



Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

SECOND DIVISION

FR. CHRISTIAN B. BUANAFE,
FIDES M. LIM, MA. EDELIZA P.
HERNANDEZ, CELIA LAGMAN
SEVILLA, ROLAND C. VIBAL,
and JOSEPHINE LASCANO,

Petitioners,

SPA No.21-156 (DC)

-versus-

FERDINAND ROMUALDEZ
MARCOS, JR.,

Respondent.

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GREETINGS:

Attached is a copy of the **RESOLUTION** promulgated on 17 January 2022 of the Commission (**SECOND DIVISION**) with **SEPARATE OPINION** of Commissioner Antonio T. Kho, Jr in the above-entitled case.

Given this 17th day of *January 2022*, City of Manila, Philippines.

FOR THE DIVISION:


ATTY. GENESIS M. GATDULA
Clerk of the Commission 



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

SECOND DIVISION

FR. CHRISTIAN B. BUENAFE,
FIDES LIM, MA. EDELIZA P.
HERNANDEZ, CELIA LAGMAN
SEVILLA, ROLAND C. VIBAL,
AND JOSEPHINE LASCANO,
Petitioners,

-versus-

SPA NO. 21-156 (DC)

FERDINAND
MARCOS, JR.,

ROMUALDEZ

Respondent.

Promulgated:

JAN 17 2022

x-----x

RESOLUTION

Before this Commission (Second Division) is a Petition¹ filed by Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, Celia Lagman Sevilla, Roland C. Vibal, and Josephine Lascano (**Petitioners**) against Ferdinand Romualdez Marcos, Jr. (**Respondent**) seeking to deny due course to and/or cancel his Certificate of Candidacy for the position of President of the Republic of the Philippines on the ground of false material representation.

¹ Records, at 7-115.

THE FACTUAL ANTECEDENTS

On 06 October 2021, Respondent filed his Certificate of Candidacy² ["COC"] for the position of President in the 09 May 2022 National and Local Elections ["NLE"].

On 02 November 2021, Petitioners filed the instant Petition under Section 78, in relation to Section 74, of the Omnibus Election Code ["OEC"], praying that:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission **DENY DUE COURSE** or **CANCEL** the Certificate of Candidacy for President filed by **FERDINAND ROMUALDEZ MARCOS, JR.** in connection with the 2022 National Elections.

Other reliefs just, consistent, and equitable under the premises are likewise prayed for.

Petitioners mainly argued that Respondent committed false material representation when he stated in his COC that he is eligible to run for President notwithstanding his prior conviction³ in a Decision⁴ dated 31 October 1997 issued by the Special Third Division,

² *Id.*, at 116.

³ The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:

1. ACQUITTING the accused-appellant of the charges of violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 and Q-91-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-29217;

2. Ordering the appellant to pay to the BIR the deficiency income taxes due with interest at the legal rate until fully paid;

3. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-29217 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

SO ORDERED.

⁴ Records, at 677-691.

of the Court of Appeals in CA-G.R. CR No. 18569 ["CA Decision"], for violation of the 1977 National Internal Revenue Code ["1977 NIRC"], which allegedly carries with it the accessory penalty of perpetual disqualification from holding any public office, to vote and to participate in any election.

Acting on the Petition, the Commission (Second Division) issued Summons with Notice of Preliminary Conference⁵ dated 11 November 2021 directing the Respondent to file a verified Answer within a non-extendible period of five (5) days from receipt of the notice. The parties were likewise notified that the Preliminary Conference of this case is set on 26 November 2021 at 10:00 o'clock in the morning *via* video conference. Lastly, the parties were required to submit a summary of the documents for comparison at least three (3) days before the scheduled conference.

On 16 November 2021, Respondent filed a Motion for Extension of Time to File Answer⁶ contending that he just engaged the services of his counsel. He prayed that he be granted an additional period of five (5) days or until 22 November 2021 within which to file his responsive pleading. Petitioners, however, opposed the said motion and moved that Respondents be barred from further submitting controverting evidence and from filing his memorandum.⁷

On 18 November 2021, the Commission (Second Division) issued an Order⁸ granting the Respondent's motion, *thus*:

IN VIEW OF THE FOREGOING, for cause shown and in the interest of justice, the Commission (*Second Division*), hereby **GRANTS** the *Motion for Extension to file Answer* and **NOTES** the *Notice of Appearance* dated 15 November 2021 filed by Respondent. Consequently, the Respondent is required to submit a Verified Answer on or before 22 November 2021.

SO ORDERED. 

⁵ *Id.*, at 201-203.

⁶ *Id.*, at 218-220.

⁷ *Id.*, at 237-239.

⁸ *Id.*, at 244-245.

On 19 November 2021, Respondent filed his verified Answer (with Prayer for Face to Face [FTF] Oral Arguments)⁹ asserting that the instant Petition is bereft of any allegation of a material representation required under Section 74 of the OEC. Essentially, Respondent claimed that he has all the qualifications of a President under Section 2, Article VII¹⁰ of the Constitution, thus, there can be no material misrepresentation under Section 78.


On the same date, Petitioners moved¹¹ to reconsider the Order dated 18 November 2021 insisting that the non-extendible period of five (5) days within which to file an Answer as provided for in Section 4(6), Rule 23 of the COMELEC Rules of Procedure is mandatory or peremptory in character. However, in its Order¹² dated 23 November 2021, the Commission (Second Division) denied the said motion for reconsideration, *to wit*:

The COMELEC . . . has authority to suspend the reglementary periods provided by the rules in the interest of justice and speedy resolution of the cases before it. Under this authority, the Commission is similarly enabled 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.

x x x

Significantly, Petitioners suffered no damage as Respondent forthwith filed his *Answer* on 19 November 2021 or three (3) days before the expiration of the extension given.

. . . Verily, in the exercise of its power to suspend its rules under the provisions of Rule 1, Section 4 of the COMELEC Rules of Procedure, in the interest of justice and the significance of the case at hand, the Commission (*Second Division*) deems it proper to allow both parties to be heard.

x x x 

⁹ *Id.*, at 293-301.

¹⁰ **Section 2.** No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

¹¹ Records, at 320-332. Refiled on 22 November 2021.

¹² *Id.*, at 401-403.

On 24 November 2021, Petitioners immediately excepted thereto and filed their Bill of Exceptions.¹³

Meanwhile, Petitioners filed a Request for the Issuance of Subpoena *Duces Tecum*¹⁴ dated 19 November 2021, to require the Bureau of Internal Revenue to produce certain documents of Respondent at the scheduled conference on 26 November 2021. On 23 November 2021, Petitioners also filed the following: (a) Compliance *Ex Abundanti Ad Cautelam* with *Ex Parte* Urgent Motion for Issuance of Subpoena *Duces Tecum*,¹⁵ to require the Honorable Clerk of Court of the Regional Trial Court of Quezon City, Branch 105, to produce the original/certified true copies of certain documents related to the instant case; and (b) Summary of Documents¹⁶ in compliance with the Notice of Preliminary Conference.

On 26 November 2021, the scheduled preliminary conference pushed through. Both the Petitioners and Respondent appeared through their counsel. Thereafter, Petitioners manifested that there were no factual issues that have been joined; thus, there is no basis to offer any stipulation of facts. On the other hand, Respondent also did not offer any stipulations. Petitioners then proceeded with the marking of their exhibits,¹⁷ which was, however, objected to by Respondent in his Memorandum dated 17 December 2021 for being contrary to the basic precepts of fair play and due process.¹⁸

On 13 December 2021, the Commission (Second Division) issued an Order¹⁹ denying the Petitioners' Request and *Ex Parte* Urgent Motion for Issuance of Subpoenas *Duces Tecum* dated 19 November 2021 and 23 November 2021, respectively, and the Respondent's Prayer for Face to Face Oral Arguments in his Answer dated 19 November 2021. This Commission (Second Division) concluded that setting the case for clarificatory hearing and allowing the reception of additional evidence, including the subject of the subpoenas prayed for by the Petitioners, would only cause needless

¹³ *Id.*, at 413.

¹⁴ *Id.*, at 338-341.

¹⁵ *Id.*, at 660-664.

¹⁶ *Id.*, at 669-674.

¹⁷ *Id.*, at 484-485.

¹⁸ *Id.*, at 907-911.

¹⁹ *Id.*, at 628-632.

delay inconsistent with the summary nature of the instant case. In the same Order, the parties were likewise required to file their respective memoranda within a period of five (5) days from receipt of notice.

On 20 December 2021, Petitioners filed a Submission²⁰ together with their Memorandum and Formal Offer of Evidence.²¹ On even date, Respondent also filed his Memorandum.²² Hence, the case is now deemed submitted for resolution.

THE ISSUE

Whether or not Respondent's COC should be denied due course or cancelled on the ground that it contains false material representations.

THE COMMISSION'S RULING

This Petition merits summary dismissal.

Section 78 of the Omnibus Election Code provides that a COC may be denied due course or cancelled when it contains a **false material representation**:

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.²³ *ma*

²⁰ *Id.*, at 735-738.

²¹ *Id.*, at 743-811.

²² *Id.*, at 862-915.

²³ Emphasis supplied.

It is clear from a plain reading of the above-quoted section that the exclusive ground for a Petition to deny due course to or cancel a COC is that the subject COC contains a **false material representation**. *There is no other possible ground.*


The requirement of this singular ground in petitions of such nature is reiterated in Section 1 of Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523,²⁴ *thus*:

Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. - A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties **on the exclusive ground that any material representation contained therein as required by law is false.** x x x

In the instant case however, aside from alleging the existence of false material representations in Respondent's COC, Petitioners also invoked grounds for disqualification against him.

More specifically, in page 39 of the Petition, Petitioners claimed that "*Respondent Marcos, Jr. was convicted of a crime involving **moral turpitude**, thereby **disqualifying** him under the Omnibus Election Code to be a candidate and to hold any public office.*"²⁵

Additionally, in page 47 of the Petition, Petitioner averred that "[T]he conviction of Respondent Marcos, Jr. in the tax evasion cases carries the mandatory penalty of **imprisonment of more than 18 months** as imposed by law, **disqualifying** him under the Omnibus Election Code from running for any public office."²⁶

Undoubtedly, these twin contentions by Petitioners are both grounds for disqualification. Section 12 of the OEC cannot be any clearer: 

²⁴ In the matter of the amendment to Rules 23, 24, and 25 of the COMELEC Rules of Procedures for purposes of the 13 May 2013 National, Local and ARMM Elections and Subsequent Elections; 25 September 2012.

²⁵ Emphasis supplied.

²⁶ *Id.*

Sec. 12. Disqualifications. - Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty. x x x²⁷

Unfortunately for Petitioners, *Our* rules mandate that a Petition to Deny Due Course to or Cancel Certificate of Candidacy that invokes grounds for disqualification shall be summarily dismissed. The 2nd paragraph of Section 1, Rule 23 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523,²⁸ provides:

Section 1. Ground for Denial or Cancellation of Certificate of Candidacy. -

x x x

A Petition to Deny Due Course to or Cancel Certificate of Candidacy invoking grounds other than those stated above or grounds for disqualification, or combining grounds for a separate remedy, shall be summarily dismissed.²⁹

Following this provision, the instant Petition ought to be summarily dismissed. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.³⁰

Further, the above provision should be accorded a plain interpretation. As held by the Supreme Court in the case of *Cynthia S. Bolos v. Danilo T. Bolos*:³¹

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted

²⁷ *Id.*

²⁸ *Supra*, note 24.

²⁹ Emphasis supplied.

³⁰ *Cipriano Enriquez, et al. v. Maximo Enriquez, et al.*, G.R. No. 139303, 25 August 2005.

³¹ G.R. No. 186400, 20 October 2010.

interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."³²

Since the instant Petition, which is one for cancellation and/or denial of due course of a COC, invoked grounds for disqualification, the instant Petition should be summarily dismissed.

Despite summary dismissal being warranted in the case at bar, We shall nevertheless relax compliance with the technical rules of procedure and proceed to discuss the merits if only to fully and finally settle the matter in this case because of its paramount importance.

Respondent's representations which are being questioned by Petitioners are material.

In case there is a false material representation in the COC, the Commission is authorized to deny due course to or cancel such COC upon the filing of a Petition pursuant to Section 78 of the OEC. To reiterate, said provision states:

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.³³

Section 74 of the OEC enumerates **the contents** of the COC. Among others, Section 74 requires the candidate to certify that he is **eligible for the office he seeks to be elected to, thus:**

³² Emphasis supplied.

³³ *Id.*

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.³⁴

In relation to the provisions quoted above, Petitioners enumerated two (2) false material representations that are purportedly present in Respondent's COC. The first refers to Item No. 11 of the *pro forma* COC and it states:

11. I AM ELIGIBLE FOR THE OFFICE I SEEK TO BE ELECTED TO.

The second false material representation allegedly pertains to Respondent's answer to Item No. 22 of his COC. The question in Item No. 22 reads:

22. Have you ever been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory?

In reply to the above-stated question, Respondent checked the box beside "No", thereby indicating that he has *never* been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory.

Based on Respondent's declaration in Item No. 11 of his COC, it becomes readily apparent that Respondent avows that he has all the *ya*

³⁴ *Id.*

qualifications and none of the ineligibilities to run for public office. As held by the Supreme Court in *Efren Aratea v. COMELEC and Estela D. Antipolo*,³⁵ "[A]s used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office."

In like manner, Respondent's avowal that he has *never* been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory, definitely pertains to his qualifications for public office. After all, if Respondent replied "Yes" to said question in Item No. 22 of his COC, it is effectively an admission under oath that *he is not qualified to hold public office*.

In the case of *Luis Villafuerte v. COMELEC and Miguel Villafuerte*,³⁶ the Supreme Court clarified that in order to justify the cancellation of a COC under Section 78, the representation made by a candidate must pertain to a material matter, *thus*:

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, **it is essential that the false representation mentioned therein pertain[s] to a material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.

x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code **refer to qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

³⁵ G.R. No. 195229, 09 October 2012.

³⁶ G.R. No. 206698, 25 February 2014.

Applying *Villafuerte* to the case at bar, **We** are constrained to agree with Petitioners that the aforesaid two representations in Respondent's COC actually pertains to a **material** matter for the simple reason that they refer to Respondent's qualifications for public office.

Respondent's material representations - that he is eligible for the position of President and that he has not been meted the penalty of perpetual disqualification from public office - are not false.

In the case of *Mike Fermin v. COMELEC*,³⁷ the Supreme Court clarified that if a candidate states in his COC a material representation that is **false**, the COMELEC is empowered to deny due course to or cancel such COC:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC 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/she is running for*. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. **Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate.**

Petitioners maintain that Respondent's answer in Item No. 22 of his COC is a material misrepresentation because Respondent remains to be disqualified to run for public office due to his conviction for violating the National Internal Revenue Code, which carries with it the penalty of perpetual disqualification.³⁸ Petitioners likewise insist that Respondent's act of signing and subscribing to the COC that he is eligible for office under Item No. 11, despite his supposed ineligibility, makes this act a material misrepresentation of his eligibility for the office he seeks.³⁹

³⁷ G.R. No. 179695, 18 December 2008.

³⁸ See Par. 61 of Petitioners' Memorandum.

³⁹ See Par. 59 of Petitioners' Memorandum.

Based on the foregoing submissions by Petitioners, it becomes the bounden duty of the Commission (Second Division) to determine whether such material representations by Respondent are indeed *false*.

Petitioners buttress their claim of falsity in these representations by consistently referring to the CA Decision dated 31 October 1997. Petitioners contend that the said Decision convicted herein Respondent for violation of the 1977 National Internal Revenue Code, which carries with it the accessory penalty of perpetual disqualification from holding any public office, to vote and to participate in any election.

Thus, in order to once and for all ascertain whether Respondent's representations in Item Nos. 11 and 22 of his COC are false, there is a need to thoroughly examine the true import and actual effect of the CA Decision.

Lest **We** be misunderstood, the Commission (Second Division) is not unmindful of the fact that the COMELEC does not have the jurisdiction to correct, amend or even review the decisions of the Court of Appeals. However, in order to perform **Our** duty of determining whether a **false** material representation exists in this case, there is an urgent need to painstakingly scrutinize the CA Decision as it is the crucial gauge by which the falsity or truth of the subject representations may possibly be established.

For ease of reference, the dispositive portion of the CA Decision reads:

WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:

1. ACQUITTING the accused-appellant of the charges of violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 and Q-91-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213 and Q-92-

29217;

2. Ordering the appellant to pay to the BIR the deficiency income taxes due with interest at the legal rate until fully paid;

3. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-29217 for failure to file income tax returns for the years 1982, 1983 and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

SO ORDERED.

To be sure, notwithstanding Respondent's conviction of four (4) counts for violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years of 1982 to 1985, nowhere in the above-quoted dispositive portion can it be expressly found that herein Respondent is meted the penalty of perpetual disqualification from holding public office.


Section 45 of the 1977 NIRC, the provision for which herein Respondent was convicted of by the Court of Appeals, pertinently states:

Section 45. *Individual Returns.* - (a) *Requirements.* - (1) **The following individuals are required to file an income tax return, if they have a gross income of at least P1,800 for the taxable year:**

(A) Every Filipino citizen, whether residing in the Philippines or abroad, and

x x x

(c) *When to file.* - **The return of the following individuals shall be filed on or before the fifteenth day of March of each year, covering income of the preceding taxable year:**

(A) Residents of the Philippines, whether citizens or aliens, whose income have been derived solely from salaries, wages, interest, dividends, allowances, commissions, bonuses, fees, pensions, or any combination thereof. 

x x x⁴⁰

Accordingly, Respondent was under the legal obligation to file his income tax returns for the years 1982 to 1985 on the following dates:


Taxable Year	Date of Mandatory Filing
1982	March 18, 1983
1983	March 18, 1984
1984	March 18, 1985
1985	March 18, 1986

However, Respondent failed to file his income tax returns for the taxable years 1982 to 1985, resulting in his conviction for violation of Section 45 of the 1977 NIRC. Petitioners then contended that in light of the amendments brought about by Presidential Decree No. 1994 ["P.D. No. 1994"] on the 1977 NIRC, the mere fact that Respondent was convicted of violating the NIRC already perpetually disqualifies him from holding any public office, to vote, and to participate in any election. In this regard, Section 286 of P.D. No. 1994 provides:

Sec. 286. *General provisions.* - [a] Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

[b] x x x

[c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a certified public accountant, his certificate as a certified public accountant shall, upon conviction, be automatically revoked or cancelled.

In essence, Petitioners maintain that by virtue of the enactment of P.D. No. 1994, the mere fact of Respondent's conviction for 

⁴⁰ Emphasis supplied.

violation of an NIRC provision already perpetually disqualified him from holding any public office, from voting, and from participating in any election. **Petitioners are gravely mistaken.**

It bears stressing that the law which is applicable for the taxable years of **1982, 1983, and 1984 is** Presidential Decree No. 1158 dated 3 June 1977, otherwise known as the **1977 NIRC** or The National Internal Revenue Code of 1977. Petitioners themselves declare that Presidential Decree No. 1994 dated 5 November 1985 or **P.D. 1994** – which added the penalty of perpetual disqualification to hold public office, to vote, and to participate in any election for an offender who is a public officer or employee - only became effective on 01 January 1986.⁴¹

The accessory penalty of perpetual disqualification cannot be made to apply to the taxable years of 1982-1984. Notably, at the time of the commission of the violations for the taxable years 1982, 1983 and 1984, Respondent was a public official. During the periods required by law to file the ITR, or on the 18th of March 1983, 1984 and 1985, however, P.D. No. 1994 was not yet applicable, as it only came into force on 01 January 1986. The applicable penalty at that time under Section 73 of 1977 NIRC only provided for either a **fine or imprisonment or both**, without the accompanying accessory penalty of perpetual disqualification provided under Section 286 of P.D. No. 1994.

Basic is the principle that crimes are punishable only by the penalty provided by law at the time of its commission. This is enshrined in the constitutional proscription against *ex post facto* laws under Section 22, Article III of the Constitution:

**ARTICLE III
BILL OF RIGHTS**

x x x

Section 22. No ex post facto law or bill of attainder shall be enacted.

In addition, Article 4 of the Civil Code of the Philippines states: 

⁴¹ Page 34 of the Petition.

Article 4. Laws shall have no retroactive effect, unless the contrary is provided.


Article 21 of the Revised Penal Code is likewise instructive:

Art. 21. *Penalties that may be imposed.* – No felony shall be punishable by any penalty not prescribed by law prior to its commission.

In this regard, Respondent aptly emphasized in his Memorandum that:

6.26. Since P.D. 1994 provides for additional and greater punishments other than those obtaining prior to its enactment, its provisions therefore cannot be applied to Petitioner's alleged failure to file his tax returns for the years 1982 to 1984. This is necessarily so since by the time P.D. 1994 took effect on January 1, 1986, the mandatory dates of filing of the tax returns for the years 1982 to 1984 have long lapsed, and consequently, the offenses arising therefrom have been consummated already. To still apply P.D. 1994 for these consummated offenses is to give such law an *ex post facto* effect. This is unconstitutional.

The Commission (Second Division) cannot agree with Petitioners' theory that Respondent's convictions for failure to file income tax returns for taxable years 1982 to 1984 render him perpetually disqualified from holding any public office, to vote and to participate in any election for the simple reason that to do so would violate the Constitutional proscription against *ex post facto* laws.

As regards the taxable year of 1985, the corresponding date of mandatory filing of the income tax return for the said year is on 18 March 1986. Hence, P.D. No. 1994, which is already in effect as early as 01 January 1986, may find possible application. However, after a careful consideration of the circumstances surrounding herein Respondent, the amendment by P.D. No. 1994 imposing the additional penalty of perpetual disqualification cannot be made to apply to him because on 18 March 1986, the date when he was supposed to file his income tax return for 1985, **Respondent was no longer a public officer**, thus effectively removing him from the purview of Section 286⁴² of P.D. No. 1994. 

⁴² Sec. 286. *General provisions.* – [a] Any person convicted of a crime penalized by this Code shall,

Simply put, Respondent ceased to be a public officer when he and his family were forced to leave the country in February 1986.

The Commission (Second Division) takes judicial notice of the fact that from 22 to 25 February 1986, the EDSA Revolution occurred which eventually resulted in the ouster of President Ferdinand Marcos, Sr. and his subsequent exile together with his family.

Under Rule 129 of the Rules of Evidence, the Commission is mandated to take judicial notice, without the introduction of evidence, of the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines. Moreover, the Commission may also take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

There is no question that the EDSA Revolution occurred, leading to the exile of the Marcos family to Hawaii, U.S.A. on the evening of 25 February 1986.⁴³ In *Republic v. Sandiganbayan*,⁴⁴ the Supreme Court briefly recounted said events and the resulting revolutionary government that ruled afterwards, *to wit*:

The EDSA Revolution took place on 23-25 February 1986.

As succinctly stated in President Aquino's Proclamation No. 3,

in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

[b] x x x

[c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election. If the offender is a certified public accountant, his certificate as a certified public accountant shall, upon conviction, be automatically revoked or cancelled.

⁴³ Ng, Alexandria, updated 6 June 2019, Chapter III: The Exile, retrieved from <https://www.hawaiinewsnow.com/2019/06/05/chapter-iii-exile/> last accessed 01 January 2022.
Richburg, Keith B. and Branigin, William, 29 September 1989, Ferdinand Marcos dies in Hawaii at 72, retrieved from <https://www.washingtonpost.com/archive/politics/1989/09/29/ferdinand-marcos-dies-in-hawaii-at-72/d1c26275-d9bd-4bfd-8934-c2a02ff4ab51/>, last accessed 01 January 2022.

⁴⁴ G.R. No. 104768, 21 July 2003.

dated 25 March 1986, the EDSA Revolution was "done in defiance of the provisions of the 1973 Constitution." The resulting government was indisputably a revolutionary government bound by no constitution or legal limitations except treaty obligations that the revolutionary government, as the de jure government in the Philippines, assumed under international law.

x x x

We hold that the Bill of Rights under the 1973 Constitution was not operative during the interregnum. However, we rule that the protection accorded to individuals under the Covenant and the Declaration remained in effect during the interregnum.

During the interregnum, the directives and orders of the revolutionary government were the supreme law because no constitution limited the extent and scope of such directives and orders. With the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government. Thus, during the interregnum, a person could not invoke any exclusionary right under a Bill of Rights because there was neither a constitution nor a Bill of Rights during the interregnum. As the Court explained in Letter of Associate Justice Reynato S. Puno:

A revolution has been defined as "the complete overthrow of the established government in any country or state by those who were previously subject to it" or as "a sudden, radical and fundamental change in the government or political system, usually effected with violence or at least some acts of violence." In Kelsen's book, General Theory of Law and State, it is defined as that which "occurs whenever the legal order of a community is nullified and replaced by a new order . . . a way not prescribed by the first order itself."

It was through the February 1986 revolution, a relatively peaceful one, and more popularly known as the "people power revolution" that the Filipino people tore themselves away from an existing regime. This revolution also saw the unprecedented rise to power of the Aquino government.

x x x

It is widely known that Mrs. Aquino's rise to the presidency was not due to constitutional processes; in fact, it was achieved in violation of the provisions of the 1973 Constitution as a Batasang Pambansa resolution had earlier declared Mr. Marcos as the winner in the 1986 presidential election. Thus it can be said that the organization of Mrs. Aquino's Government which was met by little resistance and her control of the state evidenced by the appointment of the Cabinet and other key officers of the administration, the departure of the Marcos Cabinet officials,

revamp of the Judiciary and the Military signaled the point *where the legal system then in effect, had ceased to be obeyed by the Filipino*. (Emphasis and italics in the original)" (Emphases and underscoring Ours)

In addition, Respondent and his family even sued the Philippine Government for them to be allowed to return to the Philippines in the case entitled *Ferdinand E. Marcos, et al. vs. Hon. Raul Manglapus, et al.*⁴⁵. In fact, Petitioners' statements in their Petition likewise support the fact that Respondent indeed left the country on 25 February 1986:

62. xxx On February 25, 1986, rival presidential inaugurations were held, but as Aquino supporters overran parts of Manila and seized state broadcaster PTV-4, President Marcos, Sr. was forced to flee. **Thereafter, President Marcos, Sr. and his family were exiled in the United States of America.**

63. **When the family finally fled the palace during the 1986 popular uprising, they carried as much of their wealth as they could on their persons:** xxx

64. **When Imelda fled Malacañang Palace with her husband in 1986,** she left behind a personal safe xxx.⁴⁶ (Emphasis supplied)

In sum, the dismantling of the whole government, abrogation of the 1973 Philippine Constitution, and the rise of a revolutionary government, coupled with Respondent's abandonment of his post when he and his family fled to and got exiled in Hawaii, U.S.A., all lead to the conclusion that Respondent was no longer a public officer when he failed to file his 1985 income tax return on 18 March 1986. On said date, Respondent was no longer a public official, as he was already in exile in Hawaii with a new revolutionary government functioning in the Philippines.

Section 286 of P.D. No. 1994 cannot be made to apply to a private individual such as herein Respondent, as its provisions explicitly requires the qualification of public officer or employee for its application. Evidently, the penalty of perpetual disqualification to

⁴⁵ G.R. No. 88211, 15 September 1989.

⁴⁶ Records, at 28.

hold public office, to vote and to participate in any election under Section 286 (c) of the 1977 NIRC, as amended by P.D. No. 1994, cannot be imposed on Respondent.

Hence, **the CA Decision is correct** for not imposing on herein Respondent the penalty of perpetual disqualification from holding any public office, voting, and participating in any election. There was no error in judgment as the CA Decision was in accord with the law in force at the time of the commission of violations.

Since Respondent was not meted the accessory penalty of perpetual disqualification from public office, it cannot be rightfully said that he committed a false material representation when he answered in the negative to the question posed in Item No. 22 of his COC. In like manner, when Respondent declared in Item No. 11 of his COC that he is eligible for the office for which he seeks to be elected to, he was essentially speaking the truth.

Considering the foregoing disquisitions, it now becomes manifest that **Respondent's material representations** - that he is eligible for the position of President and that he has not been meted the penalty of perpetual disqualification from public office - **are actually not false.**

Respondent did not deliberately attempt to mislead, misinform, or deceive the electorate.

Aside from the requirements of materiality and falsity of the representation, the Supreme Court has decreed a third element in order to warrant a cancellation of COC under Section 78: that there must also be a *deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible*. In the case of *Victorino Salcedo II v. COMELEC and Ermelita Cacao Salcedo*,⁴⁷ the Supreme Court pronounced that:

Aside 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

⁴⁷ G.R. No. 135886, 16 August 1999.

candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office.⁴⁸

In the instant case, Respondent cannot be said to have deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.

The CA Decision dated 31 October 1997 did not categorically hold that Respondent is convicted of a crime involving moral turpitude nor did it positively pronounce that Respondent is meted the penalty of imprisonment of more than 18 months. There is likewise no definitive declaration by the said Decision that herein Respondent is perpetually disqualified from holding public office.

It is clear therefore that when herein Respondent replied "No" to the question⁴⁹ in Item No. 22 of his COC, he did so without any intention to mislead, misinform, or hide a fact which would otherwise render him ineligible. When Respondent answered "No" to the question in Item No. 22, it was precisely because he had no basis at all to answer in the affirmative. To the best of Respondent's knowledge, what with decades of public service tucked under his belt, he honestly thought or believed that he has never been disqualified from holding public office. Thus, there is manifestly no intention on the part of Respondent to deceive the electorate as to his qualifications for public office.

Similarly, when herein Respondent signed and subscribed to his COC which contains the declaration in Item No. 11⁵⁰ that he is eligible for President, he again did so without any intention to mislead, misinform, or hide a fact which would otherwise render him ineligible. As previously discussed, there is nothing in the CA Decision dated 31 October 1997 that would have categorically apprised herein Respondent that he is suffering from any ineligibility.

⁴⁸ Emphasis supplied.

⁴⁹ The question in Item No. 22 of Respondent's COC reads:

"22. Have you ever been found liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, which has become final and executory?"

⁵⁰ Item No. 11 of Respondent's COC states:

"11. I AM ELIGIBLE FOR THE OFFICE I SEEK TO BE ELECTED TO."

for the position of President. Simply put, when Respondent filed his COC for President, he sincerely believed that he is eligible for the said office and he had no reason at all to think otherwise. In this regard, Respondent aptly highlighted in his Memorandum that:

6.85. In sum, even on the gratuitous hypothetical assumption that BBM has indeed been perpetually disqualified or that he has been convicted of a crime involving moral turpitude, there is simply nothing in the text of the law in the tenor of the court decisions, and even in the Supreme Court cases which apprises BBM of such fact. Thus, BBM genuinely and in all good faith believed – and still so believes – that when he filled up and filed his COC, he was eligible to run as President of the Philippines. Deliberate intent on the part of BBM to deceive or mislead the electorate is therefore completely absent.

Unmistakably, there is no intention on the part of Respondent to deceive the electorate as to his qualifications for public office. As held by the Supreme Court in *Ruby Talaga v. COMELEC and Roderick Alcala*,⁵¹ a deliberate attempt to mislead the electorate is required in order for a petition to deny due course to or cancel a COC to prosper, *thus*:

The denial of due course to or the cancellation of the CoC under Section 78 involves a finding not only that a person lacks a qualification but also that he made a material representation that is false. **A petition for the denial of due course to or cancellation of CoC that is short of the requirements will not be granted.** In *Mitra v. Commission on Elections*, the Court stressed that **there must also be a deliberate attempt to mislead**, *thus*:

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." **Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.**⁵²

In adherence to the ruling in *Talaga*, and considering that Petitioners utterly failed to prove that Respondent had deliberate intent to deceive the electorate as to his qualifications for public office, the instant Petition must necessarily fail. *ma*

⁵¹ G.R. No. 196804, 09 October 2012.

⁵² Emphasis supplied.

Moral turpitude and penalty of imprisonment

We have earlier discussed that Petitioners alleged in this Petition two grounds which are properly cognizable in a Petition for Disqualification. We have even gone to declaring that, due to Petitioners' act of raising these said grounds in this Petition, summary dismissal is already warranted under the circumstances.

Nonetheless, the Commission (Second Division) deems it fitting to address these two grounds on account of the public interest involved and to rectify certain matters raised by herein Petitioners.


Petitioners incessantly harp that Respondent's conviction for failure to file income tax returns for the taxable years of 1982 to 1985 constitutes an offense involving moral turpitude. Petitioners then conclude that, since Respondent has allegedly been convicted of a crime involving moral turpitude, he is likewise not eligible to hold any public office. **Petitioners are obviously clutching at straws.**

In *Republic of the Philippines v. Ferdinand Marcos II and Imelda R. Marcos*,⁵³ the Supreme Court categorically declared that **failure to file an income tax return is not a crime involving moral turpitude**, thus:

The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.

The same is illustrated in Section 51(b) of the NIRC which reads:

(b) Assessment and payment of deficiency tax - xxx

In case a **person fails to make and file a return or list at the time prescribed by law, or makes willfully or otherwise, false or fraudulent return or list x x x.** (Emphasis Supplied) 

⁵³ G.R. Nos. 130371 & 130855, 04 August 2009.

Likewise, in *Aznar v. Court of Tax Appeals*, this Court observed:

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the **(1) falsity, (2) fraud, and (3) omission**. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission." (Emphasis Supplied)

Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification.

Hence, Petitioners' contention that Respondent has been convicted of a crime involving moral turpitude is completely false. Therefore, when Respondent declared under oath that he is eligible for the position of President, he was telling the truth.

On another note, Petitioners desperately attempt to accuse the Court of Appeals of *illegally modifying* the decision of the Regional Trial Court by merely imposing a fine and "*unlawfully deleting the penalty of imprisonment despite the mandatory provision of the NIRC.*"⁵⁴ This deletion, Petitioners suggest, renders the CA Decision void.

According to Petitioners, Respondent's conviction for violation of Section 45 of the 1977 NIRC (failure to file income tax returns),^{ma}

⁵⁴ Page 47 of the Petition.

carries with it the mandatory penalty of imprisonment of more than eighteen (18) months. To support their allegation, Petitioners contend that Section 254 of the 1977 NIRC mandates the imposition of both a fine **and** imprisonment for any conviction due to, among others, the failure to file a return.


Petitioners appear to have deliberately misquoted the applicable law. We note with agreement Respondent's submissions in his Memorandum that:

6.70. Furthermore, Petitioners appear to have overlooked the fact that from 1982 to 1985, Section 73 of the 1977 NIRC was the governing provision insofar as the penalty for failing to file a return is concerned, thus:

Section 73. Penalty for failure to file return or to pay tax.
- Any one liable to pay the tax, to make a return or to supply information at the time or times herein specified in each year, **shall be punished by a fine of not more than two thousand pesos OR* by imprisonment** for not more than six months, or both.

6.71. When the amendments by P.D. 1994 took effect, Section 288 of the 1977 NIRC likewise stated:

Section 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* - Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records, or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not less than five thousand pesos nor more than fifty thousand pesos, **OR*** imprisoned for not less than six months and one day but not more than five years, or both.

6.72. Thus, even if the Honorable Commission may annul and correct the final decisions of the Court of Appeals, there is nothing to correct as (*sic*) at all since the law effective during the relevant period gives the courts the discretion to impose either fine, imprisonment, or both. 

It is clear that in both Section 73 and Section 288 of the 1977 NIRC, as amended by P.D. No. 1994, the courts are given the discretion to impose a fine, OR imprisonment, OR both. The Court of Appeals is under no obligation to impose the penalty of imprisonment on someone who is found guilty of violating the 1977 NIRC. The courts are given wide latitude by both laws to decide the appropriate penalty as they may deem fit. When the Court of Appeals supposedly deleted the penalty of imprisonment against herein Respondent and merely meted him a fine, the Court of Appeals had all the liberty, option, or discretion to do so. Hence, contrary to Petitioners' misleading stance, the CA Decision is correct.

At this juncture, it is worth mentioning that herein Petitioners deliberately cited an inapplicable provision of law in order to mislead the Commission (Second Division).

As regards the taxable years 1982 to 1984, the applicable law is Section 73 of the 1977 NIRC, which punishes those who fail to file their return by a fine of not more than two thousand pesos OR* by imprisonment for not more than six months, or both.

Relative to taxable year 1985, the applicable law is Section 288 of the 1977 NIRC (brought about by the amendment of P.D. No. 1994), which punishes those who fail to file their return by a fine of not less than five thousand pesos nor more than fifty thousand pesos, OR* imprisonment of not less than six months and one day but not more than five years, or both.

Using the foregoing as a legal backdrop, *We* now enumerate Petitioners' supposed misrepresentations.


First, instead of using as basis the above provisions depending on the year concerned, Petitioners shamelessly cited a certain provision denominated as "Section 254 of the 1977 NIRC".⁵⁵ According to Petitioners, said provision punishes those who fail to file a return a fine of not less than Ten thousand pesos (P10,000) AND* imprisonment of not less than one (1) year but not more than,

⁵⁵ Pages 47-48 of the Petition.

ten (10) years. **HOWEVER**, a careful reading of the actual Section 254 of the 1977 NIRC shows that it refers to another matter: "SECTION 254. *Rentals and royalties on mineral lands under lease.* - xxx"

*Second, Section 288 of P.D. No. 1994 became Section 254 (the provision cited by Petitioners) only on 01 January 1988 with the passing of Executive Order (E.O). No. 273.⁵⁶ Interestingly, only the numbering was amended, retaining the letters of the old law. Hence, even in the assumption that as of 01 January 1988 (Respondent was liable for 1982 to 1985), it is already Section 254 that should apply, the wordings under Section 288 – which imposes **fine OR* imprisonment OR* both** – remained unchanged. Respondent's act therefore of altering the contents of Section 254 (to make it appear that imprisonment is mandatory punishment) reeks of deliberate intent to deceive or mislead the Commission (Second Division).*

Contrary to Petitioners' claim and deliberate misquoting of the law, the penalty of imposing both a fine **AND** imprisonment **only became mandatory on 11 December 1998** with the passage of Republic Act (R.A.) No. 8424,⁵⁷ which the Court of Appeals cannot apply without violating the proscription on *ex post facto* laws:

Section 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, **who willfully fails** to pay such tax, **make such return,** keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a **fine** of not less than Ten thousand pesos (P10,000) **and** suffer **imprisonment** of not less than one (1) year but not more than ten (10) years. x x x (Emphasis and underscoring Ours) 

⁵⁶ Executive Order No. 273, ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL RVENUE CODE, AND FOR OTHER PURPOSES, 01 January 1988.

⁵⁷ Republic Act No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, 11 December 1997. Otherwise known as the "Tax Reform Act of 1997".

Petitioners and counsel knowingly misrepresented provisions of law not yet applicable in the case at bar and knowingly misquoted Section 254 by making it appear that it contained the word "AND" rather than "OR" in order to emphasize their skewed theory of mandatory application of the penalty of imprisonment.

What is more, Petitioners' propensity to mislead is at once apparent in their act of branding the cases faced by Respondent in the Regional Trial Court and Court of Appeals as "**TAX EVASION CASES.**" This phrase is clearly a misnomer. These cannot be rightfully termed as Tax Evasion Cases because he was merely charged with violation of Section 45 which is failure to file income tax returns and Section 50 [Section 51]⁵⁸ which is payment of taxes, to which he was later on acquitted with a definitive finding that there was no tax evasion or even an attempt on the part of Respondent to evade the payment of his tax liabilities, as he was subjected to the withholding tax system.

Failure to file income tax returns is not tax evasion. Tax evasion involves a scheme used outside lawful means and connotes the integration of three (3) factors: (1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.⁵⁹

In this case, the Court of Appeals found that Respondent, being an elected public official for the taxable years concerned, was already subjected to the withholding tax system, hence, his tax liabilities were already paid as they were withheld by the Government. There is therefore no tax evasion to speak of.

It somehow becomes ironic when **We** realize the thought that herein Petitioners accuse Respondent of misrepresentations while

⁵⁸ The Court of Appeals cited Section 50, however, Section 50 pertains to Verification of Returns, while Section 51 pertains to Payment and Assessment of Taxes. Moreover, both the Regional Trial Court Decision and the Court of Appeals quoted Section 51, not Section 50 for Crim. Cases Nos. Q-91-24390 and Q-91-24391, Q-92-29212 to Q-92-29217.

⁵⁹ *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, 14 September 2004.

they themselves are guilty of supposed misrepresentations in this very same proceeding.

A final note


In his Memorandum, Respondent began his discussion by arguing that this Commission has no jurisdiction to rule upon his qualifications. According to Respondent, it is the Supreme Court *En Banc* that has the sole and exclusive jurisdiction to decide on the qualifications of **presidentiables**.⁶⁰ Respondent attempts to buttress this assertion by quoting Section 4, Article VII of the Constitution, which reads:

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x

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

Respondent's reliance to the abovementioned constitutional provision is utterly misplaced. Section 4, Article VII of the Constitution pertains to the power vested upon the Supreme Court *En Banc* to act as the Presidential Electoral Tribunal, which shall be the sole judge of all contests relating to the election, returns, and qualifications of the **President** or Vice-President.

It is worth stressing that herein Respondent is *not* the President of the Philippines. He is merely a **candidate for President** or - as commonly referred to - a **presidentiable**. If the Constitution intended that the Supreme Court should be the sole judge of all contests relating to the qualifications of a presidentiable (such as herein Respondent), the highest law of the land would have expressly stated, 

⁶⁰ Par. 6.00 of Respondent's Memorandum.

so. *But it did not.* Clearly, this effectively removes the factual circumstances in this case from the contemplation of Section 4, Article VII of the Constitution.

The Constitutional provision that correctly applies here is Section 2, Article IX-C of the Constitution which grants the Commission on Elections the power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall. Emanating from this Constitutional provision are Section 78,⁶¹ in relation to Section 74,⁶² of the Omnibus Election Code and Section 1, Rule 23⁶³ of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523, the wordings of which squarely apply to herein Respondent who filed a COC for President which Petitioners allege to contain false material representations.

Lastly, on account of the clear and categorical finding in this case that Respondent's COC does not contain false material representations, it necessarily follows that **his COC will not be cancelled.** Hence, any apprehension on Respondent's part relative to the Commission's exercise of power to cancel COCs is already irrelevant.

⁶¹ **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.

⁶² **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. x x x

⁶³ **Section 1. Ground for Denial or Cancellation of Certificate of Candidacy.** - A verified Petition to Deny Due Course to or Cancel a Certificate of Candidacy for any elective office may be filed by any registered voter or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false. x x x

Other matters raised by both parties deserve scant consideration.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED.


SOCORRO B. INTING
Presiding Commissioner


ANTONIO T. KHO, JR.
Commissioner – Senior Member
WITH SEPARATE OPINION


REY E. BULAY
Commissioner – Junior Member

CERTIFICATION

I hereby certify that the conclusions in the above Resolution were reached in consultation among the members of the Commission (Second Division) before the case was assigned to the *ponente*.


SOCORRO B. INTING
Presiding Commissioner



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

SECOND DIVISION

**FR. CHRISTIAN B. BUENAFE,
FIDES M. LIM, MA. EDELIZA P.
HERNANDEZ, CELIA LAGMAN,
ROLAND C. VIBAL, and
JOSEPHINE LASCANO,**
Petitioners,

SPA NO. 21-156 (DC)

-versus-

**FERDINAND ROMUALDEZ
MARCOS, JR.,**
Respondent.

x-----x

JAN 17 2022

A handwritten signature in blue ink is located to the right of the date stamp. It appears to be a stylized signature, possibly of a judge or official.

SEPARATE OPINION

I join my esteemed colleagues in voting to **DENY** the petition to cancel the certificate of candidacy of Respondent Marcos, Jr. for the position of President of the Republic of the Philippines for **LACK OF MERIT**.

However, I do not fully subscribe to some aspects of the *ponencia*. With my full and highest respect to my esteemed colleagues, I hereby submit my separate opinion.

To dispense with any doubt, I fully concur with the *ponencia* on the following points, to wit:

1. That we *"should relax compliance with the technical rules of procedure and proceed to discuss the merits if only to fully and finally settle the matter in this case because of its paramount importance."*¹

2. That the representations made by Respondent Marcos, Jr. in his certificate of candidacy, namely, (a) that he is eligible to be elected to the office of the President of the Republic of the Philippines; and (b) that he is not liable for an offense which carries with it the accessory penalty of perpetual disqualification to hold public office, pertain *"to a material matter"*² in accordance with Section 78 of the Omnibus Election Code in relation to Section 74 thereof.

a. If those representations are found to be false, COMELEC is duty bound to grant the Petition and deny due course or cancel the certificate of candidacy of Respondent Marcos, Jr.;

3. That COMELEC *"does not have the jurisdiction to correct, amend or even review the decisions of the Court of Appeals."*³

a. The Decision dated 31 October 1997 of the Court of Appeals in Ca-G.R. CR No. 18569 finding Respondent Marcos, Jr. guilty beyond reasonable doubt of violation of Section 45 of the National Internal Revenue Code ("**NIRC**") for his failure to file income tax returns for taxable years 1982 to 1985 had long become final;

4. That Presidential Decree No. 1994 dated 05 November 1985 amended P.D. No. 1158 dated 03 June 1977 by adding the phrase *"the penalty of perpetual disqualification to hold public office, to vote, and to participate in any election for an offender who is a public officer or employee – only became effective on 01 January 1986."*⁴

¹ 3rd paragraph, page 9 of the Resolution of the 2nd Division.

² 1st paragraph, page 12 of the Resolution of the 2nd Division.

³ 3rd paragraph, page 13 of the Resolution of the 2nd Division.

⁴ 2nd Paragraph, page 16 of the Resolution of the 2nd Division.

- a. Thus, the penalty of perpetual disqualification to hold public office cannot be made to apply to Respondent Marcos, Jr. for his failure to file his income tax returns on or before 18 March 1983, 18 March 1984 and 18 March 1985 for taxable years 1982, 1983 and 1984, respectively, *"pursuant to the constitutional proscription against ex post facto laws."*⁵
- b. However, this excludes the income earned by Respondent Marcos, Jr. in taxable year 1985 that he is obliged to declare in his income tax return to be filed on or before 18 March 1986;

5. That failure of Respondent Marcos, Jr. to file an income tax return is not a crime involving moral turpitude pursuant to the Decision dated 04 August 2009 of the Supreme Court in *Republic of the Philippines vs. Ferdinand Marcos II and Imelda Marcos* in G.R. Nos. 130371 & 130855; and

6. That Respondent Marcos, Jr. *"cannot be said to have deliberately attempted to mislead, misinform, or hide a fact"*⁶ in his certificate of candidacy which would otherwise render him ineligible.

However, with respect to taxable year 1985, I cannot agree with the *ponencia* that the penalty of perpetual disqualification to hold public office under P.D. No. 1994 cannot apply to Respondent Marcos, Jr. because he *"was no longer a public officer when he failed to file his 1985 income tax return on 18 March 1986. On said date, Respondent was no longer a public official, as he was already in exile in Hawaii with a new revolutionary government functioning in the Philippines."*⁷

Further, the *ponencia* stated that *"on 18 March 1986, the date when he was supposed to file his income tax return for 1985, Respondent was no longer a public officer, thus effectively removing him from the purview of Section 286 of P.D. No. 1994."*

The fact that Respondent Marcos, Jr. abandoned his post as the Provincial Governor of Ilocos Norte when he and his family fled the

⁵ 3rd paragraph, page 17 of the Resolution of the 2nd Division.

⁶ 2nd paragraph, page 22 of the Resolution of the 2nd Division.

⁷ 3rd paragraph, page 20 of the Resolution of the 2nd Division.

country during the February 1986 EDSA People Power Revolution cannot and should not operate to deny the possible application against him of the penalty of perpetual disqualification to hold public office.

It should be stressed that Respondent Marcos, Jr. was a public officer when he earned his income for taxable year 1985, which earnings became the basis for his legal obligation to file his income tax returns on or before 18 March 1986. Thus, Respondent Marcos, Jr., even as a private person then, should not be shielded from facing the penal consequences of such failure to file his income tax returns. To allow a public officer to escape the penalty of perpetual disqualification to hold public office for his failure to file his income tax returns by the simple expedient that he is no longer a public officer at the time of the filing of the said returns is contrary to law and frustrates the intention of dispensing justice by penalizing erring public officials for violations of the tax code. In fact, the penalty of perpetual disqualification to hold public office can still be effective against a private person if he desires to return to government service, as what Respondent Marcos, Jr. clearly intends to do in this case by filing his certificate of candidacy for the position of President of the Republic of the Philippines, since the penalty of disqualification to hold public office is perpetual.

The **principal question** to be settled then is whether Respondent Marcos, Jr. was adjudged by the Court of Appeals to suffer the penalty of perpetual disqualification in its Decision dated 31 October 1997. Since the Decision of the Court of Appeals did not expressly impose such penalty, a positive answer to said question necessitates a finding that the penalty of perpetual disqualification to hold public office under P.D. No. 1994 is in the nature or has the characteristics of an accessory penalty and not a principal penalty.

I cannot agree with the *ponencia* that the penalty of perpetual disqualification to hold public office under P.D. No. 1994 is an accessory penalty. I respectfully submit that such penalty is a principal penalty.

Guided by Article 25 of the Revised Penal Code ("**RPC**"), the penalty of perpetual disqualification can either be a principal penalty or an accessory penalty. Principal penalties are those expressly specified in the judgment of conviction while accessory penalties are

those deemed included in the principal penalties and do not have to be expressly specified in the judgment of conviction.⁸

On the other hand, there is no such classification in the NIRC on the penalty of perpetual disqualification to hold public office, whether as a principal penalty or an accessory penalty. In fact, the penalty of perpetual disqualification to hold public office in P.D. No. 1994 is not even called an 'accessory penalty'. Instead, it is a separate penalty in a separate provision in the tax code that must be imposed by the court. Hence, no other conclusion can be derived at except to consider the penalty of perpetual disqualification to hold public office under P.D. No. 1994 as a principal penalty.

Further, Section 286 of P.D. No. 1994 reads:

Section 286. General Provisions. – [a] Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: *Provided*, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

[b] x x x

[c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election.** If the offender is a certified public accountant, his certificate as a certified public accountant shall, upon conviction, be automatically revoked or cancelled. (underscoring and emphasis supplied).

A plain reading of the above provision shows that the penalty of "*perpetual disqualification from holding any public office*" is in the nature of a principal penalty. As shown therein, there is a need for the court to "*impose*" the penalty against the convicted felon. There is nothing in the above provision that gives any support to the argument of

⁸ Amurao, Commentaries on Criminal Law, Revised Penal Code Book One, 2013, p. 808.

Petitioners that the penalty of perpetual disqualification to hold public office is an accessory penalty or can be construed to be deemed written into the conviction of Respondent Marcos, Jr.

The reliance of Petitioners in the case of *Jalosjos vs. Comelec*⁹ in order to argue that perpetual disqualification is deemed written into or part of the final judgment of conviction of the convicted felon and that COMELEC is mandated to enforce the penalty is patently wrong.

In *Jalosjos*, Romeo Jalosjos was convicted of two (2) counts of statutory rape and six (6) counts of acts of lasciviousness, which are felonies under the RPC. Mr. Jalosjos was meted the principal penalties of *reclusion perpetua* and *reclusion temporal* for each count. Under Article 41¹⁰ of the RPC, the penalties of *reclusion perpetua* and *reclusion temporal* carry the accessory penalty of perpetual absolute disqualification.

Thus, in *Jalosjos*, there is no question that the penalty of perpetual absolute disqualification was deemed included in the principal penalties imposed by the court. By virtue simply of the conviction of Mr. Jalosjos for felonies that carry the principal penalties of *reclusion perpetua* and *reclusion temporal*, the accessory penalties were deemed included, including perpetual absolute disqualification, in the judgment of conviction following Article 73 of the RPC.

Obviously, this is not the case here. The penalty of perpetual disqualification to hold public office under P.D. No. 1994 is a principal penalty. Since the Decision dated 31 October of the Court of Appeals did not expressly impose the penalty of perpetual disqualification to hold public office in convicting Respondent Marcos, Jr., such penalty is not deemed written into or considered part of the final judgment of conviction of Respondent Marcos, Jr.

Consequently, the representations of Respondent Marcos, Jr. in his certificate of candidacy that he is eligible to be elected to the office of the President of the Philippines and that he has not been found liable

⁹ G.R. No. 205033, 18 June 2013.

¹⁰ **Article 41.** *Reclusion perpetua and reclusion temporal; Their accessory penalties.* - The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

for an offense which carries with it the accessory penalty of perpetual disqualification from holding public office are **NOT FALSE**.

Thus, there is no legal justification to deny due course to or cancel the certificate of candidacy of Respondent Marcos, Jr.



ANTONIO T. KHO, JR.

Commissioner