Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

FORMER FIRST DIVISION

BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERLITA REOUNO, JOANNA KINTANAR CARIÑO, ELISA TITA PEREZ LUBI, LIZA LARGOZA MAZA, DANILO MALLARI DELA FUENTE, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS SR., ARABELLA CAMMAGAY BALINGAO, SR., CHERRY M. IBARDALOZA, CSSJB, SR. SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, AND JONAS ANGELO LOPENA ABADILLA,

Petitioners,

-versus-

SPA NO. 21-212 (DC)

FERDINAND ROMUALDEZ MARCOS, JR.,

Respondent.

x----------x

AKBAYAN CITIZENS' ACTION PARTY DORIS S. NUVAL, JOANNA BERNICE S. CORONACION, JO ENRICA ENRIQUEZ ROSALES, RAYMOND JOHN S. NAGUIT, AND LORETA ANN P. ROSALES,

Petitioners,

-versus- **SPA NO. 21-232 (DC)**

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

x----------x

IN THE MATTER OF DECLARATION OF NULLITY OF CONA AND DISQUALIFICATION OF FERDINAND R. MARCOS, JR.,

ABUBAKAR M. MANGELEN,
Petitioners,

-versus- **SPA NO. 21-233 (DC)**

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

x----------x

NOTICE

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7. The **EDUCATION AND INFORMATION DEPARTMENT**
This Commission
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GREETINGS:

Attached is a copy of the **RESOLUTION** of the Commission (Former First Division), promulgated on 10 February 2022, with the **SEPARATE OPINION** of Presiding Commissioner Marlon S. Casquejo, relative to the afore-cited consolidated Petitions.

Given this 10th day of February 2022, in the City of Manila, Philippines.

FOR THE DIVISION:

ATTY. GENESIS M. GATDULA
Clerk of the Commission

Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

FORMER FIRST DIVISION

BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERLITA REPUNO, JOANNA KINTANAR CARIÑO, ELISA TITA PEREZ LUBI, LIZA LARGOZA MAZA, DANILO MALLARI DELA FUENTE, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS, SR. ARABELLA CAMMAGAY BALINGAO, SR. CHERRY M. IBARDALOZA, CSSJB, SR. SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA and JONAS ANGELO LOPENA ABADILLA, *Petitioners,* -versus- **FERDINAND ROMUALDEZ MARCOS, JR.,** *Respondent.*	**SPA No. 21-212 (DC)**

x----------x

AKBAYAN CITIZENS' ACTION PARTY, DORIS S. NUVAL, JOANNA BERNICE S. CORONACION, JO ENRICA ENRIQUEZ ROSALES, RAYMOND JOHN S. NAGUIT,and LORETA ANN P. ROSALES, *Petitioners,*	**SPA No. 21-232 (DC)**

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

x----------x

ABUBAKAR M. MANGELEN,
Petitioner,

SPA No. 21-233 (DC)

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

Promulgated: 10 FEB 2022

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RESOLUTION

For resolution by the Commission (*First Division*) are three consolidated *Petitions for Disqualifications* (Consolidated Petitions) filed against **FERDINAND ROMUALDEZ MARCOS, JR.** (Respondent) pursuant to Section 12 of the Omnibus Election Code (OEC)[1] in relation to Section 1 Rule 25[2] of the COMELEC Rules of Procedure, as amended by Resolution No. 9523.[3]

The Facts

On 06 October 2021, Respondent filed his Certificate of Candidacy (CoC) for President of the Republic of the Philippines for the 09 May 2022 National and Local Elections (2022 NLE).[4] Subsequently, Petitioners filed the instant petitions, all seeking to disqualify Respondent as a candidate.

The first of these three (3) Petitions was filed on 20 November 2021 and was docketed as *SPA No. 21-212 (DC)*. The

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[1] Otherwise known as Batas Pambansa Blg. 881.
[2] Disqualification of Candidates.
[3] 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.
[4] SPA No. 21-232 (DC) Records, at 22.

Petitioners in this Petition alleges that they are martial law victims and rights advocates, namely: Bonifacio Parabuac Ilagan, Saturnino Cunanan Ocampo, Maria Carolina Pagaduan Araullo, Trinidad Gerlita Repuno, Joanna Kintanar Cariño, Elisa Tita Perez Lubi, Liza Largoza Maza, Danilo Mallari dela Fuente, Carmencita Mendoza Florentino, Doroteo Cubacub Abaya, Jr., Erlinda Nable Santurias, Sr. Arabella Cammagay Balingao, Sr. Cherry M. Ibardaloza, CSSJB, Sr. Susan Santos Esmile, SFIC, Homar Rubert Roca Distajo, Polynne Espineda Dira, James Carwyn Candila, and Jonas Angelo Lopena Abadilla (Petitioners Ilagan et al.).[5]

The two other Petitions were both filed 02 December 2021. One was docketed as *SPA No. 21-232 (DC)* and the other as *SPA No. 21-233 (DC).*[6]

In *SPA No. 21-232 (DC),* the Petition was filed by Akbayan Citizens' Action Party, Doris S. Nuval, Joanna Bernice S. Coronacion, Jo Enrica Enriquez Rosales, Raymond John S. Naguit, and Loreta Ann P. Rosales (Petitioners Akbayan et al.). Akbayan is a registered political party, and the others are members and officers of different organizations.[7]

The Petition docketed as *SPA No. 21-233 (DC)* was filed by Abubakar M. Mangelen (Petitioner Mangelen), who is allegedly the duly elected Chairman of Respondent's political party, Partido Federal ng Pilipinas (PFP).

The antecedent facts are as follows:

From 1980 to 1983, Respondent served as Vice Governor of Ilocos Norte and then as Governor of the said province from 1983 to 1986.

In the February 1986 EDSA Revolution, Respondent and his family were deposed from office and forced into exile until 1991. Following his return to the Philippines, Respondent was criminally charged with eight (8) counts of violation of the National Internal Revenue Code of 1977 (1977 NIRC),[8] as amended, specifically as follows:

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[5] SPA No. 21-212 (DC) Records, at 1-60.
[6] SPA No. 21-232 (DC) Records, at 1; SPA No. 21-233 (DC) Records, at 1.
[7] SPA No. 21-232 (DC) Records, at 2-3.
[8] Otherwise known as Presidential Decree No. 1158.

1. Four (4) Informations in Criminal Case Nos. Q-91-24391, Q-92-29213, Q-92-29214 and Q-92-29217 for failure to file income tax returns for the years 1982, 1983, 1984, and 1985, in violation of Section 45[9] of the 1977 NIRC; and

2. Four (4) Informations in Criminal Case Nos. Q-91-24390, Q-92-29216, Q-92-29215 and Q-92-29214 for non-payment of income tax for the years 1982, 1983, 1984, and 1985, in violation of Section 50[10] of the 1977 NIRC;

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[9] "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,

(B) Every alien residing in the Philippines, regardless of whether the gross income was derived from sources within or outside the Philippines.

(2) Regardless of amount, every non-resident alien engaged in trade or business in the Philippines shall file an income tax return. The income tax return shall be filed in duplicate, and shall set forth specifically the gross amount of income from all sources, except that of non-resident aliens engaged in trade or business in the Philippines which shall contain only such income derived from sources within the Philippines.

(3) Notwithstanding the provisions of the preceding paragraphs, an individual (except a non-resident alien engaged in trade or business in the Philippines) whose gross income derived solely from salaries, wages, remunerations and other similar compensation for services rendered, does not exceed his personal exemption of P1,800 if he/she is single or P3,000 if he/she is married or head of the family, plus the optional standard deduction to which he/she is entitled to claim under sub-paragraph (k) of Section 30, is not required to file an income tax return.

(b) Where to file. — The return shall be filed with the Commissioner of Internal Revenue, Revenue Regional Director, Revenue District Officer, Collection Agent, duly authorizedtreasurer of the province, city, municipality, or authorized agent banks in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, then with the Commissioner of Internal Revenue in Manila.

(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. (B) The return of all other individuals not mentioned above, including non-resident citizens shall be filed on or before the fifteenth day of April of each year covering income of the preceding taxable year.

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[10] "Sec. 50. Payment and assessment of income tax. [a] Payment of tax. — [1] In general. — The total amount of tax imposed by thisTitle shall be paid by the person subject thereto at the time the return is required to be filed. "In the case of tramp vessels, the shipping agents and/or the husbanding agents, and in their absence, the captains thereof are required to file the return herein provided and pay the tax due thereon before their departure. Upon failure of the said agents or captains to file the return and pay the tax,

The cases were lodged at Branch 105 of the Regional Trial Court, Quezon City (RTC of Quezon City)[11], which rendered a *Decision*[12] on 27 July 1995 convicting Respondent of the crimes charged, to wit:

> "WHEREFORE, the court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt of the National Internal Revenue Code of 1977, as amended, and sentences him as follows:
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> 1. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212, Q-92-29217 for failure to file income tax returns for the years 1982, 1983, and 1984;
>
> 2. To serve imprisonment of six (6) months and pay a fine of ₱2,000.00 for each charge in Criminal Cases Nos. Q-92-29216, Q-92-29215, Q-92-29214 for failure to pay income tax for the years 1982, 1983, and 1984;
>
> 3. To serve imprisonment of three (3) years and pay a fine of ₱30,000.00 in Criminal Case No. Q-91-24391, for failure to file income tax returns for the year 1985;
>
> 4. To serve imprisonment of three (3) years and pay a fine of ₱30,000.00 in Criminal Case No. Q-91-24390, for failure to pay income tax for the year 1985; and
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> 5. To pay the Bureau of Internal Revenue the taxes due, including such either penalties, interests and surcharges."

Respondent appealed his conviction before the Court of Appeals (CA), which rendered a *Decision*[13] on 07 January 2022

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the Bureau of Customs is hereby authorized to hold the vessel and prevent its departure until proof of payment of the tax is presented or, in meritorious cases, a sufficient bond is filed to answer for the tax due.".

[11] SPA No. 21-212 (DC) Records, at 303.

[12] Same, at 309.

[13] SPA No. 21-212 (DC) Records, 303-317. The case was docketed as CA-G.R. C.R. No. 18569.

acquitting Respondent on all four (4) charges of failure to pay income taxes and sustaining his conviction on the other four (4) charges of failure to file income tax returns. The dispositive portion of the CA *Decision* is hereinafter quoted:

> "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-91-24392, 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 ₱2,000.00 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 ₱30,000.00 in Criminal Cases No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.
>
> SO ORDERED."

Respondent filed a *Motion for Extension of Time to File Petition for Review on Certiorari before the Supreme Court* but subsequently withdrew the same. The withdrawal was granted by the Supreme Court (SC) in a Resolution dated 08 August 2001, and an Entry of Judgment dated 31 August 2001 was thereafter issued, rendering the CA decision final and executory.

On 27 December 2001, Respondent paid the deficiency taxes and fines with the Bureau of Internal Revenue (BIR).

Two decades later, Respondent's tax conviction was again placed under scrutiny through the instant Consolidated Petitions, which raised the following common grounds, among others:

1. Respondent is perpetually disqualified from holding public office.

   Petitioners Ilagan et al. contended that Respondent, being a public official at the time the violations of the 1977 NIRC were committed, must suffer the penalty of perpetual disqualification from public office. They argued that Respondent was a public officer from 1982 to 1985, being then the Vice Governor and subsequently, the Governor of Ilocos Norte. As such, Respondent should suffer the penalty under Section 252[14] of the 1977 NIRC, which specifically provides that if the person convicted of a crime penalized by the NIRC is a public officer or employee, the "*maximum penalty 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 elections.*" Petitioners Ilagan et al. argued that the fact that perpetual disqualification is not written in the dispositive portion of the RTC and CA decisions is of no moment as it is clear from the wording of Section 254[15] of the 1977 NIRC that the said penalty is meant to be an accessory penalty. Citing Articles 40, 41, 42, 43, 44, 45,[16] and Article 73[17] of the Revised Penal Code (RPC),

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[14] Section 252 of the 1977 NIRC is a provision on Falsification, or counterfeiting, restoration, or alteration of documentary stamps; possession or use of false, counterfeit, restored, or altered stamps.

[15] Section 254 of the 1977 NIRC actually pertains to Rentals and Royalties on mineral lands under lease, to wit:

SECTION 254. Rentals and royalties on mineral lands under lease. — For the privilege of exploring, developing, mining, extracting, and disposing of the minerals from the lands covered by lease, there is hereby imposed upon the lessee rentals and royalties x xx"

[16] Article 40. Death; Its accessory penalties. - The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date sentence, unless such accessory penalties have been expressly remitted in the pardon.

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.

Petitioners insisted that being an accessory penalty, the same need not be written in the judgment on conviction.

Petitioners Akbayan et al. also raised the ineligibility of Respondent by arguing that a public officer who violated the 1977 NIRC should be perpetually disqualified from holding public office pursuant to Section 252 (c)[18] of the 1977 NIRC as amended by Presidential Decree No. 1994[19] (PD No. 1994) which took effect on 01 January 1986. They contended that the penalty of perpetual disqualification is an accessory penalty for violations of the tax code. Thus, it applies to Respondent when he failed to file his income tax return for the year 1985. Accordingly, the said provision also applies to Respondent for his non-filing of income tax returns for the years 1982, 1983, and 1984 as he continued to fail to file the same, notwithstanding the effectivity of PD No. 1994.

2. Respondent was sentenced to a penalty of imprisonment of more than eighteen (18) months.

   Petitioners Ilagan et al. posited that the CA *Decision* is null and void because it was issued with grave abuse of discretion when it unlawfully deleted the compulsory

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Article 42. Prision mayor; Its accessory penalties. - The penalty of prision mayor, shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.
Article 43. Prisioncorreccional; Its accessory penalties. - The penalty of prisioncorreccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in the article although pardonedas to the principal penalty, unless the same shall have been expressly remitted in the pardon.
Article 44. Arresto; Its accessory penalties. - The penalty of arresto shall carry with it that of suspension of the right too hold office and the right of suffrage during the term of the sentence.
Article 45. Confiscation and forfeiture of the proceeds or instruments of the crime. - Every penalty imposed for the commission of a felony shall carry with it the forfeiture

[17] Article 73. Presumption in regard to the imposition of accessory penalties. - Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43 and 44 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.

[18] Supra. See note at 13. The imposition of the penalty of perpetual disqualification was provided under Section 286 of P.D. No. 1994.

[19] Further Amending Certain Provisions of the National Internal Revenue Code

penalty of imprisonment originally imposed by the RTC of Quezon City. Being a void judgment, the CA Decision produces no legal effect that leaves the parties to the status before the issuance thereof: Respondent was convicted by a final judgment to suffer both the payment of fines and imprisonment. Since Respondent was imposed the penalty of imprisonment exceeding eighteen (18) months by the RTC of Quezon City, he should be disqualified under Section 12 of the OEC.

Likewise, Petitioners Akbayan et al. reasoned that while the CA excluded the penalty of imprisonment in the dispositive portion of its decision, the same was "patently a mistake." They argued that although the CA acquitted Respondent in Criminal Case No. Q-91-24390, it upheld his conviction in Criminal Case No. Q-91-24391 on failure to file income tax returns. The CA, however, failed to reiterate in its dispositive portion the penalty of three (3) years imprisonment imposed by the RTC of Quezon City. Since Section 254[20] of the 1977 NIRC requires the penalty of imprisonment to be meted out in a conviction for failure to file an income tax return, the CA *Decision* should be understood to include the sentence of three (3) years imprisonment considering that the provisions of the law are deemed written into the decisions of the courts.

3. Respondent was convicted of crimes involving moral turpitude

Petitioners Ilagan et al. are of the position that Respondent's conviction for violation of Section 45 of the 1977 NIRC amounts to "moral turpitude," especially since it is not shown that Respondent had complied and suffered the penalty imposed on him when he was convicted. This continuing and unjustified refusal to comply with the law shows Respondent's willful and deliberate violation of laws which undoubtedly translates to moral turpitude.

Petitioners Akbayan et al. posited that Respondent was convicted of a crime involving moral turpitude, a

[20] Supra. See note at 14.

> disqualification under Section 12 of the OEC. Respondent's repeated failure to file his income tax returns was a series of continuing acts contrary to justice, honesty, modesty, or good morals that manifest baseness, vileness, or depravity. These acts constituted crimes involving moral turpitude. As such, he should be disqualified as a candidate for President of the Republic of the Philippines on the ground of his final conviction for crimes involving moral turpitude.
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> For his part, Petitioner Mangelen simply argued that the crime for which Respondent was convicted involves moral turpitude that carries with it the accessory penalty of perpetual disqualification to hold public office.

Another issue raised by Petitioners Ilagan et al., is that Respondent committed false material representations when he unqualifiedly stated in item No. 22 of his CoC that "*he has not 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.*" This material misrepresentation, according to Petitioners, is more than sufficient ground to disqualify Respondent.

Petitioner Mangelen also questioned the validity of Respondent's CONA purportedly issued by the PFP. He claimed that the said CONA was issued without his knowledge, concurrence, and signature as Chairman of the said political party.

To support their allegations, the Petitioners submitted the following pieces of documentary evidence:

A. For Petitioners Ilagan et. al, SPA No. 21-212 (DC):

1. Special Power of Attorney;[21]

2. Printouts of various web articles;[22]

3. Court of Appeals Decision dated 31 October 1997, CA-G.R. CR No. 18569;[23]

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[21] SPA No. 21-212 (DC) Records, 174-178.
[22] Same, at 179-302.
[23] Same, at 303-317.

4. Certification issued by the Regional Trial Court Branch 105, Quezon City dated 2 December 2021;[24] and

5. Certification issued by the Regional Trial Court, Office of the Clerk of Court, Quezon City, dated 14 December 2021.[25]

B. For Petitioners Akbayan et. al, SPA No. 21-232 (DC):

1. Copy of the dispositive portion of the CA Decision;[26]

2. Copies of the Resolution and Entry of Judgment of the Supreme Court;[27] and

3. CoC of Respondent Ferdinand Marcos Jr.[28]

C. Petitioner Abubakar Mangelen, SPA No. 21-233 (DC):

1. A copy of the Petition for Registration of Partido Federal ng Pilipinas;[29]

2. Minutes of the National Convention and General Assembly of Partido Federal ng Pilipinas;[30]

3. Platform of Government and Constitution of Partido Federal ng Pilipinas;[31]

4. List of Officers of Partido Federal ng Pilipinas;[32]

5. Resolution dated 30 April 2018;[33] and

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[24] Same, at 318.
[25] Same, at 319.
[26] SPA No. 21-232 (DC) Records, 18-19.
[27] Same, at 20-21.
[28] Supra. See note at 4.
[29] SPA No. 21-233 (DC) Records, 5-12.
[30] Same, at 19-34.
[31] Same, at 35-60.
[32] Same, at 61-79.
[33] Same, at 80.

6. A Letter to the Law Department of the Commission on Elections dated 29 November 2021.[34]

Acting on the Petitions, the Commission (*First Division*) issued *Notices* and *Summons with Notice of Preliminary Conference*,[35] all dated 20 December 2021, requesting the City Election Officer of 1st District of Pasay City and Election Officer of Batac, Ilocos Norte, to print and personally serve the *Summons*, together with the copy of the *Petition* to Respondent. The Commission *(First Division)* set the preliminary conference of all three (3) cases on 07 January 2022 via video conference. It directed the Respondent or his authorized representative to file a verified *Answer* within a non-extendible period of five (5) days from receipt thereof.

Another *Notice* and *Order,*[36] both dated 20 December 2021, was issued by the Commission *(First Division),* directing the Clerk of the Commission to inform Petitioners Ilagan et al.'s counsel in *SPA No. 21-212 (DC),* to submit the requisite proof of service within a non-extendible period of three (3) days from receipt thereof. Counsel for Petitioners Ilagan et al. submitted a *Compliance* on 23 December 2021, attaching therewith a copy of the Affidavit of Service.[37]

On 21 December 2021, the *Notices* and *Summons* were personally served to Respondent's address at G/F Sunset View Tower, 2330 Roxas Boulevard, Pasay City.[38] Another *Notice* and *Summons* were also served at the Respondent's address in Ilocos Norte on 29 December 2021.[39]

Respondent's Answer

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[34] Same, at 81-82.
[35] SPA No. 21-212 (DC) Records, at 68-73, SPA No. 21-232 (DC) Records, at 29-34, SPA No. 21-233 (DC) Records, at 165-170.
[36] SPA No. 21-212 (DC) Records, at 62-65.
[37] Same, at 78-83.
[38] SPA No. 21-212 (DC) Records, at 75-77, SPA No. 21-232 (DC) Records, at 41-42, SPA No. 21-233 (DC) Records, at 177-178.
[39] SPA No. 21-233 (DC) Records, at 268-269.

On 27 December 2021, Respondent filed an *Answer and Entry of Appearance*[40] to each of the three (3) Petitions, containing the following defenses, among others:

1. The penalty of perpetual disqualification has never been imposed against Respondent. He has neither been convicted by final judgment of a crime involving moral turpitude nor sentenced by final judgment to suffer imprisonment for more than eighteen (18) months.

2. The conviction of failure to file tax returns did not disqualify Respondent from holding any public office. Section 252, which petitioners cited as a basis for disqualification, was not in the original 1977 NIRC. The said provision was merely introduced by PD No. 1994, which took effect on 01 January 1986. Therefore, the penalty of perpetual disqualification introduced by PD No. 1994 cannot be applied to Respondent's failure to file income tax returns for taxable years 1982 to 1984 as the omission occurred before its effectivity. To rule otherwise would be tantamount to a violation of the Constitutional prohibition on *ex post facto* laws.[41]

   As for the taxable year 1985, the perpetual disqualification applies only if the accused is a public officer or employee. Respondent was no longer a government official before the last day to file the 1985 tax returns. As early as February 1986, the government was overthrown because of the EDSA revolution. Respondent was removed from the government, and his family was forced to leave the country.

   Even if Section 252 of the NIRC is applicable, he would still not be disqualified from holding public office because the penalty of disqualification is not *ipso facto* imposed upon the mere fact of conviction. Neither the RTC nor the CA imposed said penalty. Moreover, if Petitioners Akbayan et al.'s theory is to be followed – that non-filing of tax returns is a continuing offense – then it appears that such offense is, in effect,

[40] SPA No. 21-212 (DC) Records, at 97-125, SPA No. 21-232 (DC) Records, at 46-69, SPA No. 21-233 (DC) Records, at 182-201.

[41] Section 22, Article III of the 1987 Constitution provides: "No ex post facto law or bill of attainder shall be enacted."

imprescriptible until and unless the accused finally files a return or is convicted of such offense. On the other hand, Section 340 of the 1977 NIRC[42] explicitly provides for the prescription for violations of any of its provisions.

3. He was never sentenced to a penalty of more than eighteen (18) months imprisonment.

   The CA *Decision* became final and executory and did not contain any imposition of imprisonment as a penalty. Petitioners themselves admitted that the CA *Decision* became final and that Respondent was not sentenced to imprisonment. Thus, the situation falls outside the purview of Section 12 of the OEC.The governing law from 1982 to 1985 was Section 73 of the 1977 NIRC,[43] which gives the court discretion to impose either fine, imprisonment, or both.

4. Respondent was never convicted by final judgment of a crime involving moral turpitude. In the determination of whether a crime involves moral turpitude, three (3) approaches were formulated, to wit:

   i. Whether the act by itself is inherently immoral, or

   ii. Where some degree of fraud is an element, the crime involves moral turpitude; or

   iii. Whether the offender is motivated by ill-will.

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[42] Sec. 340. Prescription for violations of any provisions of this Code. – All violations of any provisions of this Code shall prescribe after five years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The term of prescription shall not run when the offender is absent from the Philippines.

[43] 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 required under this Code, who refuses or neglects to pay such tax, to make such return or to supply such 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.

Respondent contended that, first, non-filing of income tax returns is not inherently immoral. As an offense *malum prohibitum*, non-filing of the income tax return is wrong merely because the NIRC prohibits the same. Second, fraud is not an element of the failure to file a tax return. In determining whether the said offense was committed, the only issue is whether or not the accused filed a tax return. Finally, it cannot be denied that Respondent was not motivated by any ill-will when he omitted to file his income tax returns. It must be noted that Respondent was a purely compensation income earner; thus, it was the obligation of the government to compute his income taxes. It was likewise the obligation of the government to deduct and withhold his income taxes under Section 94 of the1977 NIRC.[44] Thus, Respondent's failure to file income tax returns does not fall under any of the three approaches.

Further, in *Republic vs. Ferdinand Marcos II and Imelda R. Marcos*,[45] the Supreme Court held that non-filing of income tax returns is not an offense involving moral turpitude because the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. Assuming that the non-filing of the income tax return is a crime involving moral turpitude, the disqualification is automatically removed after five (5) years pursuant to Section 12 of the OEC. He already served his sentence when he paid the deficiency taxes and fines as early as 27 December 2001.

5. The retroactive effect must be given to Republic Act No. 10963 (TRAIN LAW), which decriminalized non-filing of annual income tax returns by pure compensation income earners.

   Under the TRAIN Law, pure compensation earners are no longer required to file income tax returns. Thus, it is

[44] Section. 94. Return and payment in case of Government employees. – If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.

[45] G.R. Nos. 130371 &130855, 04 August 2009.

no longer an offense for pure compensation earners not to file their income tax returns. Since the TRAIN Law already decriminalized the non-filing of an annual income tax return by pure compensation earners, its benefits should retroactively apply insofar as it is favorable to Respondent.

6. In *SPA No. 21-233 (DC),* Respondent argued that Petitioner Mangelen's Petition for Disqualification is filed as a Special Action. Under the Comelec Rules of Procedure, Special Actions refer to petitions to: a.) deny due course to CoC; b) declare candidate as a nuisance candidate; c) disqualify a candidate; or d) postpone or suspend an election.

   A petition to declare a CONA null and void is not among those allowed by the Commission pursuant to the above enumeration. Hence, the Petition must be summarily dismissed. Moreover, Petitioner Mangelen committed forum shopping when he filed a letter-complaint with the Law Department.

The Commission (*First Division*) issued *Notices* and *Orders*,[46] dated 29 December 2021, directing the counsels on record and the parties to the petitions to personally appear during the scheduled preliminary conference for an in-person conference at the Session Hall of the Commission.

On 04 January 2022, Gen. Dionisio Santiago, Jr., LTC. Oscarlito Paulino Mapalo, LTGEN. Irineo C. Espino, BGEN. Arnolfo Bambalan Palmea, MGEN. Pedro S. Soria II, and MGEN. Ricardo Butalid, all former senior military officers of the Armed Forces of the Philippines, filed *A Motion to Intervene and Admit Attached Answer-In-Intervention*[47].

On 06 January 2022, Respondent filed a *Manifestation* stating that he will not be able to personally appear during the scheduled preliminary conference since he had to undergo

[46] SPA No. 21-212 (DC) Records, at 137-140, SPA No. 21-232 (DC) Records, at 80-83, SPA No. 21-233 (DC) Records, at 204-206.

[47] SPA No. 21-212 (DC) Records, at 142-143, 114-142. (Note: There is an error in the paging of the records. After page 143, the next page was renumbered as page 114), SPA No. 21-232 (DC) Records, at 85-115, SPA No. 21-233 (DC) Records, at 208-237.

mandatory isolation for having been in close contact with a Covid-19 positive individual.[48]

During the scheduled Preliminary Conference on 07 January 2022, counsels for Respondent and the Petitioners in *SPA Case No. 21-212 (DC)* and *SPA Case No. 21-232 (DC)* personally appeared at the Session Hall of the Commission. Petitioner Raymond John S. Naguit also appeared personally, whereas some of the Petitioners in the two aforementioned disqualification cases attended via the online platform, MS Teams. However, for SPA Case No. 21-233 (DC), neither Petitioner Mangelen nor his counsel attended the preliminary conference. As a result,Respondent's counsel moved for the dismissal of the Petition on the ground of Petitioner Mangelen's absence. This was noted by the Commission (*First Division*). Also notably absent was Respondent himself. Upon inquiry, Respondent's counsel manifested that he is physically indisposed, thus, he will not be able to attend the preliminary conference, either in-person or on video. Respondent's counsel was then directed to submit a manifestation together with the medical certificate.[49]

In the same preliminary conference, the parties raised the following issues for resolution by the Commission *(First Division):*

1. Whether Respondent is perpetually disqualified from running for public office;[50]

2. Whether Respondent has been convicted by final judgment of a crime involving moral turpitude;[51]

3. Whether Respondent has been sentenced by final judgment to a penalty of more than eighteen (18) months of imprisonment;[52] and

4. Whether Respondent is qualified to be elected as President of the Philippines.[53]

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[48] SPA No. 21-212 (DC) Records, at 361-365, SPA No. 21-232 (DC) Records, at 161-165, SPA No. 21-233 (DC) Records, at 286-291.
[49] Transcript of Stenographic Notes, 07 January 2022.
[50] Same, at 12.
[51] Same, at 14.
[52] Same, at 15.
[53] Same, at 17.

On the allegation of facts, Respondent admitted to the following:

1. The Commission has jurisdiction over the case;[54]

2. Respondent served as the Vice Governor of Ilocos Norte from 1982 to 1983;[55]

3. Respondent served as the Governor of Ilocos Norte from 1983 to 1985;[56]

4. Respondent was convicted by the RTC of Quezon City for violations of the 1977 NIRC, but that such decision did not become final as it was appealed to the CA;[57]

5. The CA found Respondent guilty of failure to file his income tax returns and was fined;[58] and

6. Respondent checked number 22 in his CoC that he has not been found liable for an offense that carries with it the accessory penalty of perpetual disqualification to hold public office.[59]

After simplifying issues, the parties marked their respective documentary exhibits with the Clerk of Court. The parties were then directed to submit their memoranda within forty-eight (48) hours from the conduct of the preliminary conference.[60]

In compliance with the directive of the Commission (*First Division*), Respondent filed a *Manifestation* after the preliminary conference, attaching therewith the medical certificate issued by his attending physician.[61]

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[54] Same, at 24.
[55] Same, at 24-25.
[56] Same, at 26.
[57] Same, at 29.
[58] Same, at 32-34.
[59] Same, at 35-36.
[60] SPA No. 21-212 (DC) Records, at 575-576, SPA No. 21-232 (DC) Records, at 318-319, SPA No. 21-233 (DC) Records, at 435-436.
[61] SPA No. 21-212 (DC) Records, at 488-499, SPA No. 21-232 (DC) Records, at 227-238, SPA No. 21-233 (DC) Records, at 341-355.

On 09 January 2022, Petitioners Ilagan et al. and Akbayan et al., filed their respective Memoranda via email.[62] On even date, Respondent also filed his Memorandum.[63]

Petitioners Ilagan et al. then filed an *Opposition with Manifestation* and a *Motion for Leave of Court to Admit Attached Opposition with Manifestation* on 11 January 2022, arguing that Respondent's Memorandum lacked a Formal Offer of Evidence as required by the Order dated 07 January 2022. Thus, the documents submitted by Respondent should be disregarded and stricken off the records.[64]

Despite not having attended the preliminary conference, Petitioner Mangelen submitted a *Memorandum* dated 10 January 2022[65] and a *Manifestation and Motion to Set Petition for Preliminary Conference*.[66] Petitioner Mangelen claimed that his non-appearance at the scheduled preliminary conference was due to the fact that he has not received a notice from the Commission.

On 13 January 2021, Respondent submitted a *Consolidated Formal Offer of Evidence*[67] of the following documentary evidence:

1. Certification from the Local Finance Committee of Ilocos Norte;

2. Provincial Government of Ilocos Norte's Index Payments to Employees for the year 1982;

3. Provincial Government of Ilocos Norte's Index Payments to Employees for the year 1983;

4. Provincial Government of Ilocos Norte's Index Payments to Employees for the year 1984;

5. Provincial Government of Ilocos Norte's Index Payments to Employees for the year 1985;

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[62] SPA No. 21-212 (DC) Records, at 402-403, 419-459, SPA No. 21-232 (DC) Records, at 320-362.
[63] SPA No. 21-212 (DC) Records, at 507-561, SPA No. 21-232 (DC) Records, at 244-282, SPA No. 21-233 (DC) Records, at 357-404.
[64] SPA No. 21-212 (DC), unpaginated.
[65] SPA No. 21-233 (DC) Records, unpaginated
[66] Same, at 437-438.
[67] SPA No. 21-212 (DC) Records, unpaginated, SPA No. 21-232 (DC) Records, unpaginated, SPA No. 21-233 (DC) Records, unpaginated.

6. BIR Certification attesting that the deficiency taxes and fines have been paid; and

7. Landbank Official Receipt.

This case is now submitted for resolution.

The Issues

1. Whether Respondent is perpetually disqualified from running for public office;

2. Whether Respondent has been sentenced by final judgment to a penalty of more than eighteen (18) months of imprisonment;

3. Whether Respondent has been convicted by final judgment of a crime involving moral turpitude.

4. Whether Respondent is qualified to be elected as President of the Philippines.

The Ruling

We shall discuss these issues successively.

Whether Respondent is perpetually disqualified from running for public office

The modern conception of suffrage is that voting is a function of government. The right to vote and be voted for in any election for public office are rights created by law - a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good.[68] But like all rights and privileges, they are not absolute. A person may be deprived of such fundamental and substantive political rights, temporarily or

[68] See People of the Philippines vs. Amaddeo Corral, G.R. No. L-42300, 31 January 1936.

even perpetually, through an adjudicative body's final and executory judgment.

One of Petitioners' contentions is that Respondent was perpetually disqualified from running for public office because of his conviction for violation of the 1977 NIRC. To quote Petitioners Akbayan et. al. in their Memorandum:[69]

> "26. Effective 01 January 1986, P.D. No. 1994 amended the National Internal Revenue Code of 1977 and imposed the accessory penalty of perpetual disqualification if the offender is a public officer. Section 286 states in part:
>
> > c. xxx 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 service and perpetually disqualified from holding any public office, to vote, and to participate in any electionxxx
>
> 27. **It is true that the accessory penalty of perpetual disqualification was not mentioned in the decision of the Court of Appeals**. However, this does not favor Respondent's case. [Emphasis supplied]
>
> 28. Even if the accessory penalty of perpetual disqualification was not mentioned in the decision of the court, it is deemed imposed. The Honorable Commission only has to apply the hornbook doctrine that accessory penalties follow the principal penalty. The language of P.D. 1994 itself, using the words 'shall' and 'in addition to,' instead of 'may,' and 'in addition,' confirms this long standing principle by making the imposition of accessory penalty of perpetual disqualification mandatory."

Respondent countered by arguing that Section 252 (c)[70] was not in the original 1977 NIRC and was merely introduced by P.D. No. 1994, which took effect on 01 January 1986. Therefore, the penalty of perpetual disqualification which P.D No. 1994 introduced cannot be applied to his failure to file income tax returns for the taxable years 1982 to 1984. To rule otherwise

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[69] SPA No. 21-232 (DC) Records, at 325.
[70] Actually numbered as Section 286 (c) under P.D. No. 1994.

would be tantamount to a violation of the Constitutional prohibition on *ex post facto* laws. As for the taxable year 1985, he was no longer a public officer at that time; hence the penalty of perpetual disqualification will also not apply.

With the parties citing different provisions of law to bolster their respective claims, *We* deem it necessary to revisit the 1977 NIRC and P.D. No. 1994 to verify the existence or non-existence of the provision on perpetual disqualification.

Scrutiny of P.D. No. 1994 shows that it took effect on 01 January 1986, along with several new provisions, including the penalty of perpetual disqualification. For easy reference, the specific provision is quoted below:

> "CHAPTER II - CRIMES, OTHER OFFENSES AND FORFEITURES
>
> 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) xxx
>
> c) xxx <u>If he is a public officer or employee</u>, the maximum penalty prescribed for the offense shall be imposed and, <u>in addition, he shall be dismissed from service andperpetually disqualified from holding any public office</u>, <u>to vote, and to participate in any election.</u> x xx[71]
>
> x xx"

Contrary to Petitioners' assertion, the penalty of perpetual disqualification by reason of failure to file income tax returns was not provided for under the original 1977 NIRC. Both Petitioners Ilagan et al. and Akbayan et al. cited Section 252 of the 1977

[71]Presidential Decree No. 1994, The Lawphil Project, https://lawphil.net/statutes/presdecs/pd1985/pd_1994_1985.html, (Accessed on 21 January 2022).

NIRC, which upon *Our* verification, is a provision pertaining to the "*Falsification, or counterfeiting, restoration, or alteration of documentary stamps; possession or use of false, counterfeit, restored, or altered stamps.*" However, a further review of the 1977 NIRC would belie Petitioner's claim; while there was indeed a provision on perpetual disqualification, the same is applicable only on unlawful possession or removal of articles subject to specific tax without payment of tax.[72]

To be clear, the penalty of perpetual disqualification came into force only upon the effectivity of P.D. No. 1994 on 01 January 1986. Thus, the penalty cannot be made to apply to Respondent's tax violations, which were committed before the effectivity of the said law, in accord with the constitutional prohibition against *ex post facto* laws.

For the year 1985, however, P.D. No. 1994 may find application as the date for the mandatory filing of income tax returns fell on 15 March 1986.[73] On this note, Respondent would argue that he ceased to be a government employee before the offense of non-filing of the tax return was consummated. However, We are of the opinion that abandonment of his post as the Provincial Governor of Ilocos Norte did not operate to relieve him of his legal obligation to file income tax returns. Afterall, Respondent even admitted that he was still the Provincial Governor of Ilocos Norte for the taxable year 1985, and therefore it can be assumed that he was still earning his compensation income at that time.

Having settled the applicability of the penalty of perpetual disqualification on Respondent's violation for the taxable year 1985, the next question to be resolved is whether the same was

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[72] SECTION 184. Unlawful possession or removal of articles subject to specific tax without payment of tax. — x xx

x xx

In applying the above scale of penalties, if the offender is an alien, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and, the offender shall suffer an additional penalty of perpetual disqualification for public office, to vote and to participate in any election.

[73] "Section 45. Individual Returns. – x xx

x xx

(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:

x xx"

imposed on Respondent. A simple reading of the decisions rendered by both the RTC of Quezon City and CA shows none.

Petitioners Ilagan et al., however, would contend that despite its omission in the RTC and CA decisions, the penalty of perpetual disqualification, being an accessory penalty, is deemed written therein, citing Section 252 of the 1977 NIRC and Articles 40 to 45, and 73 of the RPC.

The contention lacks merit.

First, contrary to the postulate of the Petitioners that the penalty of perpetual disqualification is an accessory penalty, the 1977 NIRC, and P.D. No. 1994 are silent as to the classification - whether as a principal penalty or an accessory penalty. However, it was clearly provided as a separate penalty in a particular provision in P.D. No. 1994. A careful reading of Section 286 of P.D. No. 1994, would lead to an interpretation that it is a principal penalty which must be imposed by the court in addition to the maximum penalty prescribed for tax violations, to wit:

> "**<u>in addition</u>, he shall be dismissed from service and perpetually disqualified from holding any public office, to vote and to participate in any election"** (Emphasis supplied)

Moreover, the imposition of the accessory penalties under Article 73 of the RPC is only limited to Articles 40 to 45 of the same Code. Accordingly, it cannot be made to extend to violations under the 1977 NIRC, as nothing therein indicates that the penalty of perpetual disqualification is deemed included in the other penalties for violation thereof. Therefore, as a principal penalty, it must first be imposed by the court which rendered the decision before it can be executed against the person sentenced.

Second, a proper dispositive portion should include the penalty imposed. This has been the pronouncement of the Supreme Court in the case of *Brother Mariano "Mike" Z. Velarde vs. Social Justice Society*,[74] which laid down the guidelines on the contents of a proper dispositive portion, to wit:

[74] G.R. No. 159357, 28 April 2004.

> "In a criminal case, **the disposition should include** a finding of innocence or guilt, the specific crime committed, **the penalty imposed**, the participation of the accused, the modifying circumstances if any, and the civil liability and costs." (Emphasis supplied)

A penalty that would deprive a citizen of his political right to be voted for in an election should be clearly, unequivocally, and expressly stated in the decision. The withholding of such right cannot be made dependent on a mere proposition that the penalty of perpetual disqualification for violation of Section 45 of the 1977 NIRC is deemed written in the decision. To allow Petitioners' theory would establish dangerous precedence for future litigations of petitions for disqualification grounded on violations of the tax code.

Lastly, Petitioners Ilagan et al. argued that the Commission has the duty and authority to *motu proprio* disqualify Respondent based on his perpetual disqualification for violation of the NIRC. Verily, the Commission has the constitutional mandate to enforce all laws relating to the conduct of elections. However, this does not include the duty to alter and modify a court decision which has become final and executory - specifically one that has already attained finality twenty (20) years ago.

Whether Respondent was sentenced to a penalty of imprisonment of more than eighteen (18) months or for a crime involving moral turpitude

Other grounds for disqualification proferred by the Petitioners are those provided under Section 12 of the Omnibus Election Code in relation to Section 1 of Rule 25 of the Comelec Rules of Procedures.

> **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.

> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. [underscoring supplied]
>
> x xx
>
> **Rule 25 – Disqualification of Candidates**
>
> Section 1. Grounds for Disqualification – Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing, as a candidate.
>
> x xx

For a candidate to be disqualified under Section 12 of the OEC, they must be:

1. declared by competent authority insane or incompetent; or

2. 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

3. sentenced by final judgment for a crime involving moral turpitude.

It is with respect to the last two grounds this Commission (*First Division*) is tasked to resolve.

On the penalty of imprisonment of more than 18 months

Was Respondent meted with the penalty of imprisonment of more than 18 months? Similar to the imposition of penalty of

perpetual disqualification, *We* also find that the penalty of imprisonment is absent in the CA *Decision*.

While the RTC of Quezon City convicted Respondent and ordered his imprisonment for six (6) months in Criminal Case Nos. Q-92-29213, Q-92-29212, Q-92-29217, Q-92-29216, Q-92-29215, Q-92-29214, and three (3) years for Criminal Case Nos. Q-91-24390 and Q-91-24391, the CA only convicted Respondent for violation of Section 45 of the 1977 NIRC. The CA further removed the penalty of imprisonment and imposed only a fine of Php 2,000.00 for each charge of failure to file income tax returns.

Petitioner Akbayan et al. insisted that the penalty of imprisonment was not removed by the CA. In their *Memorandum*, they argued as follows:

> "49. Although the Court of Appeals acquitted the Respondent of the charge in Criminal Case No. Q-91-24390, it upheld his conviction in Criminal Case No. Q-91-24391 for failure to file his income tax return for taxable year 1985. In upholding the QC RTC's decision as regards the conviction in Criminal Case No. Q-91-24391, the Court of Appeals did not find any reversible error nor any reason for removing the penalty of imprisonment of three years as meted out by the RTC.
>
> xxx
>
> 52. With respect to Criminal Case No. Q-91-24391, it is clear from its Decision that the Court of Appeals did not express any "opinion that error was committed which injuriously affected the substantial rights of the appellant," Nor was there any mention of substantial error committed by the Regional Trial Court. Hence, the Court of Appeals did not reverse or modify the QC RTC's decision convicting the Respondent. Consequently, the penalty of three years imprisonment meted out by the RTC stays. The fact that the dispositive portion of the Decision of the Court of Appeals did not include such imprisonment does not mean that the Court of Appeals reversed or modified the decision of the RTC, much less delete the sentence of three (3) years imprisonment."

It baffles *Us* why the Petitioners concluded that the CA did not delete the penalty of three (3) years imprisonment when it was clearly absent in the decision. At the pain of being repetitive, *We* consistently adhere to the guidelines that a proper dispositive portion should include the penalty imposed.[75] When the dispositive part of a final order or decision is definite, clear, and unequivocal and can be wholly given effect without the need of interpretation or construction, the same is considered as the judgment of the court, to the exclusion of anything said in the body thereof. Thus, the execution of a judgment must always conform to that decreed in the dispositive part of the decision because the only portion thereof that may be the subject of execution is that which is precisely ordained or decreed in the dispositive portion.[76]

Petitioners Ilagan et al. even came up with their own findings that the CA Decision, which has become immutable by reason of its finality, is null and void when it removed the penalty of imprisonment. Petitioners Ilagan et al., while obviously not the proper authority vested with jurisdiction to review decisions of the Court of Appeals, took it upon themselves to declare the CA *Decision* void. To quote their *Memorandum*:

> "100. **The Court of Appeals thereafter promulgated the Void CA Decision** which, while upholding the conviction of respondent convicted candidate Marcos, Jr. for the charge of violating Section 45 of the NIRC, modified the Decision of the RTC if Quezon City and merely imposed a fine, deleting, albeit illegally, the penalty of imprisonment, which is provided for under **Section 254 of the NIRC of 1977**. [Emphasis supplied]
>
> x xx
>
> 104. xxx Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable, A void judgment never becomes final, x xx
>
> x x x"

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[75] Supra. See note at 73.

[76] National Power Corporation vs. FelicisimoTarcelo and Heirs of Comia Santos, G.R. No. 198139, 08 September 2014.

105. It is submitted that the Void CA Decision, being void judgment, produces no legal effect, the Void Decision is such because it was issued with grave abuse of discretion and was executed against the provisions of mandatory or prohibitory laws, Specifically the void CA Decision completely ignored the mandatory directive of Section 254 of the NIRC (of 1977), which mandated the imposition of both a fine and imprisonment for any conviction due to, among others, the failure to file a return, pay taxes, withhold and remit taxes and refund excess taxes withheld on compensation:

x xx"

Worse, Petitioners Ilagan et al. and Akbayan et al. would go as far as citing provisions of law that were not yet applicable in the case at bar. A simple reading of the 1977 NIRC shows that the applicable provision from the years 1982 to 1985 was not Section 254, but Section 73 of the 1977 NIRC, which gives the court discretion to impose either fine, imprisonment, or both.[77] Even P.D. No. 1994[78] retained the original intention of the 1977 NIRC to give discretion to the courts in imposing the penalty. On the other hand, the penalty of fine AND imprisonment of not less than one (1) year but not more than ten (10) years, was introduced only upon the effectivity of Republic Act No. 8424[79] on 11 December 1998.

We can only assume that Petitioners deliberately cited an inapplicable provision of law to mislead and confuse this Commission (*First Division*). Thus, *We* hereby take this opportunity to remind Petitioners, and future litigants, to refrain from quoting wrong provisions of law just to fit their narrative.

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[77] Supra. See note at 42.

[78] "Sec. 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.

[79] Republic Act No. 8424. An Act Amending the National Internal Revenue Code, as amended, and for Other Purposes, 11 December 1997.

Whether the law provides for the imposition of either fine or imprisonment is further bolstered by the fact that the CA *Decision* never meted the penalty of imprisonment against Respondent. Thus, Petitioners' insistence that the CA did not delete the penalty of three (3) years falls short in light of these legal and factual bases. Why the CA removed the penalty of imprisonment is better left to its sound discretion. This Commission (*First Division*) does not have the power to modify another adjudicative body's final and executory judgment, much less question a decision that has long attained finality.

On the conviction of a crime involving Moral turpitude

Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellowmen or to society in general.[80]

Considering the above definition, does the failure to file income tax returns constitute moral turpitude?

Petitioners Akbayan et al. would insist that it is. Being then a public official and now a candidate seeking the highest office in Government, Respondent is subject to a higher standard of conduct. His repeated and continuous failure to file income tax returns characterizes the crimes he was convicted of as involving moral turpitude. As a public officer with a sworn duty to uphold and execute the laws of the land, Respondent's failure to file income tax returns could have been excused as one not involving moral turpitude on the first offense. However, he continued to violate the law for four years. This is an offensive display of his utter disregard of the rule of law and clearly a conduct contrary to justice, honesty, modesty and good morals.[81]

Petitioners Ilagan et al., for their part, would claim that Respondent's conviction for violation of Section 45 of the 1977 NIRC amounts to a "moral turpitude," especially since it is not shown that Respondent had complied and suffered the penalty imposed on him when he was convicted. This continuing and unjustified refusal to comply with the law shows his willful and

[80] Ty-Delgado vs. House of Representatives Electoral Tribunal and Pichay, G.R. No. 219603, 26 January 2016.
[81] SPA No. 21-232 (DC), Records at 351.Petitioner's Memorandum

deliberate violation of laws which undoubtedly translates to moral turpitude.

Respondent countered by citing the concurring opinion of Justice Arturo D. Brion in the case of *Edgar Y. Teves vs. COMELEC and Herminio G. Teves*,[82] which introduced three (3) approaches in determining whether the crime involves moral turpitude. The first approach looks from the objective perspective of the act itself, irrespective of whether or not the act is a crime. The court best expressed the first approach by emphasizing that the act itself must be inherently immoral. The second approach looks at the act committed through its elements as a crime. The third approach essentially takes the offender and his acts into account in light of the attendant circumstances of the crime: was he motivated by ill-will indicating depravity? Applying the three approaches to this case, Respondent argued that his conviction of failure to file income tax returns does not involve moral turpitude.

Whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[83]

After carefully examining each argument of the parties and the circumstances surrounding Respondent's failure to file income tax, *We* find to rule in Respondent's favor.

To determine if a crime involves moral turpitude, the Supreme Court has consistently ruled that it must be approached on a case-to-case basis.[84] Thus, *We* refer to several jurisprudence in resolving this issue.

First, in *Hon. Remigio E. Zari v. Diosdado S. Flores*[85], the Court emphasized that moral turpitude implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not merely be mala prohibita but, the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude.

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[82] G.R. No. 180363, 28 April 2009
[83] Supra. See note 81.
[84] International Rice Research Institute vs. NLRC, G.R. No. 97239, 12 May 1993, 221 SCRA 760.
[85] A.M. No. (2170-MC) P-1356, 21 November 1979, 94 SCRA 317, 323.

Is the failure to file tax returns inherently immoral? *We* submit that it is not. The failure to file tax returns is not inherently wrong in the absence of a law punishing it. The said omission became punishable only through the enactment of the Tax Code. Moreover, even the 1977 NIRC recognizes that failure to file income tax is not a grave offense as the violation thereof may be penalized only by a fine. Though there was the penalty of imprisonment, the 1977 NIRC gave the court the discretion to either impose a fine, imprisonment, or both.

Second, in *Ledesma Jesus-Paras vs. Quinciano Vailoces*,[86] the Court recognized that as a "general rule, all crimes of which fraud is an element are looked on as involving moral turpitude."

Was there fraud in the failure to file income tax returns of Respondent? *We* don't think so. In fact, in the oft-cited case of *Jose B. Aznar vs. Court of Tax Appeals*,[87] the Court classified the failure to file tax returns as a separate situation from a false return and fraudulent return, viz:

> "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 <u>failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes</u>, namely, "<u>falsity</u>," "<u>fraud</u>" and "<u>omission</u>."** That there is a difference between "false return" and fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due. [Emphasis supplied]

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[86] A.C. No. 439, 12 April 1961.
[87] G.R. No. L-20569, 23 August 1974

By not lumping "failure to file tax returns" with the other two offenses, the Court considered such failure as a mere omission on the part of the taxpayer, thereby removing it from the ambit of acts that constitute fraud.

Third, in several decided cases, not once did the Supreme Court categorically rule that failure to file income tax is a crime involving moral turpitude. As enumerated in the concurring opinion of Justice Brion in the case of *Teves*, the following is a list, albeit incomplete, of the crimes adjudged to involve moral turpitude: 1.) Abduction with consent; 2.) Bigamy; 3.) Concubinage; 4.) Smuggling; 5.) Rape; 6.) Estafa through falsification of a document; 7.) Attempted Bribery; 8.) Profiteering; 9.) Robbery; 10.) Murder, whether consummated or attempted; 11.) Estafa; 12.) Theft; 13.) Illicit Sexual Relations with a Fellow Worker; 14.) Violation of BP Bldg. 2250; 15.) Falsification of Document; 16.) Intriguing against Honor; 17.) Violation of the Anti-Fencing Law; 18.) Violation of Dangerous Drugs Act of 1972 (Drug-pushing); 19.) Perjury; 20.) Forgery; 21.) Direct Bribery; and 22.) Frustrated Homicide.

Likewise, the case of *Zari vs. Flores*[88] has provided its own list of crimes involving moral turpitude, namely: adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on the insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of a public document, and estafa thru falsification of public document.

Notably, the crime of evasion of income tax was included in the enumeration of the *Zari* case. Thus, is failure to file income tax returns considered a form of tax evasion for it to fall under the ambit of crimes involving moral turpitude? Petitioners Ilagan et al. submitted that it is. *We* rule otherwise.

Tax evasion connotes the integration of three factors, to wit:

[88] Supra. See note at 84.

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 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.[89]

It must be pointed out that the duty to withhold Respondent's taxes falls upon the government, as provided by Section 94 of the 1977 NIRC.[90] In fact, the Local Finance Committee of the Province of Ilocos certified that the taxes due were withheld against the salary of Respondent for the years 1982 to 1985.[91] Thus, it cannot be said that there was a payment of less than that known by Respondent to be legally due or the non-payment of tax when it is shown that a tax is due. *We* echo the following pronouncement of the CA in its decision that any deficiency in the taxes withheld should be attributable to the government and not with Respondent:

> "It bears emphasis that the <u>duty to withhold taxes from government employees</u>, including elective officials like the provincial Governor, has been reposed by law in the Government (Sections 90 (c); 94 of the NIRC of 1977). <u>Consequently, any deficiency in the taxes so withheld is likewise attributable to and/or determinable by the government and not by the employee concerned</u> (Section 91 (f), 1977 NIRC)." [underscoring supplied]

On the issue of willfulness, the term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty, and bad faith or bad purpose need not be shown.[92] Again, the duty to file the income tax returns fell on the government and not with Respondent. However, the records are bereft of any

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[89]Commisisoner of Internal Revenue vs. The Estate of Benigno P. Toda Jr.,
[90] Supra. See note at 43.
[91] SPA No. 21-212 (DC) Records, at 545, SPA No. 21-232 (DC) Records, at 283, SPA No. 21-233 (DC) Records, at 247.
[92]Ongsiako, Jr., et. al vs. People of the Philippines, CTA EB Crim. Case No. 031, May 26, 2015, citing Mertens (Law of Federal Income Taxation) Chapter 47.05, p. 28, Vol. 13 cited in People of the Philippines vs. Estelita Delos Angeles, CTA Crim. Case No. 0-027, November 25, 2009. 69 CTA Crim. Case No. 0-012, January 16, 2013.

evidence that Respondent voluntarily and intentionally violated the law. While he was found by a competent authority to have failed to file his income tax returns, failing to file a return, standing alone, is not an attempt to evade or defeat tax.[93]

Further, to prove the absence of any ill-intention and bad faith on his part, Respondent submitted a BIR Certification[94] and a Landbank Official Receipt dated 27 December 2001,[95] which showed his compliance with the CA Decision by paying the deficiency taxes and fines computed by the prosecution division in the total amount of P67,137.27, broken down as follows:[96]

Computation of Deficiency Income Taxes & Fines:

Taxable year Crim. Cases Nos.	**1982** **Q-92-29213**	**1983** **Q-92-29212**	**1984** **Q-92-29217**	**1985** **Q-91-29291**
TOTAL				
Total Gross Compensation Income	10,759.17	78,215.83	64,555.00	78,780.00
Less: Total Exemptions	3,000.00	3,000.00	3,000.00	3,000.00
Taxable Income	7,759.17	75,215.00	61,555.00	75,780.00
Tax Due	107.80	8,966.00	6,370.48	9,073.20
Less: Tax Withheld	-	5,348.42	4,542.00	6,416.27
Basic Tax Payable – date of filing – July 26, 1991	107.80	3617.58	1,828.48	2,656.93
Less: Payments	-	-	-	-
Deficiency Income Tax	107.80	3,617.58	1,828.48	2,656.93
Add: Increments Interest –	64.68	2,170.55	1,097.09	1,594.16

[93] People of the Philippines vs. MailaBAluyot, CTA Crim. Case Nos. 0-445, 0-446, 0-447. 0-448, 17 January 2018.
[94] SPA No. 21-212 (DC) Records, at 554, SPA No. 21-232 (DC) Records, at 292, SPA No. 21-233 (DC) Records, at 414.
[95] SPA No. 21-212 (DC) Records, at 556, SPA No. 21-232 (DC) Records, at 294, SPA No. 21-233 (DC) Records, at 416.
[96] SPA No. 21-212 (DC) Records, at 555, SPA No. 21-232 (DC) Records, at 293, SPA No. 21-233 (DC) Records, at 415.

60% maximum (Sec. 51, NIRC of 1977 as amended by PD 1705)					
TOTAL DEFICIENCY INCOME TAX	13,137.27	172.48	5,788.13	2,925.57	4,251.09
Add: FINES	36,000.00	2,000.00	2,000.00	2,000.00	2,000.00
SURCHARGE – 50%	18,000.00	1,000.00	1,000.00	1,000.00	1,000.00
TOTAL DEFICIENCY TAXES & FINES DUE	**67,137.27**	**3,178.48**	**8,788.13**	**5,925.57**	**49,251.09**

A scrutiny of the Landbank Official Receipt shows that the payment was for the above-computed taxes and fees as evidenced by the amounts indicated therein and the writing of the number 0605. 0605 is a payment form used by every taxpayer to pay taxes and fees that do not require a tax return such as second installment payment for income tax, deficiency tax, delinquency tax, registration fees, penalties, advance payments, deposits, installment payments, etc.[97]

Finally, to erase doubts as to whether the failure to file tax returns is a crime involving moral turpitude, *We* refer to the pronouncement of the Supreme Court in the case of *Republic of the Philippines vs. Ferdinand R. Marcos II and Imelda R. Marcos*[98] wherein the SC categorically ruled that a failure to file a tax return is not a crime involving moral turpitude, thus:

> "Therefore, since respondent Ferdinand Marcos II has appealed his conviction relating to four violations of Section 45 of the NIRC, the same should not serve as a basis to disqualify him to be appointed as an executor of the will of his father. More importantly, **even assuming arguendo that his conviction is later on affirmed, the same is still insufficient to disqualify him as**

[97]BIR Form No. 0605 - Payment Form, Guidelines and Instructions, bir.gov.ph, https://efps.bir.gov.ph/efps-war/EFPSWeb_war/help/help0605.html, (Accessed 28 January 2022).
[98]Supra. See note at 44.

the "failure to file an income tax return" is not a crime involving moral turpitude.[Emphasis supplied]

<u>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.</u> 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. [Emphasis supplied]

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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."

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."** [Emphasis supplied]

Petitioners asseverated, however, that the Supreme Court in the above-cited case of *Republic vs. Marcos II and Marcos* was only ruling on the issue of whether the Respondent is qualified to become the executor of his father's estate. The SC was not resolving the issue of whether or not four repeated instances of violating the law would amount to a crime involving moral turpitude.

Agreeably, the Supreme Court's discussion on moral turpitude in the aforesaid case is an *obiter dictum, as* it was merely an opinion upon some question of law that is not necessary for the resolution of the issues in the said case.

Nevertheless, the Supreme Court has also ruled that a dictum that generally is not binding as authority or precedent within the stare decisis rule may be followed if sufficiently persuasive.[99] Therefore, having found the same to be true in the aforesaid case of *Republic vs. Marcos II and Marcos, We* see no legal infirmity in adopting the said *dictum* in the hopes of finally putting the issue on moral turpitude to rest.

Whether Respondent is qualified to be elected as President of the Philippines

Taking into consideration the foregoing disquisitions, *Our* answer is in the affirmative.

Petitioners made one last attempt at disqualifying Respondent by objecting to the documentary evidence presented by the latter. Petitioners Ilagan et al. asserted that while the payment was made, the same does not reflect that payment of fines and penalties were made to the RTC of Quezon City. They argued that while Respondent presented a BIR *Certification*, the

[99] Vita Uy Lee and Henry Lee vs. The Court of Appeals, G.R. No. L-28126, 28 November 1975. Reiterated in the case of People of the Philippines vs. Hon. Gregorio G. Pineda, G.R. No. 44205, 16 February 1993.

BIR cannot certify payments made to the court or accept payments due to the court. Thus, due to the non-payment of fines with the RTC of Quezon City, it is clear that Respondent has not served his sentence. Likewise, Petitioners Akbayan et al. claimed that as per *certification*[100] from the RTC of Quezon City dated 02 December 2021, Respondent did not pay the fines as the court has no record of its compliance.

This fact of non-payment of fines with the court was admitted by Respondent during the preliminary conference on 07 January 2022.[101] He would counter, however, in his *Memorandum*, that the penalties imposed against him have already been extinguished due to the amendment brought about by the TRAIN Law, which effectively decriminalized the non-filing of annual tax returns insofar as pure compensation income earners are concerned.

It bears stressing that Respondent was only meted with the penalty of a fine for his failure to file his income tax returns. The disqualification under Section 12 of the OEC, which Petitioners cited as a basis for disqualification, contemplates only three instances when a person may be disqualified to hold public office, to wit:

1. declared by competent authority insane or incompetent; or

2. 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

3. sentenced by final judgment for a crime involving moral turpitude.

It is clear as day that Respondent's sentence to pay fines does not fall under any of the above-enumerated instances for disqualification under Section 12 of the OEC to operate. Thus, whether or not he satisfied the payment of fines and penalties with the RTC of Quezon City is immaterial, as his sentence did not fall within the purview of Section 12 of OEC.

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[100] SPA No. 21-212 (DC) Records, at 318.
[101] Transcript of Stenographic Notes, 07 January 2022. at 47-48.

Other matters raised by the parties deserve scant consideration.

In closing, the objective of prescribing disqualifications in the election laws and special laws is obviously to prevent the convicted criminals and the undeserving from running and being voted for. The right of the State to deprive a person of the right of suffrage by reason of their having been convicted of a crime is beyond question. The manifest purpose of such restrictions upon this right is to preserve the purity of elections. The presumption is that one rendered infamous by a conviction of a felony, or other base offense indicative of moral turpitude, is unfit to exercise the privilege of suffrage or to hold office.[102]

As the institution vested with the constitutional duty to "enforce and administer all laws" relating to the conduct of elections, including the disqualification of candidates running for public office, the Commission on Elections must see to it that its judgment is free from bias and partiality. *We* recognize that the resolution of the instant case is of paramount importance, considering that the 2022 NLE is fast approaching. However, the deprivation of one's right to be voted for in any election should not be exercised whimsically and capriciously, lest *We* will be preventing qualified candidates frompursuing a position in public office.

WHEREFORE, premises considered, the Petitions are hereby **DISMISSED** for lack of merit.

SO ORDERED.

(WITH SEPARATE OPINION)

MARLON S. CASQUEJO
Presiding Commissioner

[102] People of the Philippines vs. Amadeo Corral, G.R. No. L-42300, 31 January 1936.

AIMEE P. FEROLINO
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the foregoing resolution were reached in consultation among the members of the Commission (*First Division*) before the case was assigned to the writer of the opinion.

MARLON S. CASQUEJO
Presiding Commissioner

Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

FORMER FIRST DIVISION

BONIFACIO PARABUAC ILAGAN, SATURNINO CUNANAN OCAMPO, MARIA CAROLINA PAGADUAN ARAULLO, TRINIDAD GERLITA REPUNO, JOANNA KINTANAR CARIÑO, ELISA TITA PEREZ LUBI, LIZA LARGOZA MAZA, DANILO MALLARI DELA FUENTE, CARMENCITA MENDOZA FLORENTINO, DOROTEO CUBACUB ABAYA, JR., ERLINDA NABLE SENTURIAS SR., ARABELLA CAMMAGAY BALINGAO, SR., CHERRY M. IBARDALOZA, CSSJB, SR., SUSAN SANTOS ESMILE, SFIC, HOMAR RUBERT ROCA DISTAJO, POLYNNE ESPINEDA DIRA, JAMES CARWYN CANDILA, and JONAS ANGELO LOPENA ABADILLA, *Petitioners,*	**SPA No. 21-212 (DC)**
-versus-	
FERDINAND ROMUALDEZ MARCOS, JR., *Respondent.*	

10 FEB 2022

x----------x

AKBAYAN CITIZENS' ACTION PARTY, DORIS S. NUVAL, JOANNA BERNICE S. CORONACION, JO ENRICA ENRIQUEZ ROSALES, RAYMOND JOHN S. NAGUIT, and LORETTA ANN P. ROSALES,

Petitioners,

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,

Respondent.

SPA No. 21-232 (DC)

x----------x

ABUBAKAR M. MANGELEN,

Petitioner,

-versus-

FERDINAND ROMUALDEZ MARCOS, JR.,

Respondent.

SPA No. 21-233 (DC)

x----------x

SEPARATE OPINION

I vote to **DENY** the petitions for disqualification filed against Respondent Ferdinand Romualdez Marcos, Jr. ("Respondent Marcos").

The consolidated cases revolve on the issues of: (i) void judgment; (ii) accessory penalty need not written in the decision; and (iii) moral turpitude. For purposes of expounding on the *Undersigned's* basis on his vote, each issue will be discussed ***in seriatim***.

On Immutability and Void Judgment

Basic tenets of the law provide that once a judgment reaches its finality, sound principle and public policy dictate that it becomes immutable. No court, not even *Us* in the Commission, can exercise jurisdiction to modify or alter what has long been decided and settled.

On the other hand, Petitioners have this inculcated view that even if judgment reaches its finality, if it is a void judgment, it did not therefore reach finality and not immutable.

To buttress their claim, Petitioners relied heavily on the case of ***Gonzales vs. Solid Cement Corporation***[1]. But a careful scrutiny of the said case in which they lay their "void judgment" argument would show that it is in fact misleading to the point that if read in the context of how the Petitioners presented it, would lead a gullible reader to believe that this Commission can in its almighty power declare the final judgment of the Court of Appeals in ***Republic vs Marcos***[2] as *void*.

The undersigned begs to disagree with the Petitioners.

First, aside from the fact that the Gonzales case is misplaced, be it noted that the said case even adheres to the principle that, *"a decision that has acquired finality becomes immutable and unalterable."* That is the sacred principle that even *Us* in the Commission bow down to. As correctly ruled by the Supreme Court in the Gonzales case, *this quality of immutability precludes the modification of a final judgment, <u>even if the modification is meant to correct erroneous conclusions of fact and law</u>.*

The reason why the Supreme Court <u>called out as void the ruling made by the Court of Appeals</u> in the Gonzales case is due to the fact that the CA ruled that the NLRC acted outside its jurisdiction when the latter modified in the execution stage the Labor Arbiter's (LA) execution order in terms of

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1 G.R. No. 198423, 23 October 2012.
2 CA-G.R. No. 18569

re-computation of monetary benefits not found in the final judgment that was being executed. Instead of affirming the modification made by the NLRC, the CA ruled for the implementation of what the LA ordered on the ground.

The question is, if it is the NLRC who modified the final judgment, how come the Supreme Court called out the CA instead and declared its judgment as void when the latter simply reverted to the original order of the LA?

The Supreme Court pointed out that the NLRC is correct in modifying the amount to be executed since by the very nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction as provided in Article 279 of the Labor Code. Hence, the re-computation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. For while the illegal dismissal case stands, the computation of monetary consequences is affected and, to the words of the Supreme Court, is not a violation of the principle of immutability of final judgments. And for this matter, the CA ruling is the one declared as void.

One thing which the Undersigned wish to point out in the Gonzales case: whatever remedy the aggrieved party resorted to, the same was raised within the prescribed period.

So, while the Gonzales case speaks of an illegal dismissal, ***Republic vs. Marcos*** is a criminal case that sprouted out of non-filing of the Income Tax Return (ITR) which, not only has a different factual milieu, but of different nature. No modification for purposes of re-computation can be had, in contrast to the labor case of Gonzales.

Besides, in all cases cited by the Petitioners to support their attack on immutability of suits, the same were raised by the aggrieved parties. Here, not only are Petitioners **not privy** to the cases filed against Respondent Marcos, but the same has long attained finality when the Supreme Court issued an Entry of Judgment on 31 August 2001. If there is anybody who should clamor about declaration of void judgment, it should be the Republic, thru the Solicitor General. The Solicitor General should have filed its appeal within the prescribed period but it opted not to, resulting in having the questioned decision reached its finality. Herein Petitioners have no personality to question the judgment of the CA and declare voidability of its

judgment, nor could they attack directly thru another venue a final judgment by piercing the final judgment's immutability.

Petitioners insinuate that by deleting the penalty of imprisonment, the CA's questioned decision is converted to an invalid decision and renders its decision null and void.

We go back to the dispositive portion of the questioned CA ruling in ***Republic vs. Marcos***, thus:

> "WHEREFORE, the Decision of the trial court is modified as follows
>
> 1. x x x 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 Case Nos. Q-91-24391, Q-91-29212, Q-92929213, 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 Case 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."

Time and again, our jurisprudence is replete that it is the dispositive portion of the decision that controls for purposes of execution[3]. It is that part of the decision that tells how the case will be executed. This is not to say that the other part of the decision will be rendered nugatory and useless. As a matter of fact, the body can be resorted to in order to determine the ratio decidendi for such a resolution[4].

The dispositive portion of the CA ruling, modifying the RTC ruling is written in clear language that casts out ambiguities. Being the *fallo* of the case, it constitutes the resolution of the court which became the subject of execution.

Again, in light of being repetitious, the undersigned once again stress that the Commission will not be used as instruments by any party to exercise

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3 *Budget Investment & Financing, Inc. vs. Mangoma*, G.R. No. L-28683, September 4, 1987.

4 *Magdalena Estate, Inc. vs Caluag and Nava.*, G.R. No. L-16250, June 30, 1964.

jurisdiction to modify a decision that has long became final. At some point, issues must come to an end.

Interest rei publicae ut sit finis litium.

Litigation must come to an end.

The above principle is not to be taken on solid ground as it allows circumstances which the courts may consider: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable[5].

This case does not fall on any of the grounds. Although Petitioners persist on the ground that the CA ruling is a void judgment, nothing in the three (3) combined petitions would readily justify or convince the Commission why the CA ruling should be declared void. It was not clearly pointed out nor addressed head on why the act of the CA in modifying the RTC ruling is void.

Not all modification or reversal in every ruling becomes void just because one party feels aggrieve or unsatisfied. Much more can just any person disturb a final ruling that has long rested in the confines of the archives of courts.

On Moral Turpitude, Disqualification, and Accessory Penalty Being deemed Written in the Decision

The controversy is not one of first impression.

In all three consolidated petitions presented before *Us,* the primary discussion revolves as to whether the crime committed by Respondent Marcos falls under the category of moral turpitude. But before the undersigned touch on the beef of the controversy, allow the undersigned to discuss salient features material to the discussion ***in seriatim.***

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5 *FGU Insurance Corporation (now BPI/MS Insurance Corporation) vs. RTC, et al.,* G.R. No. 161282, February 23, 2011.

On Accessory Penalty Deemed Written

Petitioners in SPA No. 21-212 (DC) argue that when Respondent Marcos was convicted of a crime punishable under the NIRC, his conviction necessarily carries with it the imposition of perpetual disqualification from holding public office. They furthered that being an accessory penalty, the same need not be written in the judgment or conviction, citing the case of ***People vs. Basilio Silvallana***[6]. This is so true since the questioned CA decision, in modifying the RTC decision, only imposed the penalty of fine on Respondent Marcos —no mention was made with respect to the accessory penalty.

And in so doing, Petitioners insist on the applicability of Section 252 (c) of the NIRC of 1997, as amended, which provides that if the offender 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. Despite no express mention that the accessory penalty of perpetual disqualification is made in the questioned CA ruling, Petitioners insist that if we will apply Article 73 of the Revised Penal Code to the instant case, the perpetual disqualification penalty will, at any rate, be carried.

The pivotal question at hand now is, can the Commission interpret the questioned ruling of the CA to include the accessory penalty of perpetual disqualification despite absence of express imposition in the dispositive portion of the decision?

Basic tenets of criminal law provides that accessory penalties are deemed written in the decision. This is especially true for offenses punishable under the Revised Penal Code where the imposition of the accessory penalties is deemed included in the principal penalty despite no express statement in the dispositive portion of the decision. For this matter, Article 73 of the Revised Penal Code is explicit, thus:

> "Art. 73. *Presumption in regard to the imposition of accessory penalties.* —Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and

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6 G.R. No. L-43120, 27 July 1935.

> 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict."

What Petitioners missed, however, is that Article 73 finds application only insofar as crimes punishable under the RPC is concerned. The principle that the principal carries with it the accessory has no automatic application when it comes to special penal laws. In which case, there must be explicit provision in the special penal law finding suppletory application the provisions of the Revised Penal Code[7]. This holds true particularly that special penal laws provide for their own specific penalties.

True, Section 252 (c) of the NIRC provides for application of accessory penalty of perpetual disqualification if the offender is a government official or employee. But lest it be forgotten, this amendment introducing the penalty of perpetual disqualification came to play only in January 1986. Petitioners cannot insist on applying this amendment to Respondent Marcos since it partakes of penal in character. The general rule still stands those penal laws shall have prospective application and not retrospective if it will prejudice the rights of the accused.

Article 22 of the Revised Penal Code provides that:

> "Art. 22. *Retroactive effect of penal laws.* —Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

Viewed from the foregoing, the retroactive application of penal laws applies to all laws or statutes alike. The only parameter that serves as guidance to the magistrates in applying retroactivity is the extent as to which the law or statutes is retroactive.

Will retroactivity prejudice the accused and imposed upon him penalty which does not exist at the time the allege offense was committed?

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7 Revised Penal Code, Article 10. *Offenses not subject to the provisions of this Code.* —Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

The time-honored principle is that penal statutes are construed strictly against the State and liberally in favor of the accused[8]. When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused[9]. Since penal laws should not be applied mechanically, the Court must determine whether their application is consistent with the purpose and reason of the law[10].

We are not convinced that the amendment introduced by Section 252 (c) of the NIRC should be applied to Respondent Marcos in order to penalize him with graver penalty. As *We* have discussed above, not only is Article 73 of the RPC not applicable at the time the 1977 NIRC was in effect, but that Section 252 (c) cannot be applied retroactively to Respondent Marcos for this will violate his substantial right. Again, retroactivity can be applied if the same is not prejudicial to the offender.

Based on the above pronouncement, the arguments of Petitioners failed to adequately establish the ground within which to declare Respondent Marcos perpetually disqualified to run for the position of President.

On Disqualification to Hold Public Office and Moral Turpitude

Section 12 of the Omnibus Election Code reads:

> "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."

The undersigned will no longer delve on the issue with respect to the ground of ***"sentence to a penalty of more than eighteen months"***, since this has been passed upon in the above discussion when the undersigned stated that the dispositive portion of the decision of the CA is the one controlling.

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8 *Tan vs. Philippine Commercial International Bank*, G.R. No. 152666, April 23, 2008.
9 *Villareal vs. People*, G.R. No. 151258, February 1, 2012.
10 *Supra Note 8.*

Absence any declaration imposing imprisonment necessarily means that the CA modified the RTC ruling which the parties chose not to disturb anymore.

Clearly, what is left to discuss is ***"sentenced by final judgment for a crime involving moral turpitude"*** as a ground for disqualification. Time and again, jurisprudence is replete that there is no hard and fast rule on what constitutes moral turpitude. On this note, we are guided by the limitations on how the Supreme Court define moral turpitude. What is moral turpitude argumentatively touches on the basics pertaining to anything done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general[11].

The undersigned does not subscribe that distinction should be made between crimes under *mala in se* and *mala prohibita*, in order to determine if moral turpitude exists. As a matter of fact, in ***Dela Torre vs Commission on Elections***[12], the Supreme Court had the occasion to define moral turpitude as something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.

It cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute[13].

The undersigned now comes to the core issue where all petitions are hinged: whether non-filing of the ITR constitutes moral turpitude.

The undersigned examined the totality of facts in this case in order to determine whether the offense of non-filing of the ITR constitutes moral turpitude. The offense involved speaks of crime of omission on the part of

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11 *Soriano vs Dizon*, A.C. No. 6792, 25 January 2006, 480 SCRA 1, 9.
12 G.R. No. 121592, July 5, 1996.
13 *Supra* Note 9, *Dela Torre vs. Commission on Elections.*

the Respondent Marcos which, for all intents and purposes, lacks quantum of vileness.

We cannot justify that such omission necessarily results to injustice; this is an overkill. We cannot link such omission to contravention of morals; this is an exaggerated innuendo. We cannot resolve a crime of omission on the basis of strong public clamor insisting that the omission is inherently evil and despicable as it is.

For this matter, non-filing of the ITR does not equate to moral turpitude. Although this kind of omission is necessarily punishable by law, this, however, will not suffice to equate to moral turpitude.

The undersigned found refuge in the case of ***Edgar Teves vs COMELEC***[14], which involves a candidate for election but was convicted of violating Section 3(h), Republic Act No. 3019 of the Anti-Graft and Corrupt Practices Act. Here, the Supreme Court held that the downgrading of the indeterminate penalty of imprisonment of nine years and twenty-one days as minimum to twelve years as maximum to a lighter penalty of fine of P10,000.00 is a recognition that petitioner's violation was not intentionally done contrary to justice, modesty, or good morals but due to his lack of awareness or ignorance of the prohibition.

Applying the same guidelines, all the attending circumstances in the instant case does not come close to moral turpitude.

Respondent Marcos cannot be faulted if the CA found grounds to modify the ruling of the RTC and obliterated the imposition of imprisonment. When Respondent Marcos claimed and declared that he has not 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, he has all the right to do so.

The Commission is confronted with legal issues subject to strong public scrutiny. But no matter how unpopular *Our* findings and appreciation of facts and the law is, *We* must remain unperturbed and apply the law as it is.

The welfare of the general public is best served when *We* resolve any case without fear or favor. That is the true test of integrity. We examine each case based on how they were presented, coupled with evidence, the law and

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[14] G.R. No. 180363, 28 April 2009.

jurisprudence to back up every decision. *We* are not easily swayed because our duty to uphold the Constitution is more paramount than fear of reprisal.

WHEREFORE, in view of the foregoing premises, the *undersigned* votes to **DENY** the petitions for disqualification filed against Respondent Ferdinand Romualdez Marcos, Jr.

MARLON S. CASQUEJO
Commissioner