

## EN BANC

[G.R. No. 161434. March 3, 2004.]

**MARIA JEANETTE C. TECSON and FELIX B. DESIDERIO, JR.**,  
*petitioners*, vs. **The COMMISSION ON ELECTIONS, RONALD ALLAN  
KELLY POE (a.k.a. FERNANDO POE, JR.) and VICTORINO X. FORNIER**,  
*respondents*.

[G.R. No. 161634. March 3, 2004.]

**ZOILO ANTONIO VELEZ**, *petitioner*, vs. **RONALD ALLAN KELLEY POE,  
a.k.a. FERNANDO POE, JR.**, *respondent*.

[G.R. No. 161824. March 3, 2004.]

**VICTORINO X. FORNIER**, *petitioner*, vs. **HON. COMMISSION ON  
ELECTIONS and RONALD ALLAN KELLEY POE, ALSO KNOWN AS  
FERNANDO POE JR.**, *respondents*.

## DECISION

**VITUG, J :**

Citizenship is a treasured right conferred on those whom the state believes are deserving of the privilege. It is a "precious heritage, as well as an inestimable acquisition,"<sup>1</sup> that cannot be taken lightly by anyone — either by those who enjoy it or by those who dispute it.

Before the Court are three consolidated cases, all of which raise a single question of profound importance to the nation. The issue of citizenship is brought up to challenge the qualifications of a presidential candidate to hold the highest office of the land. Our people are waiting for the judgment of the Court with bated breath. Is Fernando Poe, Jr., the hero of silver screen, and now one of the main contenders for the presidency, a natural-born Filipino or is he not?

The moment of introspection takes us face to face with Spanish and American colonial roots and reminds us of the rich heritage of civil law and common law traditions, the fusion resulting in a hybrid of laws and jurisprudence that could be no less than distinctly Filipino.

### *Antecedent Case Settings*

On 31 December 2003, respondent Ronald Allan Kelly Poe, also known as Fernando Poe, Jr. (hereinafter "FPJ"), filed his certificate of candidacy for the position of President of the Republic of the Philippines under the Koalisyon ng Nagkakaisang Pilipino (KNP) Party, in the forthcoming national elections. In his certificate of candidacy, FPJ, representing himself to be a natural-born citizen of the Philippines,

stated his name to be "Fernando Jr.," or "Ronald Allan" Poe, his date of birth to be 20 August 1939 and his place of birth to be Manila.

Victorino X. Fornier, petitioner in G.R. No. 161824, entitled "Victorino X. Fornier, Petitioner, versus Hon. Commission on Elections and Ronald Allan Kelley Poe, also known as Fernando Poe, Jr., Respondents," initiated, on 09 January 2004, a petition docketed SPA No. 04-003 before the Commission on Elections ("COMELEC") to disqualify FPJ and to deny due course or to cancel his certificate of candidacy upon the thesis that FPJ made a material misrepresentation in his certificate of candidacy by claiming to be a natural-born Filipino citizen when in truth, according to Fornier, his parents were foreigners; his mother, Bessie Kelley Poe, was an American, and his father, Allan Poe, was a Spanish national, being the son of Lorenzo Pou, a Spanish subject. Granting, petitioner asseverated, that Allan F. Poe was a Filipino citizen, he could not have transmitted his Filipino citizenship to FPJ, the latter being an illegitimate child of an alien mother. Petitioner based the allegation of the illegitimate birth of respondent on two assertions — first, Allan F. Poe contracted a prior marriage to a certain Paulita Gomez before his marriage to Bessie Kelley and, second, even if no such prior marriage had existed, Allan F. Poe, married Bessie Kelly only a year after the birth of respondent.

In the hearing before the Third Division of the COMELEC on 19 January 2004, petitioner, in support of his claim, presented several documentary exhibits — 1) a copy of the certificate of birth of FPJ, 2) a certified photocopy of an affidavit executed in Spanish by Paulita Poe y Gomez attesting to her having filed a case for bigamy and concubinage against the father of respondent, Allan F. Poe, after discovering his bigamous relationship with Bessie Kelley, 3) an English translation of the affidavit aforesaid, 4) a certified photocopy of the certificate of birth of Allan F. Poe, 5) a certification issued by the Director of the Records Management and Archives Office, attesting to the fact that there was no record in the National Archives that a Lorenzo Poe or Lorenzo Pou resided or entered the Philippines before 1907, and 6) a certification from the Officer-In-Charge of the Archives Division of the National Archives to the effect that no available information could be found in the files of the National Archives regarding the birth of Allan F. Poe.

On his part, respondent, presented twenty-two documentary pieces of evidence, the more significant ones being — a) a certification issued by Estrella M. Domingo of the Archives Division of the National Archives that there appeared to be no available information regarding the birth of Allan F. Poe in the registry of births for San Carlos, Pangasinan, b) a certification issued by the Officer-In-Charge of the Archives Division of the National Archives that no available information about the marriage of Allan F. Poe and Paulita Gomez could be found, c) a certificate of birth of Ronald Allan Poe, d) Original Certificate of Title No. P-2247 of the Registry of Deeds for the Province of Pangasinan, in the name of Lorenzo Pou, e) copies of Tax Declaration No. 20844, No. 20643, No. 23477 and No. 23478 in the name of Lorenzo Pou, f) a copy of the certificate of death of Lorenzo Pou, g) a copy of the purported marriage contract between Fernando Pou and Bessie Kelley, and h) a certification issued by the City Civil Registrar of San Carlos City, Pangasinan, stating that the records of birth in the said office during the period of from 1900 until May 1946 were totally destroyed during World War II.

On 23 January 2004, the COMELEC dismissed SPA No. 04-003 for lack of merit. Three days later, or on 26 January 2004, Fornier filed his motion for reconsideration. The motion was denied on 06 February 2004 by the COMELEC en banc. On 10

February 2004, petitioner assailed the decision of the COMELEC before this Court conformably with Rule 64, in relation to Rule 65, of the Revised Rules of Civil Procedure. The petition, docketed G.R. No. 161824, likewise prayed for a temporary restraining order, a writ of preliminary injunction or any other resolution that would stay the finality and/or execution of the COMELEC resolutions.

The other petitions, later consolidated with G.R. No. 161824, would include G.R. No. 161434, entitled "Maria Jeanette C. Tecson, and Felix B. Desiderio, Jr., vs. The Commission on Elections, Ronald Allan Kelley Poe (a.k.a. 'Fernando Poe, Jr. '), and Victorino X. Fornier," and the other, docketed G.R. No. 161634, entitled "Zoilo Antonio G. Velez, vs. Ronald Allan Kelley Poe, a.k.a. Fernando Poe, Jr.," both challenging the jurisdiction of the COMELEC and asserting that, under Article VII, Section 4, paragraph 7, of the 1987 Constitution, only the Supreme Court had original and exclusive jurisdiction to resolve the basic issue on the case.

### *Jurisdiction of the Court*

#### *In G.R. No. 161824*

In seeking the disqualification of the candidacy of FPJ and to have the COMELEC deny due course or to cancel FPJ's certificate of candidacy for alleged misrepresentation of a material fact (i.e., that FPJ was a natural-born citizen) before the COMELEC, petitioner Fornier invoked Section 78 of the Omnibus Election Code —

*"Section 78. Petition to deny due course or to cancel a certificate of candidacy. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false" —*

in consonance with the general powers of COMELEC expressed in Section 52 of the Omnibus Election Code —

*"Section 52. Powers and functions of the Commission on Elections. In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections" —*

and in relation to Article 69 of the Omnibus Election Code which would authorize "any interested party" to file a verified petition to deny or cancel the certificate of candidacy of any nuisance candidate.

Decisions of the COMELEC on disqualification cases may be reviewed by the Supreme Court per Rule 64 <sup>2</sup> in an action for *certiorari* under Rule 65 <sup>3</sup> of the Revised Rules of Civil Procedure. Section 7, Article IX, of the 1987 Constitution also reads —

*"Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum, required by the rules of the Commission or by the Commission itself. 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."*

Additionally, Section 1, Article VIII, of the same Constitution provides that judicial power is vested in one Supreme Court and in such lower courts as may be established by law which power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

It is sufficiently clear that the petition brought up in G.R. No. 161824 was aptly elevated to, and could well be taken cognizance of, by this Court. A contrary view could be a gross denial to our people of their fundamental right to be fully informed, and to make a proper choice, on who could or should be elected to occupy the highest government post in the land.

*In G.R. No. 161434 and G.R. No. 161634*

Petitioners Tecson, et al., in G.R. No. 161434, and Velez, in G.R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:

"The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."

The provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in *Lopez vs. Roxas*,<sup>4</sup> as "not (being) justiciable" controversies or disputes involving contests on the elections, returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, "*An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same.*" Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal. Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.

Ordinary usage would characterize a "contest" in reference to a *post-election scenario*. Election contests consist of either an election protest or a *quo warranto* which, although two distinct remedies, would have one objective in view, *i.e.*, to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "*Rules of the Presidential Electoral Tribunal*," promulgated by the Supreme Court *en banc* on 18 April 1992, would support this premise —

"Rule 12. *Jurisdiction.* — The Tribunal shall be the sole judge of all *contests* relating to the election, returns, and qualifications of the *President or Vice-President* of the Philippines.

"Rule 13. *How Initiated.* — An election contest is initiated by the filing of an

election protest or a petition for *quo warranto* against the President or Vice-President. An election protest shall not include a petition for *quo warranto*. A petition for *quo warranto* shall not include an election protest.

"Rule 14. *Election Protest*. — Only the registered candidate for President or for Vice-President of the Philippines who received *the second or third highest number of votes* may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the *proclamation of the winner*."

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A *quo warranto* proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. <sup>5</sup> In such context, the election contest can only contemplate a post-election *scenario*. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election *scenario*.

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.

Accordingly, G.R. No. 161434, entitled "*Maria Jeanette C. Tecson, et al., vs. Commission on Elections, et al.*," and G.R. No. 161634, entitled "*Zoilo Antonio Velez vs. Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr.*" would have to be dismissed for want of jurisdiction.

### *The Citizenship Issue*

Now, to the basic issue; it should be helpful to first give a brief historical background on the concept of citizenship.

Perhaps, the earliest understanding of citizenship was that given by Aristotle, who, sometime in 384 to 322 B.C., described the "citizen" to refer to a man who shared in the administration of justice and in the holding of an office. <sup>6</sup> Aristotle saw its significance if only to determine the constituency of the "State," which he described as being composed of such persons who would be adequate in number to achieve a self-sufficient existence. <sup>7</sup> The concept grew to include one who would both govern and be governed, for which qualifications like autonomy, judgment and loyalty could be expected. Citizenship was seen to deal with rights and entitlements, on the one hand, and with concomitant obligations, on the other. <sup>8</sup> In its ideal setting, a citizen was active in public life and fundamentally willing to submit his private interests to the general interest of society.

The concept of citizenship had undergone changes over the centuries. In the 18th century, the concept was limited, by and large, to civil citizenship, which established the rights necessary for individual freedom, such as rights to property, personal liberty and justice. <sup>9</sup> Its meaning expanded during the 19th century to include *political citizenship*, which encompassed the right to participate in the exercise of political power. <sup>10</sup> The 20th century saw the next stage of the development of social

citizenship, which laid emphasis on the right of the citizen to economic well-being and social security. <sup>11</sup> The idea of citizenship has gained expression in the modern welfare state as it so developed in Western Europe. An ongoing and final stage of development, in keeping with the rapidly shrinking global village, might well be the *internationalization of citizenship*. <sup>12</sup>

### *The Local Setting — from Spanish Time to the Present*

There was no such term as "Philippine citizens" during the Spanish regime but "subjects of Spain" or "Spanish subjects." <sup>13</sup> In church records, the natives were called '*indios*', denoting a low regard for the inhabitants of the archipelago. Spanish laws on citizenship became highly codified during the 19th century but their sheer number made it difficult to point to one comprehensive law. Not all of these citizenship laws of Spain however, were made to apply to the Philippine Islands except for those explicitly extended by Royal Decrees. <sup>14</sup>

Spanish laws on citizenship were traced back to the *Novisima Recopilacion*, promulgated in Spain on 16 July 1805 but as to whether the law was extended to the Philippines remained to be the subject of differing views among experts; <sup>15</sup> however, three royal decrees were undisputably made applicable to Spaniards in the Philippines — the *Order de la Regencia* of 14 August 1841, <sup>16</sup> the Royal Decree of 23 August 1868 specifically defining the political status of children born in the Philippine Islands, <sup>17</sup> and finally, the *Ley Extranjera de Ultramar* of 04 July 1870, which was expressly made applicable to the Philippines by the Royal Decree of 13 July 1870. <sup>18</sup>

The Spanish Constitution of 1876 was never extended to the Philippine Islands because of the express mandate of its Article 89, according to which the provisions of the *Ultramar* among which this country was included, would be governed by special laws. <sup>19</sup>

It was only the Civil Code of Spain, made effective in this jurisdiction on 18 December 1889, which came out with the first categorical enumeration of who were Spanish citizens. —

"(a)Persons born in Spanish territory,

"(b)Children of a Spanish father or mother, even if they were born outside of Spain,

"(c)Foreigners who have obtained naturalization papers,

"(d)Those who, without such papers, may have become domiciled inhabitants of any town of the Monarchy." <sup>20</sup>

The year 1898 was another turning point in Philippine history. Already in the state of decline as a superpower, Spain was forced to so cede her sole colony in the East to an upcoming world power, the United States. An accepted principle of international law dictated that a change in sovereignty, while resulting in an abrogation of all political laws then in force, would have no effect on civil laws, which would remain virtually intact.

The Treaty of Paris was entered into on 10 December 1898 between Spain and the United States. <sup>21</sup> Under Article IX of the treaty, the civil rights and political status of the native inhabitants of the territories ceded to the United States would be determined by its Congress —

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty may

remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they reside.

Thus —

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." <sup>22</sup>

Upon the ratification of the treaty, and pending legislation by the United States Congress on the subject, the native inhabitants of the Philippines ceased to be Spanish subjects. Although they did not become American citizens, they, however, also ceased to be "aliens" under American laws and were thus issued passports describing them to be citizens of the Philippines entitled to the protection of the United States.

The term "citizens of the Philippine Islands" appeared for the first time in the Philippine Bill of 1902, also commonly referred to as the Philippine Organic Act of 1902, the first comprehensive legislation of the Congress of the United States on the Philippines —

*". . .that all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1891, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris, December tenth eighteen hundred and ninety eight."* <sup>23</sup>

Under the organic act, a "citizen of the Philippines" was one who was an inhabitant of the Philippines, and a Spanish subject on the 11th day of April 1899. The term "inhabitant" was taken to include 1) a native-born inhabitant, 2) an inhabitant who was a native of Peninsular Spain, and 3) an inhabitant who obtained Spanish papers on or before 11 April 1899. <sup>24</sup>

Controversy arose on to the status of children born in the Philippines from 11 April 1899 to 01 July 1902, during which period no citizenship law was extant in the Philippines. Weight was given to the view, articulated in jurisprudential writing at the time, that the common law principle of *jus soli*, otherwise also known as the principle of territoriality, operative in the United States and England, governed those born in the Philippine Archipelago within that period. <sup>25</sup> More about this later.

In 23 March 1912, the Congress of the United States made the following amendment to the Philippine Bill of 1902 —

"Provided, That the Philippine Legislature is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the

Philippine Islands who do not come within the foregoing provisions, the natives of other insular possession of the United States, and such other persons residing in the Philippine Islands who would become citizens of the United States, under the laws of the United States, if residing therein." 26

With the adoption of the Philippine Bill of 1902, the concept of "Philippine citizens" had for the first time crystallized. The word "Filipino" was used by William H. Taft, the first Civil Governor General in the Philippines when he initially made mention of it in his slogan, "The Philippines for the Filipinos." In 1916, the Philippine Autonomy Act, also known as the Jones Law restated virtually the provisions of the Philippine Bill of 1902, as so amended by the Act of Congress in 1912 —

*"That all inhabitants of the Philippine Islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequently thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight and except such others as have since become citizens of some other country; Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide for the acquisition of Philippine citizenship by those natives of the Philippine Islands who do not come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States, if residing therein."*

Under the Jones Law, a native-born inhabitant of the Philippines was deemed to be a citizen of the Philippines as of 11 April 1899 if he was 1) a subject of Spain on 11 April 1899, 2) residing in the Philippines on said date, and, 3) since that date, not a citizen of some other country.

While there was, at one brief time, divergent views on whether or not *jus soli* was a mode of acquiring citizenship, the 1935 Constitution brought to an end to any such link with common law, by adopting, once and for all, *jus sanguinis* or blood relationship as being the basis of Filipino citizenship —

"Section 1, Article III, 1935 Constitution. The following are citizens of the Philippines —

"(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution

"(2) Those born in the Philippines Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

"(3) *Those whose fathers or mothers are citizens of the Philippines*

"(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship.

"(5) Those who are naturalized in accordance with law."

Subsection (4), Article III, of the 1935 Constitution, taken together with existing civil law provisions at the time, which provided that women would automatically lose their Filipino citizenship and acquire that of their foreign husbands, resulted in discriminatory situations that effectively incapacitated the women from transmitting their Filipino citizenship to their legitimate children and required illegitimate children of Filipino mothers to still elect Filipino citizenship upon reaching the age of majority. Seeking to correct this anomaly, as well as fully cognizant of the newly found status of Filipino women as equals to men, the framers of the 1973 Constitution crafted the provisions of the new Constitution on citizenship to reflect such concerns —

"Section 1, Article III, 1973 Constitution — The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

"(2) *Those whose fathers or mothers are citizens of the Philippines*

"(3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.

"(4) Those who are naturalized in accordance with law."

For good measure, Section 2 of the same article also further provided that —

"A female citizen of the Philippines who marries an alien retains her Philippine citizenship, unless by her act or omission she is deemed, under the law to have renounced her citizenship."

The 1987 Constitution generally adopted the provisions of the 1973 Constitution, except for subsection (3) thereof that aimed to correct the irregular situation generated by the questionable proviso in the 1935 Constitution.

Section 1, Article IV, 1987 Constitution now provides:

"The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

"(2) *Those whose fathers or mothers are citizens of the Philippines*

"(3) *Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and*

"(4) Those who are naturalized in accordance with law."

### *The Case Of FPJ*

Section 2, Article VII, of the 1987 Constitution expresses:

"No person may be elected President unless he is a *natural-born citizen of the Philippines*, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election."

The term "natural-born citizens," is defined to include "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their

Philippine citizenship." 27

The date, month and year of birth of FPJ appeared to be 20 August 1939 during the regime of the 1935 Constitution. Through its history, four modes of acquiring citizenship — naturalization, *jus soli*, *res judicata* and *jus sanguinis* 28 — had been in vogue. Only two, i.e., *jus soli* and *jus sanguinis*, could qualify a person to being a "natural-born" citizen of the Philippines. *Jus soli*, per *Roa vs. Collector of Customs* 29 (1912), did not last long. With the adoption of the 1935 Constitution and the reversal of *Roa* in *Tan Chong vs. Secretary of Labor* 30 (1947), *jus sanguinis* or blood relationship would now become the primary basis of citizenship by birth.

Documentary evidence adduced by petitioner would tend to indicate that the earliest established direct ascendant of FPJ was his paternal grandfather Lorenzo Pou, married to Marta Reyes, the father of Allan F. Poe. While the record of birth of Lorenzo Pou had not been presented in evidence, his death certificate, however, identified him to be a Filipino, a resident of San Carlos, Pangasinan, and 84 years old at the time of his death on 11 September 1954. The certificate of birth of the father of FPJ, Allan F. Poe, showed that he was born on 17 May 1915 to an Español father, Lorenzo Pou, and a mestiza Español mother, Marta Reyes. Introduced by petitioner was an "uncertified" copy of a supposed certificate of the alleged marriage of Allan F. Poe and Paulita Gomez on 05 July 1936. The marriage certificate of Allan F. Poe and Bessie Kelley reflected the date of their marriage to be on 16 September 1940. In the same certificate, Allan F. Poe was stated to be twenty-five years old, unmarried, and a Filipino citizen, and Bessie Kelley to be twenty-two years old, unmarried, and an American citizen. The birth certificate of FPJ, would disclose that he was born on 20 August 1939 to Allan F. Poe, a Filipino, twenty-four years old, married to Bessie Kelly, an American citizen, twenty-one years old and married.

Considering the reservations made by the parties on the veracity of some of the entries on the birth certificate of respondent and the marriage certificate of his parents, the only conclusions that could be drawn with some degree of certainty from the documents would be that —

- 1.The parents of FPJ were Allan F. Poe and Bessie Kelley;
- 2.FPJ was born to them on 20 August 1939;
- 3.Allan F. Poe and Bessie Kelley were married to each other on 16 September, 1940;
- 4.The father of Allan F. Poe was Lorenzo Poe; and
- 5.At the time of his death on 11 September 1954, Lorenzo Poe was 84 years old.

Would the above facts be sufficient or insufficient to establish the fact that FPJ is a natural-born Filipino citizen? The marriage certificate of Allan F. Poe and Bessie Kelley, the birth certificate of FPJ, and the death certificate of Lorenzo Pou are documents of public record in the custody of a public officer. The documents have been submitted in evidence by both contending parties during the proceedings before the COMELEC.

The birth certificate of FPJ was marked Exhibit "A" for petitioner and Exhibit "3" for respondent. The marriage certificate of Allan F. Poe to Bessie Kelley was submitted as Exhibit "21" for respondent. The death certificate of Lorenzo Pou was submitted by respondent as his Exhibit "5." While the last two documents were submitted in evidence for respondent, the admissibility thereof, particularly in reference to the facts which they

purported to show, *i.e.*, the marriage certificate in relation to the date of marriage of Allan F. Poe to Bessie Kelley and the death certificate relative to the death of Lorenzo Pou on 11 September 1954 in San Carlos, Pangasinan, were all admitted by petitioner, who had utilized those material statements in his argument. All three documents were certified true copies of the originals.

Section 3, Rule 130, Rules of Court states that —

"Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

xxx xxx xxx

"(d)When the original is a public record in the custody of a public office or is recorded in a public office."

Being public documents, the death certificate of Lorenzo Pou, the marriage certificate of Allan F. Poe and Bessie Kelly, and the birth certificate of FPJ, constitute *prima facie* proof of their contents. Section 44, Rule 130, of the Rules of Court provides:

"*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."

The trustworthiness of public documents and the value given to the entries made therein could be grounded on 1) the sense of official duty in the preparation of the statement made, 2) the penalty which is usually affixed to a breach of that duty, 3) the routine and disinterested origin of most such statements, and 4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred. **31**

The death certificate of Lorenzo Pou would indicate that he died on 11 September 1954, at the age of 84 years, in San Carlos, Pangasinan. It could thus be assumed that Lorenzo Pou was born sometime in the year 1870 when the Philippines was still a colony of Spain. Petitioner would argue that Lorenzo Pou was not in the Philippines during the crucial period of from 1898 to 1902 considering that there was no existing record about such fact in the Records Management and Archives Office. Petitioner, however, likewise failed to show that Lorenzo Pou was at any other place during the same period. In his death certificate, the residence of Lorenzo Pou was stated to be San Carlos, Pangasinan. In the absence of any evidence to the contrary, it should be sound to conclude, or at least to presume, that the place of residence of a person at the time of his death was also his residence before death. It would be extremely doubtful if the Records Management and Archives Office would have had complete records of all residents of the Philippines from 1898 to 1902.

#### *Proof of Paternity and Filiation Under Civil Law.*

Petitioner submits, in any case, that in establishing filiation (relationship or civil status of the child to the father [or mother]) or paternity (relationship or civil status of the father to the child) of an illegitimate child, FPJ evidently being an illegitimate son according to petitioner, the mandatory rules under civil law must be used.

Under the Civil Code of Spain, which was in force in the Philippines from 08 December 1889 up until the day prior to 30 August 1950 when the Civil Code of the Philippines took effect, acknowledgment was required to establish filiation or paternity.

Acknowledgment was either judicial (compulsory) or voluntary. Judicial or compulsory acknowledgment was possible only if done during the lifetime of the putative parent; voluntary acknowledgment could only be had in a record of birth, a will, or a public document. <sup>32</sup> Complementary to the new code was Act No. 3753 or the Civil Registry Law expressing in Section 5 thereof, that —

"In case of an illegitimate child, the birth certificate shall *besigned and sworn to jointly* by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified."

In order that the birth certificate could then be utilized to prove voluntary acknowledgment of filiation or paternity, the certificate was required to be signed or sworn to by the father. The failure of such requirement rendered the same useless as being an authoritative document of recognition. <sup>33</sup> In *Mendoza vs. Mella*, <sup>34</sup> the Court ruled —

"Since Rodolfo was born in 1935, after the registry law was enacted, the question here really is whether or not his birth certificate (Exhibit 1), which is merely a certified copy of the registry record, may be relied upon as sufficient proof of his having been voluntarily recognized. No such reliance, in our judgment, may be placed upon it. While it contains the names of both parents, there is no showing that they signed the original, let alone swore to its contents as required in Section 5 of Act No. 3753. For all that might have happened, it was not even they or either of them who furnished the data to be entered in the civil register. Petitioners say that in any event the birth certificate is in the nature of a public document wherein voluntary recognition of a natural child may also be made, according to the same Article 131. True enough, but in such a case, there must be a clear statement in the document that the parent recognizes the child as his or her own."

In the birth certificate of respondent FPJ, presented by both parties, nowhere in the document was the signature of Allan F. Poe found. There being no will apparently executed, or at least shown to have been executed, by decedent Allan F. Poe, the only other proof of voluntary recognition remained to be "some other public document." In *Pareja vs. Pareja*, <sup>35</sup> this Court defined what could constitute such a document as proof of voluntary acknowledgment:

"Under the Spanish Civil Code there are two classes of public documents, those *executed by private individuals which must be authenticated by notaries*, and those issued by competent public officials by reason of their office. The public document pointed out in Article 131 as one of the means by which recognition may be made belongs to the first class."

Let us leave it at that for the moment.

The 1950 Civil Code categorized the acknowledgment or recognition of illegitimate children into voluntary, legal or compulsory. Voluntary recognition was required to be expressedly made in a record of birth, a will, a statement before a court of record or in any authentic writing. Legal acknowledgment took place in favor of full blood brothers and sisters of an illegitimate child who was recognized or judicially declared as natural. Compulsory acknowledgment could be demanded generally in cases when the child had in his favor any evidence to prove filiation. Unlike an action to

claim legitimacy which would last during the lifetime of the child, and might pass exceptionally to the heirs of the child, an action to claim acknowledgment, however, could only be brought during the lifetime of the presumed parent.

*Amicus Curiae* Ruben F. Balane defined, during the oral argument, "authentic writing," so as to be an authentic writing for purposes of voluntary recognition, simply as being a genuine or indubitable writing of the father. The term would include a public instrument (one duly acknowledged before a notary public or other competent official) or a private writing admitted by the father to be his.

The Family Code has further liberalized the rules; Article 172, Article 173, and Article 175 provide:

"Art. 172. The filiation of legitimate children is established by any of the following:

"(1) The record of birth appearing in the civil register or a final judgment; or

"(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

"In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

"(1) The open and continuous possession of the status of a legitimate child; or

"(2) Any other means allowed by the Rules of Court and special laws.

"Art. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

"The action already commenced by the child shall survive notwithstanding the death of either or both the parties.

"xxx xxx xxx

"Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

"The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent."

The provisions of the Family Code are retroactively applied; Article 256 of the code reads:

"Art. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws."

Thus, in *Vda. De SyQuia vs. Court of Appeals*, <sup>36</sup> the Court has ruled:

"We hold that whether Jose was a voluntarily recognized natural child should be decided under Article 278 of the Civil Code of the Philippines. Article 2260 of that Code provides that 'the voluntary recognition of a natural child shall

take place according to this Code, even if the child was born before the effectivity of this body of laws' or before August 30, 1950. Hence, Article 278 may be given retroactive effect."

It should be apparent that the growing trend to liberalize the acknowledgment of recognition of illegitimate children is an attempt to break away from the traditional idea of keeping well apart legitimate and non-legitimate relationships within the family in favor of the greater interest and welfare of the child. The provisions are intended to merely govern the private and personal affairs of the family. There is little, if any, to indicate that the legitimate or illegitimate civil status of the individual would also affect his political rights or, in general, his relationship to the State. While, indeed, provisions on "citizenship" could be found in the Civil Code, such provisions must be taken in the context or private relations, the domain of civil law; particularly —

"Civil Law is that branch of law which has for its double purpose the organization of the family and the regulation of property. It has thus [been] defined as the mass of precepts which determine and regulate the relations of assistance, authority and obedience among member of a family, and those which exist among members of a society for the protection of private interests." <sup>37</sup>

In *Yañez de Barnuevo vs. Fuster*, <sup>38</sup> the Court has held:

"In accordance with Article 9 of the Civil Code of Spain, . . . the laws relating to family rights and duties, or to the status, condition and legal capacity of persons, govern Spaniards although they reside in a foreign country; that, in consequence, 'all questions of a civil nature, such as those dealing with the validity or nullity of the matrimonial bond, the domicile of the husband and wife, their support, as between them, the separation of their properties, the rules governing property, marital authority, division of conjugal property, the classification of their property, legal causes for divorce, the extent of the latter, the authority to decree it, and, in general, the civil effects of marriage and divorce upon the persons and properties of the spouses, are questions that are governed exclusively by the national law of the husband and wife."

The relevance of "citizenship" or "nationality" to Civil Law is best exemplified in Article 15 of the Civil Code, stating that —

"Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon *citizens of the Philippines*, even though living abroad" —

that explains the need to incorporate in the code a reiteration of the Constitutional provisions on citizenship. Similarly, citizenship is significant in civil relationships found in different parts of the Civil Code, <sup>39</sup> such as on successional rights and family relations. <sup>40</sup> In adoption, for instance, an adopted child would be considered the child of his adoptive parents and accorded the same rights as their legitimate child but such legal fiction extended only to define his rights under civil law <sup>41</sup> and not his political status.

Civil law provisions point to an obvious bias against illegitimacy. This discriminatory attitude may be traced to the Spanish family and property laws, which, while defining proprietary and successional rights of members of the family, provided distinctions in the rights of legitimate and illegitimate children. In the monarchical set-up of old Spain, the distribution and inheritance of titles and wealth were strictly according to bloodlines and the concern to keep these bloodlines uncontaminated by foreign blood was paramount.

These distinctions between legitimacy and illegitimacy were codified in the Spanish Civil Code, and the invidious discrimination survived when the Spanish Civil Code became the primary source of our own Civil Code. Such distinction, however, remains and should remain only in the sphere of civil law and not unduly impede or impinge on the domain of political law.

The proof of filiation or paternity for purposes of determining his citizenship status should thus be deemed independent from and not inextricably tied up with that prescribed for civil law purposes. The Civil Code or Family Code provisions on proof of filiation or paternity, although good law, do not have preclusive effects on matters alien to personal and family relations. The ordinary rules on evidence could well and should govern. For instance, the matter about pedigree is not necessarily precluded from being applicable by the Civil Code or Family Code provisions.

Section 39, Rule 130, of the Rules of Court provides —

*"Act or Declaration about pedigree.* The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word 'pedigree' includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree."

For the above rule to apply, it would be necessary that (a) the declarant is already dead or unable to testify, (b) the pedigree of a person must be at issue, (c) the declarant must be a relative of the person whose pedigree is in question, (d) declaration must be made before the controversy has occurred, and (e) the relationship between the declarant and the person whose pedigree is in question must be shown by evidence other than such act or declaration.

Thus, the duly notarized declaration made by Ruby Kelley Mangahas, sister of Bessie Kelley Poe submitted as Exhibit 20 before the COMELEC, might be accepted to prove the facts of Allan F. Poe, recognizing his own paternal relationship with FPJ, i.e., living together with Bessie Kelly and his children (including respondent FPJ) in one house, and as one family —

"I, Ruby Kelly Mangahas, of legal age and sound mind, presently residing in Stockton, California, U.S.A., after being sworn in accordance with law do hereby declare that:

"1.I am the sister of the late Bessie Kelly Poe.

"2.Bessie Kelley Poe was the wife of Fernando Poe, Sr.

"3.Fernando and Bessie Poe had a son by the name of Ronald Allan Poe, more popularly known in the Philippines as 'Fernando Poe, Jr., or FPJ'.

"4.Ronald Allan Poe 'FPJ' was born on August 20, 1939 at St. Luke's Hospital, Magdalena Street, Manila.

"xxx xxx xxx

"7.Fernando Poe Sr., and my sister Bessie, met and became engaged while they were students at the University of the Philippines in 1936. I was also introduced to Fernando Poe Sr., by my sister that same year.

"8.Fernando Poe, Sr., and my sister Bessie had their first child in 1938.

"9.Fernando Poe, Sr., my sister Bessie and their first three children, Elizabeth, Ronald, Allan and Fernando II, and myself lived together with our mother at our family's house on Dakota St. (now Jorge Bocobo St.), Malate until the liberation of Manila in 1945, except for some months between 1943-1944.

"10.Fernando Poe, Sr., and my sister, Bessie, were blessed with four (4) more children after Ronald Allan Poe.

"xxx xxx xxx

"18.I am executing this Declaration to attest to the fact that my nephew, Ronald Allan Poe is a natural born Filipino, and that he is the legitimate child of Fernando Poe, Sr.

"Done in City of Stockton, California, U.S.A., this 12th day of January 2004.

Ruby Kelly Mangahas

Declarant

### *DNA Testing*

In case proof of filiation or paternity would be unlikely to satisfactory establish or would be difficult to obtain, DNA testing, which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to. A positive match would clear up filiation or paternity. In *Tijing vs. Court of Appeals*, <sup>42</sup> this Court has acknowledged the strong weight of DNA testing —

"Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and the child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when completely obtained in aid of situations presented, since to reject said result is to deny progress."

### *Petitioner's Argument For Jurisprudential Conclusiveness*

Petitioner would have it that even if Allan F. Poe were a Filipino citizen, he could not have transmitted his citizenship to respondent FPJ, the latter being an illegitimate child. According to petitioner, prior to his marriage to Bessie Kelly, Allan F. Poe, on July 5, 1936, contracted marriage with a certain Paulita Gomez, making his subsequent marriage to Bessie Kelly bigamous and respondent FPJ an illegitimate child. The veracity of the supposed certificate of marriage between Allan F. Poe and Paulita Gomez could be most doubtful at best. But the documentary evidence introduced by no less than respondent himself, consisting of a birth certificate of respondent and a marriage certificate of his parents showed that FPJ was born on 20 August 1939 to

Filipino father and an American mother who were married to each other a year later, or on 16 September 1940. Birth to unmarried parents would make FPJ an illegitimate child. Petitioner contended that as an illegitimate child, FPJ so followed the citizenship of his mother, Bessie Kelly, an American citizen, basing his stand on the ruling of this Court in *Morano vs. Vivo*, <sup>43</sup> citing *Chiongbian vs. de Leon* <sup>44</sup> and *Serra vs. Republic*. <sup>45</sup>

On the above score, the disqualification made by *amicus curiae* Joaquin G. Bernas, SJ, is most convincing; he states —

"We must analyze these cases and ask what the *lis mota* was in each of them. If the procurement of the Court on *jus sanguinis* was on the *lis mota*, the pronouncement would be a decision constituting doctrine under the rule of *stare decisis*. But if the pronouncement was irrelevant to the *lis mota*, the pronouncement would not be a decision but a mere *obiter dictum* which did not establish doctrine. I therefore invite the Court to look closely into these cases.

"First, *Morano vs. Vivo*. The case was not about an illegitimate child of a Filipino father. It was about a stepson of a Filipino, a stepson who was the child of a Chinese mother and a Chinese father. The issue was whether the stepson followed the naturalization of the stepfather. Nothing about *jus sanguinis* there. The stepson did not have blood of the naturalized stepfather.

"Second, *Chiongbian vs. de Leon*. This case was not about the illegitimate son of a Filipino father. It was about a legitimate son of a father who had become Filipino by election to public office before the 1935 Constitution pursuant to Article IV, Section 1(2) of the 1935 Constitution. No one was illegitimate here.

"Third, *Serra vs. Republic*. The case was not about the illegitimate son of a Filipino father. Serra was an illegitimate child of a Chinese father and a Filipino mother. The issue was whether one who was already a Filipino because of his mother who still needed to be naturalized. There is nothing there about invidious *jus sanguinis*.

"Finally, *Paa vs. Chan*. <sup>46</sup> This is more complicated case. The case was about the citizenship of Quintin Chan who was the son of Leoncio Chan. Quintin Chan claimed that his father, Leoncio, was the illegitimate son of a Chinese father and a Filipino mother. Quintin therefore argued that he got his citizenship from Leoncio, his father. But the Supreme Court said that there was no valid proof that Leoncio was in fact the son of a Filipina mother. The Court therefore concluded that Leoncio was not Filipino. If Leoncio was not Filipino, neither was his son Quintin. Quintin therefore was not only not a natural-born Filipino but was not even a Filipino.

"The Court should have stopped there. But instead it followed with an *obiter dictum*. The Court said *obiter* that even if Leoncio, Quintin's father, were Filipino, Quintin would not be Filipino because Quintin was illegitimate. This statement about Quintin, based on a contrary to fact assumption, was absolutely necessary for the case. . . . It was *obiter dictum*, pure and simple, simply repeating the *obiter dictum* in *Morano vs. Vivo*.

"xxx xxx xxx

"Aside from the fact that such a pronouncement would have no textual foundation in the Constitution, it would also violate the equal protection clause of

the Constitution not once but twice. First, it would make an illegitimate distinction between a legitimate child and an illegitimate child, and second, it would make an illegitimate distinction between the illegitimate child of a Filipino father and the illegitimate child of a Filipino mother.

"The doctrine on constitutionality allowable distinctions was established long ago by *People vs. Cayat*. 47 I would grant that the distinction between legitimate children and illegitimate children rests on real differences. . . . But real differences alone do not justify invidious distinction. Real differences may justify distinction for one purpose but not for another purpose.

". . . What is the relevance of legitimacy to elective public service? What possible state interest can there be for disqualifying an illegitimate child from becoming a public officer. It was not the fault of the child that his parents had illicit liaison. Why deprive the child of the fullness of political rights for no fault of his own? To disqualify an illegitimate child from holding an important public office is to punish him for the indiscretion of his parents. There is neither justice nor rationality in that. And if there is neither justice nor rationality in the distinction, then the distinction transgresses the equal protection clause and must be reprobated."

The other *amici curiae*, Mr. Justice Vicente Mendoza (a former member of this Court), Professor Ruben Balane and Dean Martin Magallona, at bottom, have expressed similar views. The thesis of petitioner, unfortunately hinging solely on pure *obiter dicta*, should indeed fail.

Where jurisprudence regarded an illegitimate child as taking after the citizenship of its mother, it did so for the benefit of the child. It was to ensure a Filipino nationality for the illegitimate child of an alien father in line with the assumption that the mother had custody, would exercise parental authority and had the duty to support her illegitimate child. It was to help the child, not to prejudice or discriminate against him.

The fact of the matter — perhaps the most significant consideration — is that the 1935 Constitution, the fundamental law prevailing on the day, month and year of birth of respondent FPJ, can never be more explicit than it is. Providing neither conditions nor distinctions, the Constitution states that among the citizens of the Philippines are "those whose fathers are citizens of the Philippines." There utterly is no cogent justification to prescribe conditions or distinctions where there are clearly none provided.

#### *In Sum* —

(1)The Court, in the exercise of its power of judicial review, possesses jurisdiction over the petition in G.R. No. 161824, filed under Rule 64, in relation to Rule 65, of the Revised Rules of Civil Procedure. G.R. No. 161824 assails the resolution of the COMELEC for alleged grave abuse of discretion in dismissing, for lack of merit, the petition in SPA No. 04-003 which has prayed for the disqualification of respondent FPJ from running for the position of President in the 10th May 2004 national elections on the contention that FPJ has committed material representation in his certificate of candidacy by representing himself to be a natural-born citizen of the Philippines.

(2)The Court must dismiss, for lack of jurisdiction and prematurity, the petitions in G.R. No. 161434 and No. 161634 both having been directly elevated to this Court in the latter's capacity as the only tribunal to resolve a presidential and vice-presidential election contest under the Constitution. Evidently, the primary jurisdiction of the Court can directly be invoked only after, not before, the elections are held.

(3) In ascertaining, in G.R. No. 161824, whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of respondent prevents him from taking after the Filipino citizenship of his putative father. Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, Lorenzo would have been born sometime in the year 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the "en masse Filipinization" that the Philippine bill had effected in 1902. That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of respondent FPJ. The 1935 Constitution, during which regime respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate.

(4) But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC*, <sup>48</sup> must not only be material, but also deliberate and willful.

WHEREFORE, the Court RESOLVES to DISMISS —

1. G.R. No. 161434, entitled "Maria Jeanette C. Tecson and Felix B. Desiderio, Jr., Petitioners, *versus* Commission on Elections, Ronald Allan Kelley Poe (a.k.a. "Fernando Poe, Jr.) and Victorino X. Fornier, Respondents," and G.R. No. 161634, entitled "Zoilo Antonio Velez, Petitioner, *versus* Ronald Allan Kelley Poe, a.k.a. Fernando Poe, Jr., Respondent," for want of jurisdiction.

2. G.R. No. 161824, entitled "Victorino X. Fornier, Petitioner, *versus* Hon. Commission on Elections and Ronald Allan Kelley Poe, also known as Fernando Poe, Jr.," for failure to show grave abuse of discretion on the part of respondent Commission on Elections in dismissing the petition in SPA No. 04-003.

No Costs.

SO ORDERED.

*Davide, Jr., C.J.*, see separate opinion.

*Puno, J.*, is on leave but was allowed to vote; see separate opinion.

*Panganiban, J.*, is on official leave; allowed to vote but did not send his vote.

*Quisumbing, J.*, joins the dissent of Justices Tinga and Morales; case should have been REMANDED.

*Ynares-Santiago, J.*, concurs and also with *J. Puno's* separate opinion.

*Sandoval-Gutierrez, J.*, concurs, please see separate opinion.

*Carpio, J.*, see separate opinion.

*Austria-Martinez, J.*, concurs, please see separate opinion.

*Corona, J.*, joins the dissenting opinion of Justice Morales.

*Carpio Morales, J.*, see dissenting opinion.

*Callejo, Sr., J.*, see concurring opinion.

*Azcuna, J.*, concurs in a separate opinion.

*Tinga, J.*, dissents as per his separate opinion.

## Footnotes

1. *Tan Chong vs. The Secretary of Labor*, 45 O.G. No. 31, 1269.
2. *Sec. 2. Mode of review.* — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided. (Rule 64)
3. *Sec. 1. Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Rule 65)
4. 17 SCRA 761.
5. See Rule 66, Revised Rules of Civil Procedure.
6. *The Politics of Aristotle*, edited and translated by Ernest Barker, Oxford University Press, London, 1946. at p. 93.
7. *Id.* at 95.
8. Introduction, "The Conditions of Citizenship," edited by Bart Van Steenberg, Sage Publications, London, Thousand Oaks, New Delhi (1994).
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. Under the codified *Novísima Recopilación* promulgated in Spain in 1805, the following were considered denizens (*vecinos*) "all foreigners who obtained the privilege of

naturalization, those who were born in these kingdoms, those who residing therein may be converted to the holy Catholic faith; those, being self-supporting, established their domicile therein; and in the case of a foreign woman who married a native man, she thereby becomes subject to the same laws and acquires the same domicile as her husband; those who establish themselves in the country by acquiring real property; those who have trade or profession and go there to practice the same; also those who practice some mechanical trade therein or keep a retail store; those who reside for a period of ten years in a home of his own; and also those foreigners who, in accordance with the common law, royal orders and other laws of the kingdoms, may have become naturalized or acquired residence therein. (Leon T. Garcia, "The Problems of Citizenship in the Philippines," Rex Bookstore, 1949, at p. 4)

14. Garcia, *supra.*, at p. 3.

15. Justices Malcolm, Recto and Florentino Torres believed that the law was effective in the Philippines. Those who entertained the contrary view were Justices Imperial and Villareal. (Garcia, *supra.*, at 4.).

16. Garcia, *supra.*, pp. 5-6.

17. Under the Royal Decree of August 23, 1868; the following were considered foreigners — (1) The legitimate and recognized natural children of a father who belongs to another independent state, and the unrecognized and natural and other illegitimate children of a mother belonging to another State born outside of the Spanish dominions, (2) The children specified in the preceding paragraph, born in the Spanish dominions or on board Spanish vessels on the high seas if they do not, on attaining the age of majority fixed in the laws of the Kingdom, elect Spanish nationality, (3) Those being Spaniards, acquire another nationality, as well by renouncing the first as by accepting employment, from another government without the authority of the sovereign and (4) The woman who contracts marriage with a subject of another State. (Garcia, *supra.*, pp. 6-7)

18. Under the law, the following were foreigners (a) All persons born of foreign parents outside of the Spanish territory; (b) Those born outside of the Spanish territory of foreign fathers and Spanish mothers while they do not claim Spanish nationality, (3) Those born in Spanish territory of foreign parents or foreign fathers and Spanish mothers while they do not make that claim, (4) Spaniards who may have lost their nationality, (5) Those born outside of the Spanish territory of parents who may have lost their Spanish nationality; and (6), the Spanish woman married to a foreigner, (Garcia, *supra.*, p. 7)

19. Velayo, *infra*, p. 11.

20. Article 17, The Civil Code of Spain.

21. Garcia, *supra.*, pp. 6-7.

22. Ramon M. Velayo, "Philippine Citizenship And Naturalization," Central Book Supply, Manila (1965), pp. 22-23.

23. *Ibid.*, p. 30.

24. Garcia, *supra.*, at pp. 31-32.

25. Garcia, *supra.*, pp. 23-26.

26. Velayo, *supra.*, p. 31

27. Section 2, Article IV, 1987 Constitution.
28. Per amicus curiae Joaquin G. Bernas, SJ.
29. 23 Phil 315 (1912).
30. *Supra*, which held that jus soli was never applied in the Philippines.
31. *Antillon vs. Barcelon*, 37 Phil 148.
32. Article 131 Old Civil Code.
33. *Dayrit vs. Piccio*, 92 Phil 729.
34. 17 SCRA 788.
35. 95 Phil 167.
36. 125 SCRA 835.
37. Vicente J. Francisco, Civil Code of the Philippines, Bk I, 1953 at p. 5.
38. 29 Phil 606.
39. Article 16. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.

Article 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs, shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

Article 815. When a Filipino is in a foreign country, he is authorized to make a will in any of the forms established by the law of the country in which he may be. Such will may be probated in the Philippines.

Article 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

Article 817. A will made in the Philippines by a citizen or subject of another country, which is executed in accordance with the law of the country of which he is a citizen or subject, and which might be proved and allowed by the law of his own country, shall have the same effect as if executed according to the laws of the Philippines.

Article 819. Wills, prohibited by the preceding article, executed by Filipinos in a foreign country shall not be valid in the Philippines, even though authorized by the laws of the country where they may have been executed.

Article 1039. Capacity to succeed is governed by the law of the nation of the decedent.

40. Article 10. Marriages between Filipino citizens abroad may be solemnized by a consul general, consul or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.

Article 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage.

Article 26. . . .

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

Article 80. In the absence of a country stipulation in the marriage settlements, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence. This rule shall not apply.

(1) Where both spouses are aliens;

(2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and

(3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for their extrinsic validity.

41. See *Ching vs. Galang*, L-11931, October 1958, unreported.

42. 354 SCRA 17.

43. 20 SCRA 562, *Paa vs. Chan*, 21 SCRA 753.

44. 82 Phil. 771.

45. 91 Phil. 914, unreported.

46. 21 SCRA 753.

47. 68 Phil. 12.

48. 248 SCRA 300 (1995)