public office.[7]

Thus, petitioner Gana-Carait sought recourse before this Court, and argued that the Commission on Elections En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it deemed her a naturalized dual citizen, despite there being no evidence of her having undergone the lengthy process of naturalization, or of her acquisition of either Philippine or United States citizenship through any positive act.[8]

Public respondent Commission on Elections counters that petitioner acquired United States citizenship by filing an application, which amounted to a positive act. It argues that this act of applying for United States citizenship placed petitioner within the scope of Republic Act No. 9225.

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4 Id.
5 Id. at 4.
6 Id. at 5.
7 Id.
8 Id. at 6.

Thus, petitioner's certificate of candidacy was validly cancelled when she failed to comply with the requirements for full exercise of civil and political rights at the time of the certificate's filing.[9]

I join the *ponente's* position that Republic Act No. 9225 does not apply to petitioner Gana-Carait because she is a dual citizen of both the Philippines and the United States by reason of birth, and not by naturalization. Similarly, I concur with the majority's finding that the Resolution of the Commission on Elections En Banc had not yet attained finality upon the timely filing of the Petition under Rule 64, in relation to Rule 65, of the Rules of Court. These matters are proper for resolution on the merits, despite their mootness, as they are capable of repetition yet evading review.

The *ponencia* correctly reasons that Republic Act No. 9225's requirements do not apply to petitioner. *De Guzman v. COMELEC*[10] discusses the purpose of Republic Act No. 9225 in providing means for the "re-acquisition and retention of Philippine citizenship" of natural-born Filipino citizens who have lost such citizenship through *naturalization.*

> R.A. No. 9225 was enacted to allow re-acquisition and retention of Philippine citizenship for: 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country. The law provides that they are *deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.*[11] (Emphasis supplied, citation omitted)

This reflects *Calilung v. Datumanong*,[12] which clarified that Republic Act No. 9225 facilitates the re-acquisition or retention of Philippine citizenship by requiring an oath of allegiance from a natural-born Philippine citizen who was subsequently naturalized to foreign citizenship.

> From the above excerpts of the legislative record, it is clear that the intent of the legislature in drafting Rep. Act No. 9225 is to do away with the provision in Commonwealth Act No. 63 which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries. *What Rep. Act No. 9225 does is allow dual citizenship to natural-born Filipino citizens who have lost Philippine citizenship by reason of their naturalization as citizens of a foreign country. On its face, it does not recognize dual allegiance.* By swearing to the supreme authority of the Republic, the person implicitly renounces his foreign citizenship. *Plainly, from Section 3, Rep. Act No. 9225 stayed clear out of the problem of dual allegiance and shifted the burden of confronting the*

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9 Ponencia, pp. 6–7.
10 607 Phil. 810 (2009) [Per J. Ynares-Santiago, En Banc].
11 Id. at 817.
12 551 Phil. 110 (2007) [Per J. Quisumbing, En Banc].

> *issue of whether or not there is dual allegiance to the concerned foreign country. What happens to the other citizenship was not made a concern of Rep. Act No. 9225.*[13] (Emphasis supplied, citation omitted)

Further, *Cordora v. Tambunting*[14] distinguished between dual citizenship and dual allegiance, while pertinently discussing Republic Act No. 9225's applicability to naturalized dual citizens because of the implications that naturalization may have on a person's allegiance:

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano, Valles v. COMELEC,* and *[Calilung] v. Datumanong. Mercado* and *Valles* involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli.* Valles was born to an Australian mother and a Filipino father in Australia. *Our rulings in Manzano and Valles stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect.* ***Dual citizenship is involuntary*** *and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein.* ***Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process.*** *[Calilung]* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain [their] Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. *The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.*
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> *In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.* Section 5(3) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC, Velasco v. COMELEC,* and *Japzon v. COMELEC,* all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. *In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen*

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[13] Id. at 117–118.

[14] 599 Phil. 168 (2009) [Per J. Carpio, En Banc].

> *of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.*[15] (Emphasis supplied, citations omitted)

Thus, dual citizenship per se will not prohibit a person from running for public office. Rather, *Mercado v. Manzano*,[16] as cited by *Cordora*, clarifies that dual citizenship, as a ground for disqualification, must be understood as the possession of dual allegiance through a voluntary act, such as naturalization.

> Invoking the maxim *dura lex sed lex*, petitioner, as well as the Solicitor General, who sides with him in this case, contends that *through §40(d) of the Local Government Code, Congress has "command[ed] in explicit terms the ineligibility of persons possessing dual allegiance to hold local elective office."*
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> *To begin with, dual citizenship is different from dual allegiance. The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states.* For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:
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> > (1) Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;
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> > (2) Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country;
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> > (3) Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.
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> There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship.
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> *Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition.*
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> ***Clearly, in including §5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se but***

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[15] Id. at 179–180.

[16] 367 Phil. 132 (1999) [Per J. Mendoza, En Banc].

> ***with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase "dual citizenship" in R.A. No. 7160, §40(d) and in R.A. No. 7854, §20 must be understood as referring to "dual allegiance."*** *Consequently, persons with mere dual citizenship do not fall under this disqualification.* Unlike those with dual allegiance, who must, therefore, be subject to strict process with respect to the termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states. As Joaquin G. Bernas, one of the most perceptive members of the Constitutional Commission, pointed out: "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control."[17] (Emphasis supplied, citations omitted)

Therefore, it is the manner by which a Philippine citizen procures their second foreign citizenship that determines the applicability of Republic Act No. 9225's prerequisites for candidacy. As aptly found by the *ponencia*, petitioner never underwent the process of naturalization or committed any voluntary act to acquire her United States citizenship. Rather, petitioner possessed dual citizenship by birth,[18] which was merely affirmed by the issuance of her Consular Report of Birth Abroad. I join the *ponencia's* position that petitioner did not make any material misrepresentation in her certificate of candidacy because Republic Act No. 9225 did not require her to renounce her United States citizenship or to take a separate oath of allegiance in order to run for public office.[19]

As to the propriety of petitioner's procedural recourse, I concur that the Resolution of the Commission on Elections En Banc had not yet attained finality at the time petitioner filed her Petition for Certiorari. The *ponencia's* discussion on this matter eruditely harmonized the rules of procedure and the constitutional provisions defining the periods for questioning the Commission's decisions, orders, and rulings.[20]

Likewise, I agree that the remedies available under Rule 47 and Rule 65 are similar in that both are capable of annulling an assailed judgment, final order or resolution that has attained finality. The *ponencia* did well to distinguish the grounds available in the present Rule 65 Petition, as opposed to a Rule 47 Petition, which I reiterate here.

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17 Id. at 144–147.
18 Ponencia, pp. 14–15.
19 Id. at 17.
20 Id. at 9.

Mercury Drug Corporation v. Spouses Huang,[21] citing *Yu v. Reyes-Carpio,*[22] recognizes that judgments rendered with grave abuse of discretion are a form of void judgment, in that they have no force and effect.[23] However, *Imperial v. Armes,*[24] which also cites *Yu*, distinguished void judgments from judgments rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, and emphasized the difference between rules for seeking relief under either procedural vehicle:

> *A judgment rendered without jurisdiction is a void judgment.* This want of jurisdiction *may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties.*
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> *A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction.* In *Yu v. Judge Reyes-Carpio*, we explained —
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> > The term "grave abuse of discretion" has a specific meaning. *An act of a court or tribunal can only be considered as 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."* x x x [T]he use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void" x x x.
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> In *Guevarra v. Sandiganbayan, Fourth Division,* we further explained —
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> > x x x However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. x x x
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> To give flesh to these doctrines, the Rules of Court, particularly the 1997 Revised Rules on Civil Procedure, provides for a remedy that may be used to assail a void judgment on the ground of lack of jurisdiction. *Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the CA to annul a void judgment of regional trial courts even after it has become final and executory. If the ground invoked is lack of jurisdiction, which we have explained as pertaining to both lack of jurisdiction over the subject matter and over the* person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in. *In cases where a tribunal's action is*

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21 552 Phil. 496 (2007) [Per CJ Puno, First Division].

22 667 Phil. 474 (2011) [Per J. Velasco, Jr., First Division].

23 *Mercury Drug Corporation v. Spouses Huang*, 817 Phil. 434 (2017) [Per J. Leonen, Third Division].

24 804 Phil. 439 (2017) [Per J. Jardeleza, Third Division].

> *tainted with grave abuse of discretion, Rule 65 of the Rules of Court provides the remedy of a special civil action for certiorari to nullify the act.*[25] (Emphasis supplied, citations omitted)

Here, the *ponencia* succinctly discussed the procedural recourse available under Rule 65, as availed of by petitioner. The Rule 65 Petition adequately raised and proved how the Commission on Elections committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when it denied due course to petitioner's certificate of candidacy despite there being no basis to do so. The assailed Resolutions are, therefore, a nullity, producing no force and effect.

Finally, I join the *ponencia* in reasoning that the mootness of the issue surrounding petitioner's certificate of candidacy should not prohibit this Court from resolving the same, as it affects a matter of public importance and resolves an issue "capable of repetition yet evading review."[26] *Timbol v. Commission on Elections*,[27] citing *Dela Camara v. Enage*,[28] sanctions a ruling on a case's merits despite its mootness in order to set "controlling and authoritative doctrines."[29]

ACCORDINGLY, I vote to **GRANT** the Petition and to **REVERSE** and **SET ASIDE** the September 23, 2021 Resolution of the Commission on Elections *En Banc* and the February 27, 2019 Resolution of the Commission on Elections First Division.

Likewise, I vote that the November 6, 2018 Petition to Deny Due Course to or Cancel Certificate of Candidacy filed by private respondent Dominic P. Nuñez against petitioner Mariz Lindsey Tan Gana-Carait, docketed as SPA Case No. 18-126 (DC) be **DISMISSED**.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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25 Id. at 459–460.
26 *Timbol v. Commission on Elections*, 754 Phil. 578, 585 (2015) [Per J. Leonen, En Banc].
27 754 Phil. 578 (2015) [Per J. Leonen, En Banc].
28 148-B Phil. 502, 504 (1971) [Per J. Fernando, En Banc].
29 *Timbol v. Commission on Elections*, 754 Phil. 578, 585 (2015) [Per J. Leonen, En Banc].