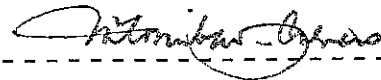


EN BANC

G.R. No. 261344 — FRANK ONG SIBUMA, *petitioner, versus*
COMMISSION ON ELECTIONS, ALMA L. PANELO and STEFANIE
ANN ERIGUEL CALONGCAGON, *respondents.*

Promulgated:

January 24, 2023



x-----x

DISSENTING OPINION

CAGUIOA, J.:

The *ponencia*:

- 1) grants the Petition for *Certiorari*¹ (Petition) with prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction;
- 2) annuls and sets aside the assailed Resolution² dated May 13, 2022 of the Commission on Elections (COMELEC) Second Division (assailed COMELEC Resolution), the Certificate of Finality³ and Entry of Judgment,⁴ both dated May 24, 2022, and the Writ of Execution⁵ dated June 29, 2022, all of which were issued in SPA No. 21-172 (DC);
- 3) denies the Petition to Deny Due Course (Section 78 Petition) to or Cancel the Certificate of Candidacy (CoC) filed against herein petitioner Frank Ong Sibuma (Sibuma) before the COMELEC by respondent Alma L. Panelo (Panelo);
- 4) upholds the Certificate of Canvass of Votes and Proclamation of Winning Candidate for Municipal Mayor⁶ dated May 10, 2022 in Sibuma's favor; and
- 5) makes permanent the *Status Quo Ante* Order⁷ dated July 5, 2022 issued by the Court.⁸

¹ *Rollo*, Vol. I, pp. 9-36.

² *Id.* at 43-54. Signed by Presiding Commissioner Marlon S. Casquejo and Commissioner George Erwin M. Garcia, while Commissioner Rey E. Bulay took no part.

³ *Id.* at 55-57. Issued by Atty. Genesis M. Gardula.

⁴ *Id.* at 58-59.

⁵ *Id.* at 63-67. Signed by Presiding Commissioner Socorro B. Inting.

⁶ *Id.* at 223-224.

⁷ *Id.* at 378-380.

⁸ *Ponencia*, p. 26.



In so ruling, the *ponencia* finds that the COMELEC Second Division committed grave abuse of discretion in issuing the assailed Resolution and cancelling Sibuma's CoC under Section 78⁹ of Batas Pambansa Blg. 881,¹⁰ otherwise known as the "Omnibus Election Code of the Philippines" (OEC) on the ground that he had materially misrepresented in his CoC that he was eligible to run for Mayor of Agoo, La Union, when, in fact, he was not, as he failed to satisfy the qualification of one-year residency required under Section 39 (a)¹¹ of Republic Act No. (R.A.) 7160¹² or the Local Government Code of 1991 (LGC). The *ponencia* likewise rules that the COMELEC gravely abused its discretion in denying Sibuma's subsequent Motion for Reconsideration (MR) for having been filed beyond the prescriptive period.

Respectfully, I *dissent*, and submit that:

- 1) The COMELEC was correct in finding that the assailed Resolution of the Second Division — which cancelled Sibuma's CoC for material misrepresentation — had already become final and executory. As correctly held by the COMELEC, Sibuma's MR of the assailed Resolution was filed grossly beyond the prescriptive period with no justifiable reason having been advanced for such lapse; accordingly, no grave abuse of discretion can be ascribed to the COMELEC for refusing to give due course to said MR.
- 2) On the substantive issues, the COMELEC's ruling that Sibuma had materially misrepresented his residency qualification is supported by substantial evidence. Therefore, there was no grave abuse of discretion on the COMELEC's part and such ruling is binding upon the Court.

Discussion

I. The COMELEC was correct in finding that the assailed Resolution of its Second Division — which cancelled Sibuma's CoC for material misrepresentation — had already

⁹ 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.

¹⁰ Approved on December 3, 1985.

¹¹ SEC. 39. *Qualifications.* — (a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

¹² AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT, AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED, AND FOR OTHER PURPOSES, approved on August 29, 2003.



become final and executory. Sibuma's MR of said Resolution was filed grossly beyond the prescriptive period and no justifiable reason was advanced for such lapse; hence, no grave abuse of discretion can be ascribed to the COMELEC for refusing to give due course to said MR

The *ponencia* rules the COMELEC to have gravely abused its discretion in failing to "liberally apply its own rules in order to pave the way to a complete resolution of the case, the same being imbued with public interest x x x."¹³

I respectfully disagree.

Section 7, Rule 23 in relation to Section 13 (c) of Rule 18 of the COMELEC Rules of Procedure (COMELEC Rules), as amended by Resolution No. 9523,¹⁴ provides that a motion for reconsideration of a decision, resolution, order or ruling of the COMELEC Division must be filed, and the filing fee therefor must be paid, within five days from receipt of such assailed COMELEC issuance; otherwise, such issuance shall become final, thus:

RULE 23 — Petition to Deny Due Course to or Cancel Certificate of Candidacy

x x x x

Section 7. Motion for Reconsideration. — A motion to reconsider a Decision, Resolution, Order or Ruling of a Division ***shall be filed within five (5) days from receipt thereof and upon payment of filing fee*** in the amount of ₱1,000.00. Such motion, if not *pro-forma*, suspends the execution for implementation of the Decision, Resolution, Order and Ruling. The movant shall be required to furnish a copy of his motion for reconsideration to the adverse party prior to filing the same with the Office of the Clerk of Commission.

x x x x

RULE 18 — Decisions

x x x x

Section 13. Finality of Decisions or Resolutions. — x x x

(c) Unless a motion for reconsideration is *seasonably filed*, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in

¹³ *Ponencia*, p. 14.

¹⁴ IN THE MATTER OF THE AMENDMENT TO RULES 23, 24, AND 25 OF THE COMELEC RULES OF PROCEDURE FOR PURPOSES OF THE 13 MAY 2013 NATIONAL, LOCAL AND ARMM ELECTIONS AND SUBSEQUENT ELECTIONS, promulgated on September 25, 2012.

Special actions and Special cases x x x following its promulgation. (Emphasis and underscoring supplied)

As regards the manner of filing pleadings before the COMELEC, prompted by the health risks in physical contacts posed by the COVID-19 pandemic,¹⁵ Section 1, Rule 2 of COMELEC Resolution (Com Res) No. 10673¹⁶ requires that such filing be made generally *via* electronic mail (e-mail). Moreover, under Section 5 of the same Rule, the cut-off for filing of pleadings is 5:00 p.m. of working days; otherwise, such filing shall be considered made at 8:00 a.m. of the next working day, thus:

Rule 2

ELECTRONIC FILING AND SERVICE OF PLEADINGS AND OTHER PAPERS BY THE PARTIES

Section 1. *Filing Through Electronic Mail.* — The filing of verified pleadings, memoranda, comments, briefs and other submissions, in PDF Format, before the Commission shall be done by the parties through electronic mail (E-mail). x x x

x x x x

Section 5. *Schedule of Filing thru E-mail.* — The schedule of filing of verified pleadings, memoranda, comments, briefs and other submissions through E-mail shall be from Monday to Friday, 8:00 a.m. to 5:00 p.m., excluding holidays. E-mails received beyond 5:00 p.m. shall be considered filed at 8:00 a.m. of the next working day. (Emphasis supplied)

On the other hand, the service of resolutions and final orders of the COMELEC, *per* the same Com Res, is also likewise made *via* e-mail to the e-mail address on record of the party or his or her counsel, and is complete at the time of the electronic transmission of such e-mail, thus:

Rule 4

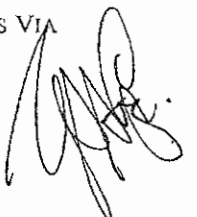
ISSUANCES OF THE COMMISSION, SUBMISSION/TRANSMITTAL OF DOCUMENTS AND SERVICE THEREOF

x x x x

Section 5. *Service of Resolutions and Final Orders.* — Resolutions or final orders of the Commission shall be served to all counsel, or parties[,] if not represented by counsel, concerned through their official E-mail addresses and/or E-mail addresses on record. Proof of receipt of such E-mail must be properly recorded and/or logged. Hard copies of these Resolutions or final orders may be provided upon written request of the parties subject to pertinent rules on fees and approval.

¹⁵ See WHEREAS clauses of COMELEC Resolution No. 10673.

¹⁶ IN RE: GUIDELINES ON ELECTRONIC FILING, CONDUCT OF HEARINGS/INVESTIGATIONS/INQUIRIES VIA VIDEO CONFERENCE, AND SERVICE, promulgated on June 25, 2020.



x x x x

Section 6. Proof and Completeness of Service to the Parties. — Electronic service is complete at the time of the electronic transmission of the document, or when available, at the time that the electronic notification of service of the document is sent. Electronic service is not effective or complete if the party serving the document learns that it did not reach the addressee or person to be served.

Proof shall be made by an affidavit of service executed by the person who sent the E-mail, together with a printed proof of transmittal, which shall form part of the records of the case. (Emphasis supplied)

Here, as laid down in the Comment¹⁷ of the COMELEC, filed through the Office of the Solicitor General (OSG), its records show that its Clerk, through the latter's e-mail address, electronically transmitted the assailed Resolution to the official e-mail address of Sibuma's counsel on May 16, 2022 (a Monday). This is based on the proof of service of the said e-mail¹⁸ **and is likewise admitted by Sibuma** in his Motion to Quash and/or Recall Certificate of Finality attached to the Petition.¹⁹ Hence, Sibuma had until May 21, 2022 to file his MR.

However, the records of the COMELEC show that Sibuma sent *via* e-mail his MR only on May 27, 2022 (a Friday) at 5:43 p.m.²⁰ Hence, as it was filed beyond the 5:00 p.m. cutoff, following Com Res No. 10673, the MR is considered to have been filed on the following working day or only on May 30, 2022. Indeed, as shown in its official receipt, the filing fee for the MR was paid only on that day, May 30, 2022.²¹ Considering Section 7, Rule 23 of the COMELEC Rules which requires the concurrence of both the filing of a pleading and the payment of the filing fees therefor, the MR was legally filed only on May 30, 2022 **or a total of nine days from the deadline** under the rules cited above.

Sibuma contends that his counsel received, saw and read the COMELEC's e-mail serving him with a copy of the assailed Resolution only on May 22, 2022. This contention is manifestly absurd and reeks of deception because an e-mail is, as is common knowledge, received by the recipient almost instantaneously from its transmission. This is why Section 6 of Com Res No. 10673 provides that such transmitted e-mail **"is complete at the time of the electronic transmission" of such e-mail.**

But even if the COMELEC, or this Court for that matter, were minded to "liberally apply [the COMELEC's] rules in order to pave the way to a complete resolution of the case, the same being imbued with public interest"²²

¹⁷ *Rollo*, Vol. II, pp. 528-570.

¹⁸ *Id.* at 541.

¹⁹ See *id.* at 595.

²⁰ *Id.* at 542.

²¹ See *id.*

²² *Ponencia*, p. 14.

and accept as correct Sibuma's contention that the five-day period must be reckoned from May 22, 2022, his MR, which was filed, and the filing fees therefor paid, only on May 30, 2022 or three days after his claimed deadline of May 27, 2022 — was still incredibly beyond the required time.

The *ponencia* insists that the COMELEC should have suspended its Rules and given due course to the belatedly filed MR as it is empowered to do so under Section 4, Rule 1 of the said Rules²³ which reads:

Sec. 4. *Suspension of the Rules.* — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof **may be** suspended by the Commission. (Emphasis and underscoring supplied)

Again, with respect, I disagree.

First, the COMELEC is clearly given a *discretion* under Section 4, Rule 1 on whether it should suspend its rules and allow a deviation therefrom in the interest of justice. In merely enforcing its rules of procedure, it cannot be found to have committed grave abuse of discretion, especially in light of the grossness of the deviation committed by Sibuma as discussed above.

It is noted that the *ponencia's* cited cases of *Hayudini v. COMELEC*,²⁴ *Tolentino v. COMELEC*,²⁵ and *De Castro v. COMELEC*²⁶ are cases where the Court precisely upheld the power and discretion of the COMELEC to liberally apply its own rules of technicalities.

On the other hand, in *Rodillas v. COMELEC*,²⁷ similar to the present case, the COMELEC was being faulted by petitioner therein for failing to excuse his non-payment of the prescribed fees which the COMELEC is allowed to waive under the COMELEC Rules. The Court refused to encroach upon the COMELEC's exercise of discretion and upheld its ruling, emphasizing that liberality is discretionary on its part, thus:

Petitioner cannot invoke to his aid the provision of Section 18, Rule 40 of the COMELEC Rules of Procedure for the simple reason that under said Rule, **the COMELEC is precisely given the discretion, in a case where the prescribed fees are not paid, to either refuse to take action on the case until the fees are paid, or to dismiss the action or proceeding. The COMELEC, unfortunately for petitioner, chose [to] exercise the second option.** The COMELEC, therefore, did not commit an abuse of discretion in dismissing the appeal.²⁸ (Emphasis supplied)

²³ Id.

²⁴ 733 Phil. 822 (2014).

²⁵ G.R. Nos. 187958, 187961, and 187962, April 7, 2010, 617 SCRA 575, 598.

²⁶ G.R. Nos. 187966-68, April 7, 2010, 617 SCRA 575, 598.

²⁷ 315 Phil. 789 (1995).

²⁸ Id. at 794-795.

Indeed, a perusal of relevant jurisprudence shows that it is the reverse — where the COMELEC chooses to suspend its Rules of procedure for no justifiable reason and to the prejudice of the adverse party — that it is possible to condemn it for grave abuse of discretion. In *Kho v. COMELEC*,²⁹ the Court faulted the COMELEC for admitting an Answer that was filed four days beyond the reglementary period under the COMELEC Rules without a prior motion for extension filed.

Second, Sibuma advanced no justifiable reason whatsoever to warrant the suspension of the rules of procedure in his favor. His argument — that the five-day reglementary period must be reckoned from when his counsel opened and read the COMELEC's e-mail — finds no support in the Rules or even in reason. To sustain such argument can, and will, open the floodgates to suspension of the prescriptive rules simply because the party served with an official issuance of the State refuses and/or neglects to open and read such issuance despite actual receipt thereof.

Moreover, and as mentioned, even if the Court sustains Sibuma's proposed reckoning date, his MR would have still been filed three days late.

The Court has repeatedly emphasized the importance of procedural rules in the administration of justice. Hence, the *rule* is that they must be respected and upheld, and their suspension can be resorted to only under justifiable causes and circumstances, thus:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies," the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." **A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.**

As emphasized above, exceptional circumstances or compelling reasons may have existed in the past when we either suspended the operation of the Rules or exempted a particular case from their application. But, these instances were the exceptions rather than the rule, and we invariably took this course of action only upon a meritorious plea for the liberal construction of the Rules of Court based on attendant exceptional circumstances. These uncommon exceptions allowed us to maintain the stability of our rulings, while allowing for

²⁹ 344 Phil. 878 (1997).



the unusual cases when the dictates of justice demand a correspondingly different treatment.³⁰ (Emphasis supplied; citation omitted)

Here, the COMELEC merely enforced its Rules because suspension thereof was not warranted, there being no compelling reason advanced by Sibuma to excuse his procedural lapses. Pursuant to such Rules, the COMELEC was correct in merely noting, and refusing to give due course to Sibuma's MR.

Consequently, the COMELEC was likewise correct in issuing the assailed Certificate of Finality, Entry of Judgment, and Writ of Execution. The assailed COMELEC Resolution became final and executory when no MR was filed after the lapse of the five-day reglementary period, pursuant to the clear mandate of Section 13(c), Rule 18 of the COMELEC Rules cited above.

The Court has held that the finality of a decision comes by operation of law and the effects of a final and executory decision — that is, its immutability and unalterability — take place as a matter of course, unless interrupted by the filing of the appropriate legal remedy within the period stated in the rules.³¹ In *Chua v. COMELEC*,³² the Court pronounced:

It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. **Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law.**

It is axiomatic that when a decision attains finality, it “becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.”³³ (Emphasis supplied; citations omitted)

Further, once finality of a decision or resolution is attained, it becomes the *ministerial* duty of the court or body which issued the same to issue a writ of execution.³⁴ In fact, a court or body which holds in abeyance the issuance of a writ of execution of a final and executory judgment can be considered to be in grave abuse of discretion.³⁵

Hence, here, as the assailed COMELEC Resolution had long attained finality and had therefore become immutable and unalterable, the COMELEC

³⁰ *Pates v. COMELEC*, 609 Phil. 260 (2009) (Resolution).

³¹ See *Chua v. COMELEC*, 838 Phil. 619, 628 (2018).

³² *Id.*

³³ *Id.* at 628-629.

³⁴ See *Vargas v. Cajucom*, 761 Phil. 43, 54 (2015). Citation omitted.

³⁵ See *id.* at 53. Citation omitted.

did not err, and did not abuse its discretion, when it performed what was clearly its ministerial duty to proceed with execution.

II. On the substantive issues, the COMELEC's ruling that Sibuma materially misrepresented his residency qualification is supported by substantial evidence; hence, there was no grave abuse of discretion on its part and such ruling is binding upon the Court

It is well to emphasize that the main issue raised by the Petition on the merits of the case is factual in nature and requires the re-evaluation by the Court of the evidence submitted by the parties in order to determine whether the COMELEC's own evaluation thereof was tainted with grave abuse of discretion. As such, a brief discussion of related settled principles is in order.

First, the Court is generally not a trier of facts and is not equipped to receive evidence and determine the truth of factual allegations.³⁶ The Court's function, as mandated by the Constitution, is merely to check whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it simply erred or has a different view.³⁷

Second, owing to this nature of the review powers of the Court, the factual findings of administrative bodies, when supported by substantial evidence, are final and non-reviewable. This principle finds greater force when the case concerns the COMELEC, because the framers of the Constitution intended to place the poll body — created and explicitly made independent by the Constitution itself — on a higher level than statutory administrative organs.³⁸ In fact, the documents and evidence it relies upon for its resolution as well as the manner it appreciates the sufficiency of said documents and evidence are ordinarily beyond the scrutiny of the Court.³⁹

Third, only if such factual findings of the COMELEC are not supported by evidence or contrary to the evidence presented can the COMELEC be deemed to have acted capriciously and whimsically, in which case the Court should then step in and correct the grave abuse of discretion committed.⁴⁰

Considering the above principles, the question becomes: are the findings of the COMELEC that Sibuma made a material misrepresentation of his residency in his CoC supported by the evidence on record or, at the very least, substantial evidence? I submit that the answer is yes.

³⁶ *Typoco v. COMELEC et al.*, 628 Phil. 288, 294 (2010). Citations omitted.

³⁷ *Id.* at 306. Citation omitted.

³⁸ See *Japzon v. COMELEC*, 598 Phil. 354, 372-373 (2009).

³⁹ *Sevilla v. COMELEC*, 843 Phil. 142, 157 (2018).

⁴⁰ See *Sevilla v. COMELEC*, 843 Phil. 142, 143 (2018).



To recall, the COMELEC Second Division granted the Section 78 Petition and cancelled Sibuma's CoC for falsely representing therein that he would have been a resident of Barangay Sta. Barbara, Agoo, La Union for one year and three months on the day before the May 9, 2022 National and Local Elections (NLE) and was thus eligible to run for Mayor of Agoo, La Union.⁴¹

The COMELEC's ruling is based on the following evidence: (1) the Certifications of *Punong Barangay* Erwina Eriguel (Eriguel) stating that Sibuma is not a resident of Barangay Sta. Barbara,⁴² and (2) the *Affidavits of Recantation* individually executed by eight out of the 38 affiants who earlier jointly executed the *Affidavit of Residency* submitted by Sibuma, stating that they signed the latter affidavit under false pretenses.⁴³ The COMELEC likewise rejected the contention of Sibuma that Agoo is his domicile of origin and that applying the case of *Romualdez-Marcos v. COMELEC*⁴⁴ (*Romualdez-Marcos*), he could not be deemed to have abandoned said domicile. The COMELEC Division concluded that, based on the evidence presented by Sibuma himself, specifically his *Secondary Student's Record*, his domicile of origin is not Agoo but Aringay, La Union.⁴⁵

On the other hand, the *ponencia*, in granting the Petition and finding grave abuse of discretion in the COMELEC's evaluation of evidence, afforded little to no evidentiary value to the Certifications⁴⁶ dated October 29, 2021 issued by *Punong Barangay* Eriguel because of her supposed personal relationship with respondent Stefanie Ann Eriguel Calongcagon (Calongcagon) and because they fail to cite the barangay secretary, who is specifically required by the LGC to keep an updated record of the inhabitants of the barangay.⁴⁷ The *ponencia* likewise gave more weight to the *Affidavit of Residency*⁴⁸ of Sibuma over the recantations made by eight of the 38 affiants of the *Affidavit*.⁴⁹ Finally, the *ponencia* dismissed as too trivial the discrepancy between the declared period of residency of Sibuma, which began in January 2021, and the period when the consumption in the utility bills he presented in evidence started (February 2021) as the latter still proves that he satisfied the one-year residency requirement for the May 2022 elections.⁵⁰

Likewise, the *ponencia*, citing *Romualdez-Marcos* and *Faypon v. Quirino*,⁵¹ holds that Sibuma was born in Agoo and obtained his secondary education therein and has proven, not only his physical presence therein, but likewise his intentions to remain and to return thereto (*animus manendi* and

⁴¹ *Rollo*, Vol. 1, pp. 47-48.

⁴² *Id.* at 49.

⁴³ *Id.* at 50-51.

⁴⁴ 318 Phil. 329 (1995).

⁴⁵ *Rollo*, Vol. 1, p. 52.

⁴⁶ *Id.* at 459-460.

⁴⁷ *Ponencia*, p. 22.

⁴⁸ See *rollo*, pp. 121-124.

⁴⁹ *Ponencia*, p. 22.

⁵⁰ *Id.* at 23.

⁵¹ 96 Phil. 294 (1954).

revertendi), thereby disproving the theory that he abandoned Agoo as his domicile of origin.⁵²

On the element of intent to deceive, the *ponencia* rules that there is no substantial evidence that Sibuma committed a deliberately false and deceptive representation of his residency in his CoC.⁵³

Respectfully, I disagree with the *ponencia* and maintain that the COMELEC did not commit grave abuse of discretion in cancelling Sibuma's CoC.

Section 78 of the OEC provides:

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 elements of a material misrepresentation under Section 78 are (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.⁵⁴

Here, the existence of the first element, materiality, is not controverted. What are at issue are the second and third elements, *i.e.*, the falsity of the representation and whether the same was made with deceitful intent.

On whether the representation was false

I submit that substantial evidence supports the finding of the COMELEC Second Division that Sibuma's representation in his CoC — that he satisfied the residency requirement and is thus eligible to run for Mayor of Agoo — is false.

First, the COMELEC is correct in finding that *Romualdez-Marcos* cannot apply to sustain Sibuma's allegation that his domicile of origin was Agoo and that he never abandoned the same.

⁵² See *ponencia*, p. 21.

⁵³ *Id.* at 17.

⁵⁴ *Fermin v. COMELEC*, 595 Phil. 449, 465 (2008). Citation omitted.



To recall, in *Romualdez-Marcos*, the concept of residence in election law was thoroughly discussed and was held to mean “domicile” or a “permanent home,” “a place to which, whenever absent for business or for pleasure, one intends to return x x x.”⁵⁵ In the case of a minor, he or she follows the domicile of his or her parents and such becomes his or her domicile of origin. Such domicile is not easily lost and is retained until a new one is gained, which change in domicile must be demonstrated by clear and convincing proof, thus:

First, a minor follows the domicile of his [or her] parents. As domicile, once acquired is retained until a new one is gained, it follows that in spite of the fact of petitioner's being born in Manila, Tacloban, Leyte was her domicile of origin by operation of law. This domicile was not established only when she reached the age of eight years old, when her father brought his family back to Leyte contrary to private respondent's averments.

Second, domicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate:

1. An actual removal or an actual change of domicile;
2. A *bona fide* intention of abandoning the former place of residence and establishing a new one; and
3. Acts which correspond with the purpose.

In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity or residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time.⁵⁶ (Emphasis supplied)

Here, Sibuma claims that his domicile of origin, which he asserted he had not abandoned, is Agoo, relying upon two pieces of evidence therefor: (1) his *Certificate of Live Birth* showing that he was born in Agoo, La Union; and (2) his *Secondary Student's Record* showing that he studied at Don Mariano Marcos State University (DMMSU) South La Union Campus located in Agoo for his secondary education.

However, as mentioned, *Romualdez-Marcos* ruled that one's domicile of origin as a minor is the domicile of his or her parents, which may or may not be his or her place of birth. Hence, in *Romualdez-Marcos*, while petitioner Imelda Romualdez-Marcos (Imelda) was born in Manila, her domicile of origin was nonetheless held to be Tacloban, Leyte as the same was her parents' domicile when she was born and during her childhood. The Court held:

⁵⁵ *Romualdez-Marcos v. COMELEC*, supra note 44 at 377.

⁵⁶ *Id.* at 386.

x x x A minor follows the domicile of his [or her] parents. As domicile, once acquired is retained until a new one is gained, **it follows that in spite of the fact of petitioner's being born in Manila, Tacloban, Leyte was her domicile of origin by operation of law.** This domicile was not established only when her father brought his family back to Leyte contrary to private respondent's averments.⁵⁷ (Emphasis supplied)

Applying *Romualdez-Marcos*, while Sibuma was born in Agoo, La Union as reflected in his *Certificate of Birth*, the same does not *ipso facto* prove that Agoo is his domicile of origin.

Rather, and as pointed out by respondents and as held by the COMELEC Second Division, the domicile of origin of Sibuma — that is, his parents' domicile when he was born and during his childhood — was Aringay, La Union. This is clear from Sibuma's own evidence, his *Secondary Student's Record*, which clearly indicates "San Eugenio, Aringay, La Union" as his address when he was attending elementary school in San Eugenio Elementary School, as well as when he was in secondary school/high school in DMMSU.⁵⁸

Hence, based on Sibuma's own submitted evidence and the case of *Romualdez-Marcos* which he heavily invokes, his domicile of origin, following the domicile of his parents when he was a child, was Aringay, La Union and not Agoo, La Union.

Even assuming *arguendo* that Sibuma's domicile of origin is Agoo, he still failed to show that he had retained his close ties thereto such that even as he had resided in other localities over the years, he still had *animus revertendi* or intent to return to Agoo. In *Romualdez-Marcos*, the Court, in ruling that Tacloban, Leyte, was the domicile of origin of Imelda which she never abandoned, noted that she was able to show strong proof of *animus revertendi* through various acts demonstrating that she kept her close ties to her hometown, such as celebrating milestones therein, instituting well-publicized projects, establishing a political power base, maintaining properties, etc.:

Moreover, while petitioner was born in Manila, as a minor she naturally followed the domicile of her parents. She grew up in Tacloban, reached her adulthood there and eventually established residence in different parts of the country for various reasons. Even during her husband's presidency, at the height of the Marcos Regime's powers, petitioner kept her close ties to her domicile of origin by establishing residences in Tacloban, celebrating her birthdays and other important personal milestones in her home province, instituting well-publicized projects for the benefit of her province and hometown, and establishing a political power base where her siblings and close relatives held positions of power either through the ballot or by appointment, always with either her influence or consent. These

⁵⁷ Id.

⁵⁸ See *rollo*, Vol. 1, p. 129.

well-publicized ties to her domicile of origin are part of the history and lore of the quarter century of Marcos power in our country.⁵⁹

Unlike Imelda in the *Romualdez-Marcos* case, as pointed out by the OSG in its Comment, Sibuma failed to submit substantial evidence proving that he had retained any sort of close ties or connection to Agoo prior to when he transferred his voter's registration thereto in 2021.⁶⁰ He could have submitted photographs of special occasions celebrated therein, or of his alleged residence or properties located in Agoo, or any proof of projects or personal or political ties.

Worse, *Punong Barangay* Eriguel of Sta. Barbara, the claimed residence of Sibuma, issued two Certifications disproving such claim and stating that Sibuma is not a resident of said barangay. As mentioned earlier, the *ponencia* afforded little to no evidentiary value to the Certifications because (1) *Punong Barangay* Eriguel is supposedly the paternal aunt of respondent Calongcagon and (2) the Certifications do not refer to any statement or certification from the barangay secretary, who is specifically required by the LGC to keep an updated record of the inhabitants of the barangay.⁶¹

Respectfully, I submit that these factors do not work to defeat the evidentiary value of the Certifications.

First, the supposed relationship between *Punong Barangay* Eriguel and respondent Calongcagon does not appear to be alleged in the present Petition nor in the Section 78 Petition filed before the COMELEC. Being so, the COMELEC could not be faulted for failing to consider the same, much less be held to have abused its discretion gravely for such failure. In any case, such relationship, if true, of and by itself, cannot discredit the official act made by a public officer such as *Punong Barangay* Eriguel done pursuant to her duties as such and in the absence of proof of any ill motive or bad faith on her part.

Second, anent the lack of reference of the Certifications of *Punong Barangay* Eriguel to any statement by the barangay secretary, the same is not fatal. The Court has held that the *punong barangay*, by himself or herself, is competent to issue a certification relating to residency as he or she is required to be privy to the records kept by the barangay secretary by the very duties and responsibilities of his or her office.⁶² Indeed, the Court, *in various cases*, has given much weight and credence to such certifications on account of the nature of the position of *punong barangays*,⁶³ without requiring the participation whatsoever of the barangay secretary and even without such certifications being sworn to, thus:

⁵⁹ *Romualdez-Marcos v. COMELEC*, supra note 44 at 385.

⁶⁰ See *rollo*, Vol. II, p. 555.

⁶¹ *Ponencia*, p. 22.

⁶² *Sabili v. COMELEC*, 686 Phil. 649, 653 (2012).

⁶³ See *Sabili v. COMELEC*, *id.* and *Mitra v. COMELEC*, 636 Phil. 753 (2010).

Even without being sworn to before a notary public, Honrade's Certification would not only be admissible in evidence, but would also be entitled to due consideration.

Rule 130, Section 44 of the Rules of Court provides:

SEC. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

In *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*, we explained that the following three (3) requisites must concur for entries in official records to be admissible in evidence:

(a) The entry was made by a public officer, or by another person specially enjoined by law to do so;

(b) It was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and

(c) The public officer or other person had sufficient knowledge of the facts stated by him, which facts must have been acquired by him personally or through official information.

As to the first requisite, the *Barangay* Secretary is required by the Local Government Code to "keep an updated record of all inhabitants of the *barangay*." Regarding the second requisite, we have explicitly recognized in *Mitra v. Commission on Elections*, that "it is the business of a *punong barangay* to know who the residents are in his own *barangay*." Anent the third requisite, the *Barangay* Captain's exercise of powers and duties concomitant to his position requires him to be privy to these records kept by the *Barangay* Secretary.

Accordingly, there is basis in faulting the COMELEC for its failure to consider Honrade's Certification on the sole ground that it was initially not notarized.⁶⁴ (Citations omitted)

As regards the *Affidavit of Residency* submitted by Sibuma which was signed by 38 individual affiants, all attesting to the same narration of facts (e.g., that they have personal knowledge of the birth of Sibuma in *Barangay* Sta. Barbara), the COMELEC rejected the same and gave more probative value to the individual and separate recantations of eight of said 38 affiants which narrated *in precise detail* how said recanters were made to sign the *Affidavit of Residency* under false pretenses (e.g., that the same is required to receive compensations [*"ayuda"*]).

⁶⁴ *Sabili v. COMELEC*, id. at 679-681.



I submit that the ruling of the COMELEC in giving more weight and credence to the recantations as against the *Affidavit of Residency* is sound and cannot be said to have been tainted with capriciousness, especially in light of the above-discussed Certifications issued by the *punong barangay* and the questionable declarations in the *Affidavit of Residency* made uniformly by 38 individuals all claiming to have personal knowledge of the birth and childhood of Sibuma while likewise alleging to be mere acquaintances of the latter. As the COMELEC succinctly and pointedly discussed:

Applying these rules, We note that general and *pro forma* affidavits, such as the *Affidavit of Residency*, are not afforded significant evidentiary weight. Neither are the declarations made therein particularly convincing, as it states that:

“1. We personally know FRANK ONG SIBUMA since his childhood, he being our acquaintance and neighbor in Barangay Sta. Barbara, Agoo, La Union, Philippines.

2. We all know that said Frank Ong Sibuma was born in the above-said place, and we personally witnessed that he is presently residing and actually residing again in Sta. Barbara, Agoo, La Union, since January 2021 up to the present.”

The COMELEC Second Division finds it doubtful that all 38 signatories would have personal knowledge that the respondent was born in Sta. Barbara, Agoo, La Union. Especially considering that they declare to being mere acquaintances. It is also difficult to believe, absent proof, that all 38 of them were neighbors of the respondent during his childhood.

When compared to the specific and separate Affidavits of Desistance of the eight affiants who recanted, the latter have considerably more probative value. **The affiants narrate in precise detail their different personal experiences of being asked to sign the Affidavit of Residency under questionable pretenses. Clearly, these Affidavits of Desistance are not pro forma and pertain to events that affiants personally experienced.**

Thus, between the Affidavit of Residency and the Affidavits of Recantation, We are more inclined to believe the affiants who recanted.

Even in the remote chance that We allow ourselves to give them equal weight, Our ruling in this would still not tilt in favor of respondent. The recantation of a prior testimony is generally viewed with suspicion and reservation — true — but in this instance, the conflicting asseverations of numerous witnesses muddles up not just the recantation itself but also the original testimony. It would be wise for the COMELEC Second Division therefore to not put too much weight and emphasis on the testimony of a collective who appears to be easily swayed from one end of the spectrum to the other.⁶⁵ (Emphasis and underscoring supplied; italics and citations omitted)

⁶⁵ *Rollo*, Vol. I, pp. 50-51.

Interestingly, as noted by the OSG, Sibuma kept indicating in his Verified Answer⁶⁶ to the Section 78 Petition his residence to be “Sta. Rita” instead of “Sta. Barbara,” seemingly demonstrating a curious lack of familiarity to Sta. Barbara which he insists has been his domicile since childhood.⁶⁷

Under these circumstances, it appears that the COMELEC relied on substantial evidence in concluding that Sibuma misrepresented his residency qualification on his CoC. That the COMELEC gave greater credence to the pieces of evidence discussed above, some of which were presented by Sibuma himself (i.e., his *Secondary School Records* showing domicile of origin to be Aringay, La Union) over the other pieces of evidence presented (e.g., Sibuma’s *Voter’s Certification* showing that he transferred his voter’s registration to Agoo, a Tax Declaration of Real Property over a residential building erected on the lot of Sibuma’s brother, Eric Ong Sibuma, utility bills in Sibuma’s name) cannot support a finding of grave abuse of discretion on the part of the COMELEC. At worst, any lapse on the COMELEC’s part in appreciating the evidence presented before it can only be considered as errors in judgment, and therefore beyond the review powers of the Court, making the COMELEC’s factual findings binding upon it.

On whether there was intent to deceive

On the element of intent to deceive, the *ponencia* rules that there is no substantial evidence that Sibuma committed a deliberately false and deceptive representation of his residency in his CoC.⁶⁸ Rather, the *ponencia* regards these representations as having been made in good faith.⁶⁹

I respectfully disagree.

As the *ponencia* correctly rules, intent to deceive under Section 78 in relation to Section 74⁷⁰ of the OEC means that the candidate who made the false representation must have done so *knowingly*. This means that if the material information supplied by the candidate in his CoC which is false was

⁶⁶ Id. at 89.

⁶⁷ Id. at 556.

⁶⁸ See *ponencia*, p. 17.

⁶⁹ See id. at 20.

⁷⁰ SEC. 74. *Contents of certificate of candidacy.* — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. (Emphasis supplied)

made upon his good faith belief that the same is true to the best of his knowledge, then there can be no material misrepresentation under Section 78.⁷¹

Here, Sibuma claims that, in making the subject declaration pertaining to his residence — that he will be a resident of Sta. Barbara, Agoo, La Union for “one year and three months” on the day before the May 9, 2022 elections or since February 2021 — he was simply relying on the *Voter’s Certification* issued by the Office of Election Officer of the COMELEC in Agoo, La Union.⁷²

However, a perusal of the *Voter’s Certification* referred to reveals that the same was issued on August 9, 2021 and the same states that Sibuma had then been a resident of Sta. Barbara, Agoo, La Union for a period of “1 year(s) and month(s)” or since August of 2020.⁷³ This evidently does not align with the representation on his CoC that his residence in Agoo started in February of 2021.

Neither do the utility bills submitted in evidence by Sibuma — which show that the electrical consumption in his claimed residence started, and utilities thereon were installed, only on February 2021 — align with the false statement he made in his CoC, as aptly pointed out in the assailed COMELEC Division’s Resolution.⁷⁴

Finally, Sibuma’s claims that he had been a resident of Agoo since birth and that he never abandoned the same as his domicile is, as discussed above, likewise belied by his own evidence, his *Secondary School Records* showing his address to be in Aringay, La Union, during the time that he was studying in elementary and secondary/high school.⁷⁵

From the foregoing, when Sibuma declared in his CoC that he had been a resident of Barangay Sta. Barbara since January of 2021, he was aware, based on his own evidence, that the same was false. Stated differently, the false material declaration was knowingly made, thereby satisfying the element of deceit under Section 78.

The COMELEC did not commit grave abuse of discretion in issuing the assailed resolutions and orders.

In a special civil action for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, petitioner has the burden of proving not merely

⁷¹ See *ponencia*, pp. 18-19 citing the Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Villamor v. COMELEC*, G.R. No. 250370, October 5, 2021 (Resolution).

⁷² *Rollo*, Vol. I, p. 31.

⁷³ *Id.* at 97

⁷⁴ *Id.* at 51.

⁷⁵ *Id.* at 129.

reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC.⁷⁶ Grave abuse of discretion arises when there is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, such as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.⁷⁷

Based on the above discussion, I find it difficult to attribute abuse of discretion, more so grave abuse, on the part of the COMELEC. Its refusal to give due course to the MR filed by Sibuma and its subsequent issuance of the assailed Certificate of Finality, Entry of Judgment, and Writ of Execution were all in accordance with its Rules and were, in fact, correct and proper, in light of the gross violation of the procedural rules committed by Sibuma in the filing of the same and his failure to advance any sort of reasonable excuse for such lapse. As such, said assailed Resolution became final and executory by operation of law, rendering it the COMELEC's ministerial duty to proceed with its execution.


Neither can capriciousness be ascribed to the COMELEC's factual findings that Sibuma committed false material representation in his CoC in stating therein that he is eligible to run for Mayor of Agoo as he has been a resident thereof for one year and three months prior to the May 2022 elections. His heavy reliance upon *Romualdez-Marcos* to argue that Agoo remains to be his domicile of origin is misplaced, as his own evidence show that his domicile of origin — that is, the domicile of his parents when he was a minor, was, in truth, Aringay, La Union. Sibuma likewise failed to show that, if, indeed, Agoo was his domicile of origin, he had *animus manendi* and *revertendi* thereto or had kept his close ties with his alleged hometown, similar to how Imelda proved the same in the *Romualdez-Marcos* case.

Further, the Certifications issued by the *punong barangay* of Sta. Barbara attesting that Sibuma was not a resident of said barangay prior to the May 2022 elections and the recantation of the *Affidavit of Residency* by eight of the 38 supposed neighbors of Sibuma are sufficient bases for the COMELEC's findings of fact, considering the nature of the Court's review powers over it which are limited to finding grave abuse of discretion and not mere errors in judgment. The COMELEC's ruling on the facts is, as it cannot be deemed to be, capricious or whimsical as the same was based on a careful evaluation of all the evidence presented, including those submitted by Sibuma himself.

Finally, Sibuma's bad faith in making the subject false representation is evident from the information borne by his own evidence which, in themselves, do not align with the representation he made in his CoC.

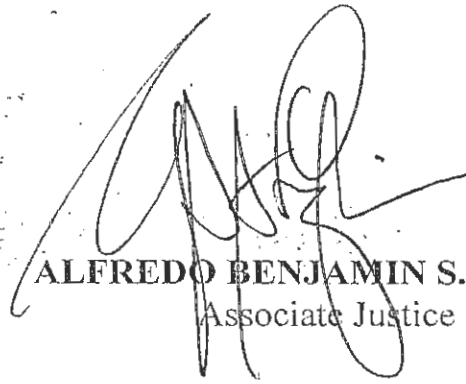
⁷⁶ See *Maturan v. COMELEC*, 808 Phil. 86, 95 (2017).

⁷⁷ See *Albania v. COMELEC*, 810 Phil. 470, 477 (2017). Citation omitted.




All things considered, in finding that Sibuma knowingly made a material false representation under Section 78 of the OEC and thereby cancelling his CoC, the COMELEC could not have grossly abused its discretion.

In light of the foregoing, I vote to **DISMISS** the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court