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[G.R. No. 261344. January 24, 2023]

FRANK ONG SIBUMA, *Petitioner*, *v.* **COMMISSION ON ELECTIONS, ALMA L. PANELO, and STEFANIE ANN ERIGUEL CALONGCAGON,** *Respondents*.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for *Certiorari*[1] with prayer/application for the issuance of a temporary restraining order and/or writ of preliminary injunction assailing the following: *(1)* Resolution[2] dated May 13, 2022 of the Commission on Elections (COMELEC) Second Division ordering the cancellation of the Certificate of Candidacy[3] of Frank Ong Sibuma (Sibuma) in SPA No. 21-172 (DC); *(2)* Certificate of Finality[4] and Entry of Judgment,[5] both dated May 24, 2022; and *(3)* Writ of Execution[6] dated June 29, 2022 annulling Sibuma's proclamation as the duly elected Mayor of the Municipality of Agoo, La Union, and proclaiming private respondent Stefanie Ann Eriguel Calongcagon (Eriguel) in his stead.

The Antecedents

Sibuma and Eriguel vied for the mayoralty position of the Municipality of Agoo, La Union in the National and Local Elections of May 9, 2022 (May 9, 2022 Elections). Petitioner filed

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1 *Rollo*, pp. 1-35. Filed under Rule 65 of the Rules of Court.

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 345.

4 Id. at 55-57. Issued by Atty. Genesis M. Gatdula.

5 Id. at 58-59.

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

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his Certificate of Candidacy (CoC) for the position on October 7, 2021.[7]

Alma L. Panelo (Panelo) filed a Petition to Deny Due Course [to] or Cancel [a] Certificate of Candidacy[8] dated November 2, 2021 under Section 78 of the Omnibus Election Code of the Philippines[9] (OEC) against Sibuma. Panelo averred that Sibuma committed a material misrepresentation when he stated in his CoC that "*he will be a resident of Brgy. Sta. Barbara, Agoo, La Union for 1 year and 3 months on the day before the May 9, 2022 Elections*"[10] because "*in truth and in fact he is a resident of Zone 2, Purok 9, San Eugenio, Aringay, La Union.*"[11]

To prove her claims, Panelo submitted in evidence two Certifications[12] dated October 29, 2021 issued by *Punong Barangay* Erwina C. Eriguel (*Punong Barangay* Eriguel) of Brgy. Sta. Barbara, Agoo—the *barangay* where Sibuma allegedly resides. The Certifications stated that Sibuma is not a resident of Brgy. Sta. Barbara. Panelo also submitted a Deed of Absolute Sale,[13] Transfer Certificate of Title No. 025-2020001551,[14] and applications for building permits and licences covering a certain property.[15] Panelo asserted that these documents show that the address alleged by Sibuma in his CoC belongs to a different person, a certain Eric Ong Sibuma. Panelo further invoked a

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[7] Id. at 44.

[8] Id. at 346-361. Filed under Section 78, in relation to Section 74, of *Batas Pambansa* Blg. (BP) 881 or the Omnibus Election Code, and in consonance with Section 1, Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523.

[9] BP 881, approved on December 3, 1985.

[10] *Rollo*, p. 347.

[11] Id.

[12] Id. at 459-460.

[13] Id. at 449.

[14] Id. at 450-452.

[15] Id. at 454-457.

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Certification[16] issued by the Municipal Engineer of Agoo attesting that no certificate of occupancy had been issued over the said property.[17]

For his part, Sibuma alleged that he had established his residency in the Municipality of Agoo, Province of La Union since his birth. He contended that while he may have been absent thereat for some time, his intention to return *(animus revertendi)* has always been shown. In support thereof, he submitted in evidence the following documents: *(a)* Certificate of Live Birth[18] showing that he was born in Agoo, La Union; *(b)* Secondary Student's Record[19] from the Don Mariano Marcos State University of Agoo, as well as a Certification[20] attesting that he completed his secondary education therein; *(c)* copies of his telephone bills and a Ledger Inquiry from the La Union Electric Company, all issued in his name, indicating Sta. Barbara, Agoo, La Union as his address;[21] *(d)* a Tax Declaration of Real Property[22] issued in his name and his spouse covering a property situated in Sta. Barbara, Agoo, La Union; and *(e)* Affidavit of Residency[23] dated November 29, 2021 signed by 41 residents of Brgy. Sta. Barbara, Agoo, attesting that he has resided in Agoo from January 2021.[24]

Panelo offered as supplementary evidence affidavits dated December 3 and 4, 2021 individually executed by eight of the 41 affiants in Sibuma's Affidavit of Residency. The affidavits provided that the eight affiants recanted their participation in Sibuma's Affidavit of Residency.[25]

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16 Id. at 458.

17 Id. at 350-351.

18 Id. at 98.

19 Id. at 115.

20 Id. at 116.

21 Id. at 99-114.

22 Id. at 117.

23 Id. at 153-156.

24 Id. at 46.

25 Id.

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During the pendency of Panelo's petition to deny due course to or cancel Sibuma's CoC, Sibuma's name remained on the ballots when the May 9, 2022 Elections ensued. On May 10, 2022, the Municipal Board of Canvassers of Agoo, La Union issued a Certificate of Canvass of Votes and Proclamation of Winning Candidate for Municipal Mayor[26] proclaiming Sibuma as the duly elected Mayor of the Municipality of Agoo, La Union. Sibuma garnered 21,364 votes against Eriguel's 16,603 votes.

On May 13, 2022, the COMELEC Second Division issued the assailed Resolution[27] granting Panelo's petition to deny due course to or cancel Sibuma's CoC and ruled that Sibuma committed material misrepresentation in his CoC relating to his residency, *viz*.:

> In conclusion, it is apparent that [Sibuma] committed a material misrepresentation under Section 78 of the OEC for *falsely* declaring his eligibility to run for a position for which he was not qualified.
>
> In light of this fact, his Certificate of Candidacy must be deemed cancelled and all votes cast for [him] be considered stray.
>
> Furthermore, material misrepresentation in a COC is an election offense under Section 262 in relation to Section 74 of the OEC. Thus, the election offense aspect of this case is now referred to the Law Department for the conduct of investigation.
>
> WHEREFORE, premises considered, the Commission *(Second Division)* RESOLVED, as it hereby RESOLVES, to GRANT the instant Petition. The Certificate of Candidacy of Respondent FRANK ONG SIBUMA for the position of Mayor in connection with the 2022 NLE is hereby CANCELLED.
>
> Let the records of the case be forwarded to the Law Department of this Commission for the proper conduct of preliminary investigation.
>
> SO ORDERED.[28] (Emphases omitted.)

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[26] Id. at 223-224.

[27] Id. at 43-54.

[28] Id. at 53.

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The COMELEC Second Division ruled that Sibuma's representation of residency in his CoC is material as it pertains to a qualification for local elective officials under Section 39(a)[29] of Republic Act No. 7160,[30] or the Local Government Code of 1991. Holding that residence, in contemplation of election laws, is synonymous to domicile, the COMELEC Second Division underscored that Sibuma must establish both his *(a)* physical presence in the Municipality of Agoo, La Union, and *(b)* intention to make it his domicile. In the case, it found that Sibuma failed to establish the required element of *actual physical* presence at the place where he sought to be elected as mayor.[31]

First, the COMELEC Second Division found disputable the veracity of Sibuma's Affidavit of Residency, noting that it was jointly signed on its face by affiants therein—all attesting to the same narration of facts, as follows:

"1. We personally know FRANK ONG SIBUMA, since 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."[32]

The COMELEC Second Division found doubtful that all signatories in Sibuma's Affidavit of Residency would have personal

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[29] Section 39 of Republic Act No. (RA) 7160 provides:

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.

x x x x (Italics supplied.)

[30] Approved on October 10, 1991.

[31] *Rollo*, pp. 48-49.

[32] As culled from the COMELEC Resolution dated May 13, 2022, id. at 50.

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knowledge that Sibuma was born in Sta. Barbara, Agoo, La Union, considering their declarations of being mere acquaintances with him. It also found difficult to believe that all of them were neighbors of Sibuma during his childhood. On the other hand, it gave weight to the separate affidavits subsequently executed by eight affiants who recanted their declarations in Sibuma's Affidavit of Residency. It noted that the eight affiants narrated in precise detail their different personal experiences of being asked to sign Sibuma's Affidavit of Residency under questionable pretenses. It also gave significant weight to the Certifications dated October 29, 2021 issued by *Punong Barangay* Eriguel of Sta. Barbara, Agoo, La Union stating that Sibuma is not a resident of Brgy. Sta. Barbara.[33]

Second, the COMELEC Second Division noted that Sibuma's telephone and electricity bills indicated that the installation of utilities and consumption of electricity occurred only from February 2021 onwards, thus belying his allegation that he resided at Sta. Barbara, Agoo, La Union since January 2021.[34]

Third, the COMELEC Second Division ruled that Sibuma failed to establish his domicile in Agoo, La Union. It rejected his reliance on his Certificate of Live Birth and Secondary School Records to prove *animus revertendi* to Agoo, La Union. It particularly noted that the address indicated in his Secondary School Records is not Agoo, La Union, but "San Eugenio, Aringay, La Union." It added that Sibuma failed to provide any evidence of "well-publicized ties" to Agoo, La Union, political or otherwise, or any celebration of important personal milestones therein as would establish the element of *animus revertendi*.[35]

On May 24, 2022, the Office of the Clerk of the Commission (OCOC) issued a Certificate of Finality[36] stating that the assailed Resolution dated May 13, 2022 had become final and executory on

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[33] Id. at 49-51.

[34] Id. at 51.

[35] Id. at 51-53.

[36] Id. at 55-57.

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even date, and noting that "[Sibuma] has not filed any motion for reconsideration within the five-day reglementary period reckoned from the date of service";[37] thus:

> WHEREAS, the case records show that [Sibuma] was served a copy of the aforementioned Resolution on 16 May 2022 *via* e-mail and using the official e-mail address of the Clerk of the Commission. This is based on the proof of service or e-mail of the Clerk of the Commission.
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> WHEREAS, Section 7, Rule 23 of Resolution No. 9523, in relation to Section 14(c), Rule 18 of the 1993 COMELEC Rules of Procedure, as amended by Resolution No. 7808, provides that unless a motion for reconsideration is seasonably filed, the resolution or decision of a Division becomes final and executory five (5) days after receipt by the parties of the promulgated copy thereof.
>
> WHEREAS, the records show that *[Sibuma] has not filed any motion for reconsideration within the five-day reglementary period reckoned from the date of service*.
>
> NOW THEREFORE, in view of the foregoing, the Resolution of the Commission *(Second Division)* promulgated on 13 May 2022 is hereby declared FINAL and EXECUTORY.[38] (Emphases omitted; italics supplied)

On May 24, 2022, the OCOC issued an Entry of Judgment.[39]

Thereafter, counsel for Panelo filed a Motion for Execution which was received by the OCOC *via* electronic email (e-mail) on May 25, 2022. He also filed an Urgent Reiterative Motion for Execution *via* e-mail on May 27, 2022.[40]

Meanwhile, Sibuma submitted the following: *(a)* Motion to Withdraw as Counsel filed on May 26, 2022; *(b)* Entry of Appearance filed on May 27, 2022; *(c)* Opposition to the Motion for Execution filed *via* e-mail on May 27, 2022; *(d)* Motion for Reconsideration (of the assailed Resolution dated May 13,

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[37] Id. at 56.

[38] Id. at 56-67.

[39] Id. at 58-59.

[40] Id. at 65.

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2022) filed on May 27, 2022; *(e)* Supplement to the Motion for Reconsideration (of the assailed Resolution dated May 13, 2022) received by the OCOC on May 30, 2022; and *(f)* Motion to Quash and/or Recall Certificate of Finality received by the OCOC on May 31, 2022.[41]

In his Motion for Reconsideration,[42] Sibuma alleged that the assailed Resolution dated May 13, 2022 was received by his counsel electronically on May 22, 2022 and physically on May 25, 2022.[43]

Sibuma argued that under Section 2,[44] Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523, the petition must be filed within five days from the last day for the filing of CoC, which in the case fell on October 8, 2021. Sibuma pointed out that Panelo's petition should have been dismissed for having been belatedly filed on November 2, 2021.[45]

On the merits, Sibuma maintained that his domicile remains to be Agoo, La Union, and that in any event, he is a *bona fide* resident thereof. He argued that while he may have been absent thereat for some time, his intention to return to Agoo, La Union has been established by the following circumstances: *(1)* he was born in Agoo, La Union on October 19, 1973 as evidenced by his Certificate of Live Birth; *(2)* he acquired properties in Agoo, La Union, declaring them for taxation purposes and paying real property taxes due thereon; *(3)* he studied and completed his Secondary Education at the Don Mariano Marcos Memorial State

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41 Id.

42 Id. at 68-79.

43 Id. at 70.

44 Section 2, Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523 provides:

> Section 2. *Period to File Petition*. – The Petition must be filed *within five (5) days from the last day for filing of certificate of candidacy*; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy. (Italics supplied.)

45 *Rollo*, pp. 71-72.

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University Laboratory High School, Agoo, La Union; *(4)* he paid bills for utilities of his properties located at Brgy. Sta. Barbara, Agoo, La Union; *(5)* his neighbors and acquaintances confirmed and attested that he is a resident of Brgy. Sta. Barbara, Agoo, La Union; and *(6)* he is a registered voter of Agoo, La Union.[46]

Invoking the will of the electorate of Agoo, La Union, Sibuma argued that for failure of the COMELEC Second Division to resolve Panelo's petition to deny due course to and/or cancel his CoC prior to the May 9, 2022 Elections and his proclamation, the cancellation of his CoC was no longer justified. He argued that Panelo's petition should have been dismissed.[47]

On June 2, 2022, counsel for Panelo filed *via* e-mail the following: *(a)* Reply to [Sibuma's] Opposition to Motion for Execution; *(b)* Opposition to [Sibuma's] Motion to Quash and/or Recall Certificate of Finality; and *(c)* Opposition to [Sibuma's] Motion for Reconsideration.[48]

In a Writ of Execution[49] dated June 29, 2022, the COMELEC Special Second Division ordered the execution of the Resolution dated May 13, 2022 *annulling Sibuma's proclamation and ordering the proclamation of Eriguel in his stead*, thus:

ACCORDINGLY, the Commission (Special Second Division) hereby DIRECTS the Municipal Board of Canvassers (MBOC) of the Municipality of Agoo, La Union to RECONVENE at the Session Hall, 8th Floor, Palacio del Gobernador, General Luna St., Intramuros, Manila on Tuesday, 05 July 2022 at 2 o'clock in the afternoon and thereafter:

1. ANNUL the proclamation of Frank Ong Sibuma as the Municipal Mayor of the Municipality of Agoo, La Union;

2. AMEND/CORRECT, the Certificate of Canvass of Votes and Proclamation for the position of Mayor, in the Municipality of Agoo, La Union, based on the Amended Statement of Votes by Precint;

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[46] Id. at 74-75.

[47] Id. at 76-77.

[48] Id. at 51-53.

[49] Id. at 63-67.

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3. PROCLAIM STEPHANIE ANN ERIGUEL CALONGCAGON who garnered Sixteen Thousand Six Hundred Three (16,603) votes as the duly elected Municipal Mayor for the Municipality of Agoo, La Union; and

4. FURNISH a copy of the Certificate of Proclamation to the Department of Interior and Local Government (DILG), Secretary of the Sangguniang Bayan for the Municipality of Agoo, La Union and affected parties.

SO ORDERED.[50] (Emphases omitted.)

Notably, the COMELEC Special Second Division no longer acted on the respective filings of Sibuma and Panelo relative to the assailed Resolution dated May 13, 2022; and the Certificate of Finality and the Entry of Judgment both dated May 24, 2022.

Hence, the petition anchored on the following grounds:

I.

Respondent [COMELEC] committed grave abuse of discretion amounting to lack or excess of jurisdiction when it gave due course to the Petition to Deny Due Course and/or Cancel COC of [Sibuma], even if the said Petition was clearly filed out of time[;]

II.

Respondent [COMELEC] committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied [Sibuma's] right to appeal to the [COMELEC] En Banc the assailed Resolution even if [he] timely filed [his] Motion for Reconsideration[;]

III.

Respondent [COMELEC] committed grave abuse of discretion amounting to lack or excess of jurisdiction when it prematurely issued the assailed Writ of Execution.[51]

On July 4, 2022, Sibuma filed a Supplemental Petition for *Certiorari* (with Extremely Urgent Application for Temporary

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[50] Id. at 66-67.

[51] Id. at 18.

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Restraining Order/*Status Quo Ante* Order and/or Writ of Preliminary Injunction and Motion for Conduct of Special Raffle).[52]

On July 5, 2022, the Court granted the application for injunctive reliefs by issuing a Temporary Restraining Order and *Status Quo Ante* Order[53] (TRO and *SQA* Order), directing as follows:

> NOW THEREFORE, effective immediately and continuing until further orders from this Court, You, respondents COMELEC, Alma L. Panelo and Stefanie Ann Eriguel Calongcagon, your agents, representatives, or persons acting in your place or stead, are hereby *ENJOINED from implementing the assailed COMELEC Resolution dated May 13, 2022 in SPA No. 21-172 (DC) and the corresponding Writ of Execution dated June 29, 2022*. The COMELEC directive to the Municipal Board of Canvassers of the Municipality of Agoo, La Union to reconvene at the Session Hall, 8th Floor, Palacio del Gobernador, General Luna Street, Intramuros, Manila on Tuesday, July 5, 2022 at 2 o'clock in the afternoon and thereafter is restrained.[54] (Italics and underscoring supplied)

Panelo, Eriguel, and the COMELEC, through the Office of the Solicitor General (OSG) (collectively, respondents), filed their respective Comments[55] on the petition maintaining that the assailed Resolution cancelling Sibuma's CoC had already attained finality and may no longer be disturbed. In any event, they insist that the cancellation of Sibuma's CoC has factual and legal bases.

All respondents pray that the TRO and *SQA* Order issued by the Court on July 5, 2022 be lifted on the ground that the acts sought to be enjoined from had already become *fait accompli*.[56] They aver that pursuant to the assailed Writ of Execution dated June 29, 2022, the Municipal Board of Canvassers of Agoo, La Union reconvened on July 5, 2022. On the same day, it annulled Sibuma's proclamation and, thereafter, proclaimed private respondent Eriguel in his stead as the duly elected Mayor of Agoo, La Union.

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[52] Id. at 310-339.

[53] Id. at 378-380. See also Court Resolution dated July 5, 2022, id. at 376-377.

[54] Id. at 379.

[55] Id. at 382-421; 528-571; 586-604.

[56] "An accomplished fact." Id. at 418-420; 559; 603.

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In his Comment/Opposition[57] dated August 23, 2022, Sibuma opposes respondents' prayer for the lifting of the TRO and *SQA* Order dated July 5, 2022.

On the basis of the parties' submissions, the Court deems the case ready for resolution.

The Issue

The case rests upon the resolution of the core issue: whether the COMELEC Second Division gravely abused its discretion when it ordered the cancellation of Sibuma's CoC and the nullification of his proclamation as the duly elected Mayor of Agoo, La Union.

The Ruling of the Court

The Court grants the petition.

Preliminarily, the Court addresses the following procedural issues relating to the following: *(a)* timeliness of Panelo's petition, and *(b)* finality of the assailed Resolution dated May 13, 2022.

Panelo's Section 78 Petition was timely filed.

There is no merit in Sibuma's argument that Panelo's petition should have been dismissed for having been filed beyond the five-day reglementary period under the COMELEC Rules.

Section 78 of the OEC reads:

> Section 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. (Italics in the original and supplied.)

Relatedly, Section 2, Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523, provides:

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[57] Id. at 639-649.

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Section 2. *Period to File Petition*. — The Petition must be filed *within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy* subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy. (Italics in the original and supplied.)

Evidently, the filing of a petition to deny due course to or cancel a certificate of candidacy must be made not later than *25 days* from the time of the filing of the certificate of candidacy.[58] Here, Sibuma filed his CoC on October 7, 2021. Counting 25 days therefrom, Panelo timely filed his petition on November 2, 2021.

On the issuance of Certificate of Finality, Entry of Judgment, and Writ of Execution

The core argument against the petition is that the Resolution dated May 10, 2022 cancelling Sibuma's CoC had already become final and executory on the ground that he failed to timely file his motion for reconsideration thereof. The assailed Certificate of Finality dated May 24, 2022 pertinently states:

WHEREAS, the case records show that *[Sibuma] was served a copy of the aforementioned Resolution on 16 May 2022 via e-mail* and using the official e-mail address of the Clerk of Court of the Commission. This is based on the proof of service or e-mail of the Clerk of the Commission.

WHEREAS, Section 7, Rule 23 of Resolution No. 9523, in relation to Section 1[3](c), Rule 18 of the 1993 COMELEC Rules of Procedure, as amended by Resolution No. 7808, provides that unless a motion for reconsideration is seasonably filed, the resolution or decision of a Division becomes final and executory *five (5) day after receipt by the parties of the promulgated copy thereof*.

WHEREAS, the records show that [Sibuma] has not filed any motion for reconsideration within the five-day reglementary period *reckoned from the date of service*.[59] (Italics supplied and emphasis omitted.)

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[58] *Aznar v. Commission on Elections*, 264 Phil. 307, 318 (1990), citing Section 78 of BP 881.

[59] *Rollo*, p. 56.

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The COMELEC Second Division reckoned the running of the five-day reglementary period on May 16, 2022, treating it as the date of service of the assailed Resolution, as well as Sibuma's receipt thereof through his counsel.[60] It made reference to the e-mail[61] sent by the OCOC to the parties on May 16, 2022 indicating therein the e-mail address of Sibuma's counsel as one of the addressees thereof. In treating the e-mail as proof of service, no regard was made whether receipt thereof was acknowledged by Sibuma's counsel or that the attached Resolution dated May 13, 2022 was opened by him. Notably, the records are wanting of any proof of service—by way of an affidavit of service executed by the COMELEC Clerk of Court who sent the assailed Resolution dated May 2022—as required under Section 9,[62] Rule 2 of COMELEC Resolution No. 10673.[63]

On the other hand, Sibuma asserts that he timely filed his Motion for Reconsideration on May 27, 2022, reckoning the five-day period from May 22, 2022. He maintains that it was only on May 22, 2022 that his counsel "received, seen and read" the e-mail sent by the OCOC on May 16, 2022.[64]

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[60] Id. at 541.

[61] Id. at 257.

[62] Section 9, Rule 2 of COMELEC Resolution No. 10673 provides:

> SECTION 9. *Proof and Completeness of Service by a Party*. — 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, copies of which shall be attached to the verified pleadings, memoranda, comments, briefs, and other submissions filed pursuant to Section 1, Rule 2. (Italics in the original and supplied.)

[63] In re: Guidelines on Electronic Filing, Conduct of Hearings/Investigations/ Inquiries via Video Conference, and Service, approved on June 25, 2020.

[64] *Rollo*, pp. 245-246.

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Without a doubt, the treatment of the subject electronic service of the assailed COMELEC Resolution raises a highly technical matter, the intricacies of which should have prompted the COMELEC Second Division to liberally apply its own rules in order to pave the way to the complete resolution of the case, the same being imbued with public interest, especially so that the people of Agoo had already elected Sibuma as their Mayor. Further, the records reveal that the OCOC indeed received *via* e-mail his Motion for Reconsideration on May 27, 2022. He even paid the filing fee thereof in the amount of ₱1,000.00 as evidenced by Official Receipt No. 13385505 issued by the COMELEC Cash Division.[65]

Indeed, the COMELEC is empowered to suspend its own rules as provided under Section 4, Rule 1 of the COMELEC Rules of Procedure, thus:

> 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.

This authority enables the COMELEC "to cope with all situations without concerning itself about procedural niceties that do not square with the need to do justice, in any case without further loss of time, provided that the *right of the parties to a full day in court is not substantially impaired*."[66] In *Mayor Hayudini v. Commission on Elections*[67] *(Hayudini)*, the Court instructs:

> As a general rule, statutes providing for election contests are to be liberally construed in order that the will of the people in the choice of public officers may not be defeated by mere technical objections. Moreover, it is neither fair nor just to keep in office, for an indefinite period, one whose right to it is uncertain and under suspicion. It is imperative that his claim be immediately cleared, not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure that protract

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[65] Id. at 264-265.

[66] *Caballero v. COMELEC*, 770 Phil. 94, 109-110 (2015), citing *Datu Mentang v. Commission on Elections*, 299 Phil. 711, 722 (1994).

[67] 733 Phil. 822 (2014).

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and delay the trial of an ordinary action. This principle was reiterated in the cases of *Tolentino v. Commission on Elections* and *De Castro v. Commission on Elections*, where the Court held that "in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC must not be straitjacketed by procedural rules in resolving election disputes."

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives — ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.[68] (Italics in the original and underscoring supplied.)

Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure, outline the correct steps to be taken in the event motions for reconsideration are filed, *viz.*:

Sec. 5. *How Motion for Reconsideration Disposed of*. — Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

Sec. 6. *Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration*. — The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification thereof.

The foregoing notwithstanding, the Court does not find proper remanding Sibuma's Motion for Reconsideration for resolution

[68] *Id.* at 840-841. Citations omitted.

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by the COMELEC *En Banc*. Considering the urgency inherent in the resolution of election cases, the Court proceeds to resolve the propriety of the issuance of the assailed Entry of Judgment and Writ of Execution, as the issues relating to the cancellation of the CoC of Sibuma and the annulment of his proclamation have been raised by the parties before the Court. As underscored in the following discussion, the assailed issuances are tainted with grave abuse of discretion.

COMELEC Second Division's grave abuse of discretion

The provision on *false material representation* under Section 78 of the Omnibus Election Code relates to the contents of a certificate of candidacy under Section 74 of the same Code. Thus, where a candidate declares that he or she is eligible to run for public office when in truth he or she is not, such misrepresentation is a ground for a Section 78 petition.

Sections 74 and 78 read:

SECTION 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. (Underscoring supplied.)

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SECTION 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

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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. (Underscoring supplied.)

While the foregoing provisions are silent on the element of deceit, the Court in *Hayudini* underscored that aside from the requirement of materiality, it is essential that a false representation under Section 78 be committed with a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible."[69] In other words, the false material representation "must be made with a *malicious intent to deceive the electorate* as to the potential candidate's qualifications for public office."[70]

Here, there is no substantial evidence that Sibuma committed a *deliberately* false and *deceptive* representation of his residence qualifications in his CoC. In fact, a thorough reading of the assailed Resolution cancelling his CoC reveals the paucity of such finding of *intent to deceive* essential in a Section 78 petition.

Ordinarily, the appreciation by the COMELEC of evidence before it is beyond the scrutiny of the Court, the former being an independent constitutional body of a level higher than statutory administrative bodies.[71] However, upon showing that it issued findings not supported by evidence or are contrary to evidence, then it is deemed to have acted capriciously and whimsically.[72] Resulting errors arising from grave abuse of discretion mutate from an error of judgment to one of jurisdiction;[73] in which case, the Court is constitutionally duty-bound to step in and correct the grave abuse of discretion committed by the COMELEC.[74]

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[69] *Mayor Hayudini v. Commission on Elections*, supra note 67 at 844-845 (2014). Italics supplied.

[70] Id. at 845, citing *Velasco v. Commission on Elections*, 595 Phil. 1172, 1185 (2008).

[71] *Sevilla v. Commission on Elections*, 843 Phil. 142, 156-157 (2018).

[72] Id. at 157.

[73] Id., *Delos Reyes v. Commission on Elections*, 545 Phil. 739, 748 (2007).

[74] *Mayor Varias v. COMELEC*, 626 Phil. 292, 315 (2010), citing *De Guzman v. COMELEC*, 470 Phil. 591 (2004).

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In *Mitra v. Commission on Elections*,[75] the Court, confronted with a similar issue on false representation on residence requirement in a CoC, set aside the cancellation of the CoC of petitioner therein for *failure* of the COMELEC "to critically consider whether [he] deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan."[76] The Court underscored that without such finding, a cancellation of CoC cannot be sustained.

Indeed, the *lack of findings of intent* on the part of Sibuma *to deceive the electorate* of the Municipality of Agoo, La Union taints the issuance of the assailed Resolution cancelling his CoC, as well as the Writ of Execution nullifying his proclamation, with grave abuse of discretion amounting to lack or excess of jurisdiction.[77]

It bears further underscoring, that the cancellation of a certificate of candidacy is "*not based on the lack of qualifications* but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he [or] she is running for."[78] This reiterates the indispensability of the element of intent to deceive the electorate in a Section 78 petition, the lack of which gives rise to a presumption of good faith in favor of a candidate's declaration in his or her CoC under oath. As Associate Justice Alfredo Benjamin S. Caguioa comprehensively underscored in his Dissenting Opinion in *Villamor v. Commission on Elections*,[79] Section 74 only requires that the facts declared in the CoC be true *to the best of the candidate's knowledge*,[80] thus:

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[75] 636 Phil. 753 (2010).

[76] Id. at 78.

[77] *Dano v. COMELEC*, 794 Phil. 573, 595 (2016).

[78] *Fermin v. Commission on Elections*, 595 Phil. 449, 465 (2008). Italics in the original and omitted.

[79] G.R. No. 250370 (Notice), October 5, 2021.

[80] See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Villamor v. Commission on Elections*, G.R. No. 250370 (Notice), October 5, 2021.

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Section 74 requires the inclusion in the CoC of a declaration that the facts stated therein are true to the best of the candidate's knowledge. Evidently, this declaration qualifies all of the information that Section 74 requires. In other words, the law does not demand from candidates perfect accuracy and absolute certainty in the information that they supply in a CoC, but only such facts which they believe to be true to the best of their knowledge. This means that *a candidate who makes a representation which is subsequently found to be false, would still be compliant with Section 74 if he or she made such representation in good faith*. What is material is that at the time that he or she made such declaration, he or she believed said information to be true to the best of his or her knowledge.

Accordingly, the reference by Section 78 to Section 74 effectively limits the scope of Section 78 to only those *false material representations which were knowingly made, i.e., those which the candidate did not know to be true to the best of his or her knowledge or which he or she downright knew to be false*. A contrary interpretation of Section 78 would lead to the absurdity that a CoC of a candidate who had fully complied with the requirements under Section 74 can nonetheless be denied due course or cancelled under Section 78. To stress, Section 78 requires that the ground for the petition be the existence of a false material representation in the CoC *as required in Section 74* and Section 74 requires only facts which are true to the best of the candidate's knowledge.[81] (Italics in the original and supplied.)

Maintaining that his domicile remains to be in Agoo, La Union, and that he is a *bona fide* actual resident thereof, Sibuma adduced documents seeking to establish the following: *(1)* he was born in Agoo, La Union on October 19, 1973 as evidenced by his Certificate of Live Birth;[82] *(2)* he acquired properties in Agoo, La Union, declaring them for taxation purposes and paying real property taxes due thereon;[83] *(3)* he studied and completed his Secondary Education at the Don Mariano Marcos Memorial State University Laboratory High School, Agoo, La Union as evidenced by his Secondary Student's Record indicating his attendance for four complete school years, 1986-1987, 1987-1988, 1988-

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[81] Id.

[82] *Rollo*, p. 98.

[83] Id. at 117-120.

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1989;[84] *(4)* he paid telephone and electricity bills in his name for his property located at Brgy. Sta. Barbara, Agoo, La Union;[85] *(5)* his neighbors and acquaintances confirmed that he is a resident of Brgy. Santa Barbara, Agoo, La Union as attested to by them in his Affidavit of Residency;[86] and *(6)* he is a registered voter of Agoo, La Union as evidenced by his Voter's Certification[87] issued by the Office of Election Officer of the COMELEC, Agoo, La Union on August 9, 2021, stating that he is a registered voter of Agoo, La Union as of February 2, 2021 and a resident thereof for more than one year prior to the May 9, 2022 Elections.

The Court sees Sibuma's declaration of residency in his CoC as proceeding from his *good faith* and firm belief that he possesses the required residency for the position vied for—*i.e.*, his domicile remains to be in Agoo, La Union, and that he is a *bona fide* resident thereof—as confirmed by his documents in support thereof.

It is settled jurisprudence that a domicile of an individual is not lost by the mere fact that he or she has maintained residences in different places. In *Romualdez-Marcos v. Commission on Elections*,[88] the Court held:

> [A]n individual does not lose his domicile even if he has lived and maintained residences in different places. Residence, it bears repeating, implies *a factual relationship to a given place for various purposes*. The absence from legal residence or domicile to pursue a profession, to study or to do other things of a temporary or semi-permanent nature does not constitute loss of residence.[89] (Italics supplied.)

More significantly, in *Faypon v. Quirino*,[90] the Court explained:

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[84] Id. at 207-208.

[85] Id. at 99-114.

[86] Id. at 121-127.

[87] Id. at 97.

[88] 318 Phil. 329 (1995).

[89] Id. at 382.

[90] 96 Phil. 294 (1954).

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A citizen may leave the place of his birth to look for "greener pastures," as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from his professional or business activities; so there he registers himself as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the *animus revertendi* to his home, to his domicile or residence of origin has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to his place of birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another.[91] (Underscoring supplied.)

Contrary to the conclusion of the COMELEC Second Division, the Court finds that Sibuma has more than sufficiently proven by substantial evidence not only his actual physical presence in Agoo, La Union for a period of one year prior to the May 9, 2022 Elections but also, more importantly, the intentions required by jurisprudence, *i.e.*, *"animus manendi"* and *"animus revertendi"* to establish Agoo, La Union as his domicile or *legal residence*, that is, "the place from which [he] could or might depart, or be absent temporarily for a certain purpose and to which he always intended to return."[92] *First*, Sibuma was born in Agoo, La Union and obtained his secondary education therein. *Second*, his evidence established his actual physical presence in Agoo, La Union and that he, together with his wife, owns a residential house and other real properties thereat. There being no positive proof that he abandoned his Agoo, La Union domicile for another, his domicile therein cannot be doubted.

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[91] Id. at 299-300.

[92] *In re: Cezar v. Republic*, 112 Phil. 1102 (1961), citing *King v. Republic*, 89 Phil. 4, 6 (1951).

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COMELEC Second Division's grossly unreasonable appreciation and evaluation of evidence

Suffice it to state that Panelo carries the burden under Section 78 to prove that Sibuma falsely represented his residence qualifications in his CoC. One who alleges malice has the burden of proving it.[93] Indeed, "contentions must be proved by competent evidence, and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense."[94] Placed in this evidentiary perspective, the COMELEC Second Division's grave abuse of discretion lay not only in shifting the burden of evidence upon Sibuma but also in making a *grossly unreasonable* appreciation and evaluation of the evidence that he, nevertheless, adduced.

First, the COMELEC Second Division faulted Sibuma in failing to establish his *bodily* physical presence in Agoo, La Union for a period of one year prior to the May 9, 2022 Elections. It found particularly convincing the Certification[95] dated October 29, 2021 issued by *Punong Barangay* Eriguel of Sta. Barbara, Agoo, La Union, stating that Sibuma is not a resident thereof.

However, while a *barangay*, through its secretary, is required by the Local Government Code to keep an updated record of all its inhabitants, certifications of residency issued by a *punong barangay* are not conclusive, as he or she is merely *presumed* to know who the residents are in his or her own barangay.[96] Needless to state, the Certification issued by *Punong Barangay* Eriguel, who is the paternal aunt of respondent Eriguel Calongcagon, makes no particular reference to a statement or like certification from the *barangay* secretary. Indeed, the certification's *pro forma* statement of *no record of residency* necessarily yields to Sibuma's positive evidence collectively establishing not only his physical presence but also his domicile in Agoo, La Union.

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[93] *See* Separate Concurring Opinion of J. Austria-Martinez in *Tecson v. Commission on Elections*, 468 Phil. 421, 565 (2004).

[94] Id.

[95] *Rollo*, p. 459.

[96] *Mitra v. Commission on Elections*, supra note 75 at 783.

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Second, the COMELEC Second Division gave more weight to the individual affidavits of recantation executed by eight of the original 41 affiants in Sibuma's Affidavit of Residency. In doing so, the COMELEC Second Division *could only surmise* on the supposed incredulity of the declarations of the 41 affiants in Sibuma's Affidavit of Residency on the *sole* premise that they jointly attested to the same narration of facts therein, as opposed to the separate and individual affidavits of the eight affiants repudiating their earlier declarations.

Considering that the contending affidavits are notarized documents upon which the presumption of regularity equally rests, motives for repudiation as well as the veracity of the statements made in the affidavits of recantation should be looked into with suspicion.[97] Notably, the subject affidavits of recantation were executed by seven affiants on the same day, December 3, 2021, and by one affiant on December 4, 2021 before the same notary public. Their statements provided general statements of repudiation—*i.e.*, that they did not read or understand the contents of the Affidavit of Residency that they previously signed. Indeed, the same incredulity may be attributed to the subsequent statements of the recanting affiants made barely a week after they voluntarily and categorically signified personally knowing Sibuma as a resident of Sta. Barbara, Agoo, La Union. Ranged against the impending May 9, 2022 Elections, the general tenor of their repudiation is highly suspect. The fact that they executed their affidavits individually and separately is too trivial for the COMELEC Second Division to consider as this may be deliberately and conveniently resorted to by them. The COMELEC Second Division simply had no convincing basis to tilt the balance of credibility in favor of the repudiating affiants.

Third, the COMELEC Second Division faulted Sibuma with material misrepresentation when he declared in his CoC that *"he will be a resident of Brgy. Sta. Barbara, Agoo, La Union for 1 year and 3 months on the day before the May 9, 2022*

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[97] *People v. P/Supt. Lamsen*, 721 Phil. 256, 259 (2013).

Elections."[98] Reckoning such period from January 1, 2021, the COMELEC Second Division concluded that Sibuma was not being truthful in his declaration because this was belied by his utility bills indicating that the consumption of electricity and installation of utilities occurred only from February 2021 onwards.[99] Again, the discrepancy noted by the COMELEC Second Division is too trivial and inconsequential. The supposed discrepancy does not render him unable to fulfill the one-year residence requirement under the LGC for the position vied for.

As shown, the COMELEC Second Division gravely erred in cancelling Sibuma's CoC on the basis of the foregoing hasty conclusion, surmises, and trivial matters. This egregious error proceeding from its *grossly unreasonable appreciation and evaluation of evidence* is constitutive of grave abuse of discretion.[100]

Doubts, if at all, should have been resolved in favor of Sibuma's residence qualification, in order to give fullest effect to the manifest will of the people of Agoo electing him as their mayor.

Notably, the COMELEC Second Division failed to resolve the subject petition prior to the May 9, 2022 Elections, contrary to Section 78 of the OEC providing that a petition for cancellation of certificate of candidacy "shall be decided, after due notice and hearing, *not later than fifteen days before the election*."[101] The name of Sibuma remained on the ballots, and on the day of the elections, he was decisively elected by the people of Agoo as their Mayor. He prevailed with an overwhelming 21,364 votes against Eriguel's 16,603 votes.

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[98] *Rollo*, 347.

[99] Id. at 51.

[100] See Concurring Opinion of Associate Justice Arturo D. Brion in *Dano v. Commission on Elections*, supra note 77 at 626.

[101] Section 78 of BP 881.

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Under the situation, the COMELEC Second Division should have been guided by the jurisprudential directive that utmost efforts be exerted in resolving the case in a manner that would give effect to the will of the electorate. It should have accorded Sibuma "every possible protection, defense and refuge, in deference to the popular will."[102] It should have heeded the majority's verdict by resolving all *doubts* in favor of Sibuma's residence qualification.[103] Instructive on the matter is *Frivaldo v. Commission on Elections*,[104] thus:

> In any action involving the possibility of a reversal of the popular electoral choice, this Court must *exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority*, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the *ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility* and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.[105] (Italics supplied and citation omitted.)

Contrary to the foregoing, however, the COMELEC Second Division proceeded to cancel Sibuma's CoC in its Resolution dated May 13, 2022. Thereafter, it issued a Certificate of Finality and an Entry of Judgment, both dated May 24, 2022, noting that Sibuma failed to file a timely motion for reconsideration within five days from receipt thereof *via* e-mail. Eventually, the COMELEC Special Second Division issued a Writ of Execution on June 29, 2022 annulling Sibuma's proclamation as the duly elected Mayor of the Municipality of Agoo, La Union and proclaiming private respondent Eriguel in his stead.

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[102] *Frivaldo v. Comelec*, 327 Phil. 521, 574 (1996).

[103] See Concurring Opinion of Associate Justice Arturo D. Brion in *Dano v. Commission on Elections*, supra note 77 at 627.

[104] 327 Phil. 521 (1996).

[105] Id. at 574-575.

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It bears underscoring that prior to the issuance of the Writ of Execution, Sibuma filed the following: *(a)* Motion to Withdraw as Counsel filed on May 26, 2022; *(b)* Entry of Appearance filed on May 27, 2022; *(c)* Opposition to the Motion for Execution[106] filed *via* e-mail on May 27, 2022; (d) Motion for Reconsideration[107] (of the assailed Resolution dated May 13, 2022) filed on May 27, 2022; *(e)* Supplement to the Motion for Reconsideration[108] dated May 30, 2022 which was received by the OCOC on May 30, 2022;[109] *(f)* Motion to Quash and/or Recall Certificate of Finality[110] dated May 31, 2022 which was received by the OCOC on May 31, 2022; *(g)* Omnibus Motion[111] dated June 14, 2022 seeking to: expunge Panelo's Motion for Execution, immediately resolve his Motion to Quash and/or Recall Certificate of Finality and Motion to Recall Entry of Judgment, and admit of his Supplemental Motion for Reconsideration filed before the COMELEC *En Banc*; and *(h)* Extremely Urgent *Ex-Parte* Motion to Set for Status Hearing all Pending Motions[112] dated June 14, 2022.

On the other hand, Panelo filed the following: *(a)* Reply [to (Sibuma's) Opposition to Motion for Execution][113] dated June 2, 2022; *(b)* Opposition to [Sibuma's] Motion to Quash and/or Recall Certificate of Finality; and *(c)* Opposition to [Sibuma's] Motion for Reconsideration.

Considering that the Writ of Execution was issued *only* on June 29, 2022, or more than a month from the issuance of the assailed Resolution cancelling Sibuma's CoC, the COMELEC Second Division could have reasonably acted on the respective filings of Sibuma and Panelo. Pursuant to the aforementioned

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[106] *Rollo*, pp. 486-496.

[107] Id. at 68-79.

[108] Id. at 226-249.

[109] Id. at 252-253.

[110] Id. at 244-249.

[111] Id. at 283-299.

[112] Id. at 305-309.

[113] Id. at 254-279.

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jurisprudential directive and the principle on liberal application of COMELEC Rules of Procedure, Sibuma's case should have been certified to the COMELEC *En Banc* for resolution. Instead, the COMELEC Special Second Division merely contented itself on the supposed failure of Sibuma to timely file his Motion for Reconsideration of the assailed Resolution cancelling his CoC and conveniently noted his Motion for Reconsideration without action along with his other filings.

Conclusion

Sibuma has not committed any materially false and deceptive representation in his CoC relating to his residence qualifications. Panelo failed to prove this claim by substantial evidence. On the other hand, Sibuma clearly demonstrated his Agoo, La Union domicile. Therefore, the COMELEC Second Division had no factual and legal bases in cancelling his CoC, more so in annulling his proclamation as the duly elected Mayor of the Municipality of Agoo, La Union. It committed grave abuse of discretion amounting to lack or excess of jurisdiction in doing so on the basis of its *grossly unreasonable appreciation and evaluation of evidence* before it.

WHEREFORE, the petition is **GRANTED**. The assailed COMELEC Second Division Resolution dated May 13, 2022, the Certificate of Finality dated May 24, 2022, the Entry of Judgment dated May 24, 2022, and the Writ of Execution dated June 29, 2022, all in SPA No. 21-172 (DC), are **ANNULLED** and **SET ASIDE**. The petition to deny due course to or cancel the Certificate of Candidacy of petitioner Frank Ong Sibuma is **DENIED**.

Accordingly, the Certificate of Canvass of Votes and Proclamation of Winning Candidate for Municipal Mayor dated May 10, 2022 proclaiming petitioner Frank Ong Sibuma as the duly elected Mayor of the Municipality of Agoo, La Union **STANDS**. The *Status Quo Ante* Order issued by the Court on July 5, 2022 is **MADE PERMANENT**.

SO ORDERED.

Gesmundo, C.J., Leonen, Zalameda, M. Lopez, Gaerlan, Dimaampao, and *Kho, Jr., JJ.*, concur.

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Lazaro-Javier, J., see concurrence.

Caguioa, J., see dissent.

Hernando, J. Lopez, Marquez, and *Singh, JJ.*, join the dissent of Justice Caguioa.

Rosario, J., on official leave.

APPEARANCES OF COUNSEL

The Law Firm of Garay Usita Concha & Jimenea and *Gana Atienza Avisado Law Offices* for petitioner.

The Solicitor General for public respondents.

Gialogo & Associates for private respondent Alma L. Panelo.

Dennis P. Manalo Law Office for private respondent Stefanie Ann Eriguel Calongcagon.

CONCURRENCE

LAZARO-JAVIER, *J.*:

Sovereignty resides in the people and all government authority emanates from them.[1] *Malabaguio v. COMELEC*[2] paints a clear picture of what should be the overriding policy of the Commission on Elections (COMELEC) as a Constitutional Commission and guardian of the most hallowed right of a Filipino—*the right to vote and be voted upon*:

> This Court has repeatedly stressed that the **importance of giving effect to the sovereign will of the people as expressed through the ballot must be given fullest effect**. In case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, in *Pangandaman v. COMELEC, et al.*, this Court emphatically stated that:
>
> **[U]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but**

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[1] Const., art. II, sec. 1.

[2] *Malabaguio v. COMELEC*, 400 Phil. 551 (2000) [Per J. Ynares-Santiago, *En Banc*].

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it should do everything to have that sovereignty obeyed by all. Well done is always better than well said. Corollarily, laws and statutes governing election contests[,] especially the appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.[3] (Emphases supplied)[3]

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At balance, the question really boils down to **a choice of philosophy and perception of how to interpret and apply the laws relating to elections**; literal or liberal; the letter or the spirit; the naked provision or the ultimate purpose; legal syllogism or substantial justice; in isolation or in context of social conditions; harshly against or gently in favor of the voter's obvious choice. **In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms**."[4] (Emphases supplied)

In keeping with the sovereign will of the electorate, I register my assent to the excellent *ponencia* of Associate Justice Henri Jean Paul B. Inting and discuss the specifics of my concurrence.

As I have stressed in my separate concurrence in *Buenafe v. COMELEC*,[5] doubts cannot unseat the clear popular choice. The sovereign will should be respected:

Here, the fact of consequence is the *overwhelming choice* of the sovereign will. It *shapes* how election laws are to be explained and enforced.

Mere *doubts* arising from asserted interpretations of election laws cannot unseat the *clear popular choice*, his duly elected government *cannot be thwarted*. It is *not within this Court's power* to found a government enabled only by *complex but little understood legalisms*.

x x x x

In **G.R. No. 260374** and **G.R. No. 260426**, the **choice of leaders of the sovereign-of-the-day *cannot be overturned* by speculative and far-**

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[3] Id. at 551–556.

[4] Id. at 567.

[5] G.R. No. 260374, June 28, 2022 – See *Separate Concurrence of Associate Justice Amy C. Lazaro-Javier* [Per J. Zalameda, *En Banc*].

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fetched arguments. In case of *doubt*, as here, the **Court will for sure allow the sovereign will to be respected.** This is to be expected. The election of our leaders is *the greatest of all political questions*. It has been committed *not just textually but as a matter of long-standing and unassailable practice* to the conviction and belief of *our electors* since time immemorial. Therefore, *in applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms*. **Win or lose as regards the candidates we have highly esteemed, the clear choice *nonetheless* binds us all**.[6] (Emphases and italics supplied)

There is no material misrepresentation of residency.

The COMELEC Second Division ruled that petitioner Frank Ong Sibuma's (Sibuma) representation of residency in his certificate of candidacy (COC) pertains to his qualification for local elective official under Section 39(a) of Republic Act No. 7160 or "The Local Government Code of 1991," *viz.*:

> Section 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.[7] (Emphasis supplied)

The COMELEC ruled that Sibuma must establish both his: (a) physical presence in the Municipality of Agoo, La Union; and (b) intention to make it his domicile. On this score, however, he failed to establish his actual physical presence at the place where he sought to be elected as mayor. Thus, it cancelled his COC under Section 78 of the Batas Pambansa Bilang 881 or "The Omnibus Election Code of the Philippines":

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6 Id.

7 Republic Act No. 7160, The Local Government Code of 1991, Approved on October 10, 1991.

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SECTION 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.[8]

Was there a material misrepresentation? *There was none*.

There is no doubt that *eligibility* may be *falsely represented* in a COC for which a petition under Section 78 of the Omnibus Election Code of the Philippines may be triggered. This is the ruling of the Court in a host of cases including *Halili v. Commission on Elections*.[9] To be clear, however, the false representation is not simply about the legal conclusion of a candidate's eligibility. Rather, the misrepresentation includes the *facts* from which the legal conclusion of eligibility or ineligibility is to be inferred. Hence, Section 78 is not just penalizing the expression of the legal opinion or belief by the candidates about their eligibility, which would be unfair if it were just that, but rather the *false statements of fact* that the candidates know or ought to know from which their ineligibility arises.

Verily, a claim of eligibility though the candidates had not been residents of the elctoral unit would constitute a false representation of their eligibility if the candidates were *not in fact residents* of that locality.

Arguably, a *misrepresentation* about the candidates' eligibility in cases where the factual basis for the claim is *not egregiously absent*, as in this case, while still an instance of a false material representation under Section 78, would *not* be *actionable* under this provision since the element of *malicious intent* or *mens rea* would be absent.

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[8] Batas Pambansa Bilang 881, The Omnibus Election Code of the Philippines, Approved on December 3, 1985.

[9] G.R. No. 231643, January 15, 2019 [Per J. Carpio, *En Banc*].

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In *Abang Lingkod Party-List v. COMELEC*,[10] the Court ordained that to be a ground to deny due course or cancel a certificate of candidacy, the material misrepresentation must be a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible:

> Declaration of an untruthful statement in a petition for registration, or in any other document pertinent to the registration and/or accreditation under the party-list system, as a ground for the refusal or cancellation of registration under Section 6(6) of R.A. No. 7941, is akin to material misrepresentation in the certificate of candidacy filed by an individual candidate under **Section 78 of the Omnibus Election Code**. Both provisions **disallow prospective candidates from participating in an election for declaring false statements in their eligibility requirements** . . .
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> x x x x
>
> Elucidating on **what constitutes material misrepresentation in a certificate of candidacy under Section 78 of the Omnibus Election Code**, the Court, in *Lluz v. Commission on Elections*, explained that:
>
> From these two cases several conclusions follow. *First*, **a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility**. x x x *Third*, a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy under Section 78. In other words, for a candidate's certificate of candidacy to be denied due course or cancelled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate. (Emphasis ours)

In *Velasco v. Commission on Elections*, the Court further clarified that a false representation under Section 78 of the Omnibus Election Code, in order to be a ground to deny due course or cancel a certificate of candidacy, must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. Thus:

> The false representation that [Sections 74 and 78 of the Omnibus Election Code] mention must necessarily pertain to a material fact, not to a mere innocuous mistake. This is emphasized by the consequences of

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[10] 720 Phil. 120 (2013) [Per J. Reyes, *En Banc*].

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any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, cannot serve; in both cases, he or she can be prosecuted for violation of the election laws. Obviously, these facts are those that refer to a candidate's qualification for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the local government under which he is running.

Separately from the requirement of materiality, **a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office**.[11] (Emphases supplied)

As the *ponencia* wrote, false representation under Section 78 requires a "*deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.*" The false material representation "must be made with a malicious intent to deceive the electorate as to the potential candidate's qualifications for public office."

To the best of his (Sibuma) knowledge, when he filed his COC, he represented that he was eligible for the Office of the Mayor of Agoo, La Union. Sibuma alleged that he had established his residency in the Municipality of Agoo, Province of La Union since birth. He contended that while he may have been absent there for some time, his intention to return *(animus revertendi)* has always been shown. He thus submitted in evidence the following documents: (a) Certificate of Live Birth showing that he was born in Agoo, La Union; (b) Secondary Student's Record from the Don Mariano Marcos State University of Agoo, as well as a certification attesting that he completed his secondary education therein; (c) Copies of his telephone bills and a Ledger Inquiry from the La Union Electric Company, all issued in his name, indicating Sta. Barbara, Agoo, La Union as his address; (d) Tax

[11] Id. at 141–143.

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Declaration of Real Property issued in his name and his spouse covering a property situated in Sta. Barbara, Agoo, La Union; and (e) Affidavit of Residency dated November 29, 2021, signed by 41 residents of Barangay Sta. Barbara, Agoo, attesting that he has resided in Agoo from January 2021.

For the COMELEC Second Division, however, these pieces of evidence were not enough. It ruled against Sibuma and accorded much weight to Alma L. Panelo's (Panelo) evidence, to wit: (a) Certification of Punong Barangay Erwina C. Eriguel and Aunt of Stephanie Ann Eriguel Calongcagon, stating that he is not a resident of Barangay Sta, Barbara; (2) Deed of Absolute Sale and application for building permits and licenses covering a certain property; and (3) Recantation affidavits of eight affiants presented by Sibuma.

Based thereon, was Panelo able to muster the requisite quantum of substantial evidence, or such *relevant evidence as a reasonable mind will accept* as adequate to support a conclusion? *She was not*. For aside from the fact that Panelo failed to clearly demonstrate that Sibuma *"intentionally deceived"* the electorate, her documentary evidence do not inspire credence. *For one*, the certification of Erwina C. Eriguel, aunt of Stephanie Ann Eriguel Calongcagon, is in the nature of a self-serving evidence in view of her close relationship with the person who would be most benefited by the disqualification of Sibuma. Hence, this certification should be taken with a grain of salt. *For another*, 41 affiants minus 8, leaves 33 affiants and residents of Barangay Sta. Barbara, Agoo attesting that Sibuma has resided in Agoo from January 2021. Verily, the COMELEC Second Division could and should not have cancelled Sibuma's COC based only on the eight (8) affiants who recanted their sworn statements of residency in favor of Sibuma. How about the overwhelming majority of 33 affiants who did not recant? In any event, we reckon back with the dismal failure of Panelo to prove that Sibuma knowingly committed a material misrepresentation in his COC.

In *Papandayan, Jr. v. COMELEC*,[12] the COMELEC Second Division disqualified Mauyag B. Papandayan, Jr., (Papandayan) as

[12] 430 Phil. 754 (2013) [Per J. Mendoza, *En Banc*].

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a candidate for Municipal Mayor of Tubaran, Province of Lanao del Sur in the May 14, 2001 elections, as he was not a resident of Barangay Tangcal in Tubaran with more or less similar pieces of evidence.[13] In resolving the petition in favor of Papandayan, the Court recited the various jurisprudence and rules relative to residency:

. . . *Second*. Petitioner alleges that the COMELEC gravely abused its discretion in declaring him disqualified on the ground that he is not a resident of Tubaran.

x x x x

With due regard for the expertise of the COMELEC, we find the evidence to be insufficient to sustain its resolution. We agree with the Solicitor General, to the contrary, that petitioner has duly proven that, although he was formerly a resident of the Municipality of Bayang, he later transferred residence to Tangcal in the Municipality of Tubaran as shown by his actual and physical presence therein for 10 years prior to the May 14, 2001 elections.

x x x x

Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an "intention to return" to the place where he seeks to be elected. Corollary to this is a determination whether there has been an

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[13] Id. In support of her allegation, respondent submitted the joint affidavit, 2 dated February 14, 2001 of Barangay Chairman Hadji Bashir Ayonga and two members of the Sangguniang Barangay of Tangcal, Tubaran, Hadji Taher Batawe and Saadori Buat, stating that petitioner never resided in Barangay Tangcal, Tubaran as they personally knew all the registered voters of the said barangay; that petitioner omitted to own nor lease any house in Barangay Tangcal; and that petitioner's father, the late Mauyag Papandayan, Sr., who was a school superintendent, and his family were permanent residents of Bayang, Lanao del Sur. Respondent also submitted a similar affidavit, 3 dated February 17, 2001, of Samoranao Sarip, a member of the Sangguniang Barangay of Tangcal. She averred that petitioner did not state in his Voter Registration Record, 4 accomplished on May 8, 1999, the number of years and months (Annex D-1) he had been a resident of the Municipality of Tubaran.

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"abandonment" of his former residence which signifies an intention to depart therefrom. . .

In *Co v. Electoral Tribunal of the House of Representatives*, respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing ***Faypon v. Quirino*, applied the concept of *animus revertendi* or "intent to return," stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoang revealed that he always had *animus revertendi*.**

In *Abella v. Commission on Elections* and *Larrazabal v. Commission on Elections*, it was explained that the determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances . . .

In *Romualdez v. RTC*, Br. 7, Tacloban City, the Court held that "domicile" and "residence" are synonymous. The term "residence," as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980's in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People's Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary so as to constitute an abandonment of residence. The Court explained that in order to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. **The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.**

x x x x

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Indeed, it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the Constitution's residency qualification requirement . . .

x x x x

When the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters. To successfully challenge petitioner's disqualification, respondent must clearly demonstrate that petitioner's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. Respondent failed to substantiate her claim that petitioner is ineligible to be mayor of Tubaran.[14] (Emphases supplied)

The determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. Sibuma has clearly presented pieces of evidence that he had established his residency in the Municipality of Agoo, Province of La Union since his birth. He contended that while he may have been absent there for some time, his intention to return *(animus revertendi)* has always been shown.

Notably, *the purpose of election laws is to give effect to, rather than frustrate, the will of the voters*.[15] Even the remote possibility that evidence between parties are at equal or doubtful, jurisprudence calls for the COMELEC to rule in favor of Sibuma.

The equipoise rule for preponderance of evidence, a higher standard of evidence that substantial evidence even provides such basic rule—*When the evidence on an issue of fact is in equipoise*

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[14] Id. at 767-774.

[15] Id. at 773.

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or there is doubt as to which side the evidence preponderates, the party having the burden of proof fails upon that issue. Where neither party is able to establish its cause of action and prevail with the evidence it has, the courts have no choice but to leave them as they are and dismiss the complaint/petition.[16]

The choice of leaders of the sovereign-of-the-day *cannot be overturned* by speculative and far-fetched arguments. In case of *doubt*, as here, the Court will for sure allow the sovereign will to be respected. This is to be expected. The election of our leaders is *the greatest of all political questions*. It has been committed *not just textually but as a matter of long-standing and unassailable practice* to the conviction and belief of *our electors* since time immemorial. Therefore, *in applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms*. Win or lose as regards the candidates we have highly esteemed, the clear choice *nonetheless* binds us all.[17]

In keeping with the sovereign will of the electorate, I therefore, register my concurrence.

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 Resolution[2] dated May 13, 2022 of the Commission on Elections (COMELEC)

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16 *Sabellina v. Buray*, 768 Phil. 224, 239 (2015) [Per J. Brion, Second Division].

17 Supra note 9.

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.

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Second Division (assailed COMELEC Resolution), the Certificate of Finality[3] and Entry of Judgment,[4] both dated May 24, 2022, and the Writ of Execution[5] 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 Mayor[6] dated May 10, 2022 in Sibuma's favor; and

5) makes permanent the *Status Quo Ante* Order[7] dated July 5, 2022 issued by the Court.[8]

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 78[9] 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

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[3] Id. at 55-57. Issued by Atty. Genesis M. Gatdula.

[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.

[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.

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failed to satisfy the qualification of one-year residency required under Section 39 (a)[11] of Republic Act No. (R.A.) 7160[12] 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

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[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.

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Sibuma's CoC for material misrepresentation — had already 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.

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[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.

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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 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. 10673[16] 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)

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[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.

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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.

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 Comment[17] 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-mail[18] **and is likewise admitted**

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[17] *Rollo*, Vol. II, pp. 528-570.

[18] Id. at 541.

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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] 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.

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[19] See id. at 595.

[20] Id. at 542.

[21] See id.

[22] *Ponencia*, p. 14.

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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 Rules[23] 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

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[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).

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)

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

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[28] Id. at 794-795.

[29] 344 Phil. 878 (1997).

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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 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.

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

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

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[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.

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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

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

[37] Id. at 306. Citation omitted.

[38] See *Japzon v. COMELEC*, 596 Phil. 354, 372-373 (2009).

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

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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.

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

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

[41] *Rollo*, Vol. I, pp. 47-48.

[42] Id. at 49.

[43] Id. at 50-51.

[44] 318 Phil. 329 (1995).

[45] *Rollo*, Vol. I, p. 52.

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of evidence, afforded little to no evidentiary value to the Certifications[46] 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 *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.

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[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).

[52] See *ponencia*, p. 21.

[53] Id. at 17.

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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.

To recall, in *Romualdez-Marcos*, the concept of residence in election law was thoroughly discussed and was held to mean

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

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"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.

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

[56] Id. at 386.

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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:

> 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

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[57] Id.

[58] See *rollo*, Vol. I, p. 129.

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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 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

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

[60] See *rollo*, Vol. II, p. 555.

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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:

> 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.

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[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).

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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

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

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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*"]).

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**

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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)

Interestingly, as noted by the OSG, Sibuma kept indicating in his Verified Answer[66] 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

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[65] *Rollo*, Vol. I, pp. 50-51.

[66] Id. at 89.

[67] Id. at 556.

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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 74[70] 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 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.

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[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)

[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).

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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 to 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.

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[72] *Rollo*, Vol. I, p. 31.

[73] Id. at 97.

[74] Id. at 51.

[75] Id. at 129.

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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 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.

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

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

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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.

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.