

GERARDO ROXAS AND THE LIBERAL PARTY, PETITIONERS, VS. THE AUDITOR GENERAL OF THE PHILIPPINES AND/OR RAMON MORADA, RESPONDENTS.

G.R. No. L-31499. October 31, 1972

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/8b11cd2cbcdf/>

MAKASIAR, J.:

In his triple capacity as a taxpayer, Senator and President of the Liberal Party, Gerardo Roxas, together with the Liberal Party, filed on January 22, 1970 (p. 1, rec.) this petition for prohibition with preliminary injunction against respondents Auditor General and/or Ramon Morada, alleged as a mere formal co-respondent, questioning the validity of the designation on October 6, 1969 by the President of the Philippines of respondent Ramon Morada as "acting member of the City Council of Davao City, vice Cornelio P. Maskariño" (Annex "C", p. 21, rec.) and praying for a writ of preliminary injunction to restrain the respondent Auditor General and his representatives from passing in audit and allowing the disbursement of public funds of the City of Davao, for the payment of salaries, allowances or other pecuniary benefits in favor of the respondent Ramon Morada (p. 16, rec.).

In substance, petitioners alleged that Cornelio Maskariño, official candidate of the Liberal Party in the 1967 elections, obtained the second highest number of votes, was proclaimed elected and assumed office as councilor of Davao City, together with eight (8) other duly elected city councilors, namely, Manuel M. Garcia (1st place), Felicidad C. Santos (3rd place); Cipriano Villafuerte (4th place), Domingo R. Vidanes (5th place), Tomas Monteverde, Jr. (6th place), Benigno S. Bangoy (7th place), Antonio S. Castillo (8th place), and Bonifacio Tamayo (9th place); that on September 12, 1969 — exactly 60 days prior to the presidential, senatorial and congressional elections of November 11, 1969 — Cornelio Maskariño filed his certificate of candidacy for congressman for the congressional district of Davao del Sur (Annexes "A" & "B", pp. 7-8, 19-20, rec.); that the city of Davao then was entitled to ten (10) city councilors under its charter, Republic Act No. 4354; that the 10th councilor was not proclaimed because of the pendency of the action filed by candidate Pantaleon V. Pelayo, Jr. against the Comelec, et. al. in G. R. No. L-28869; that in said case, the Supreme Court in its decision dated June 29, 1968, stated that:

"On December 19, 1967, the board issued a 'Certificate of Votes of Candidates' — upon canvass terminated on December 18 — to inform the public of 'the status of votes cast for each candidate.' This certificate shows: Petitioner Pantaleon V. Pelayo, Jr., official Liberal Party candidate, garnered 16,541 votes as against 16,495 of respondent Gaudioso M. Tiongco of the Nacionalistas. The margin is only 46 votes." [1]

that on January 13, 1968, the City Board of Canvassers proclaimed Pantaleon V. Pelayo, Jr. as the 10th councilor-elect, which was sustained as valid by the Supreme Court in said case; [2] that under Section 21 of Republic Act No. 180, as amended (former Revised Election Code), any permanent vacancy in the city or municipal elective office shall be filled up by appointment by the President "of a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party * * *"; that under Sections 7 and 8 of Republic Act No. 5185, otherwise known as the Decentralization Act of 1967, should the

position of number one councilor become vacant by virtue of said number one councilor succeeding to the position of vice-mayor, the same shall be filled up by the council member who obtained the second highest number or percentage of the total votes and the succeeding vacancy or vacancies as a result of such succession shall be filled automatically by the other members on the basis of the number of votes or percentage of votes received; and that permanent vacancies occurring in the board or council prior to 60 days before the presidential election shall be filled up by a special election, but if the vacancy occurs after such period (60 days or within 60 days before a presidential election), the President alone, in case of elective provincial and city officials, shall appoint "qualified persons belonging to the political party or faction of the officer whom he is to replace, upon recommendation of the said political party or faction and who shall serve the unexpired term of the office * * *"; that Ramon Morada is not a member nor the recommendee of the Liberal Party; and that consequently, his designation by the President as acting city councilor of Davao City vice councilor Cornelio Maskariño (LP), who was deemed to have resigned as city councilor upon his filing his certificate of candidacy for congressman on September 12, 1969 for the 1969 elections (also a presidential election), is null and void.

Without issuing any writ of preliminary injunction nor restraining order, in a resolution dated January 26, 1970, the Supreme Court directed the respondents to file their answer (p. 26, rec.).

On February 20, 1970, the Solicitor General, in behalf of respondent Auditor General, filed an answer asserting that co-respondent Ramon Morada is an indispensable, not merely a formal, party; that petitioner Gerardo Roxas has no legal personality to institute the present petition for prohibition as he is not a person directly affected by the proceeding; that the president of the Liberal Party has no capacity to sue, as the Liberal Party is neither a natural nor juridical person nor an entity authorized by law to sue, as the petition does not aver that the Liberal Party is duly incorporated; that the appropriate action should be one for quo warranto and not for prohibition, because the suit questions the right and title of co-respondent Ramon Morada to a public office or the legality of his designation as member of the Davao City council; that under the Constitution, the laws and pertinent regulations, the respondent Auditor General cannot inquire into the legality or validity of the designation of respondent Ramon Morada for thereby he would be reviewing a Presidential designation; and that his function as Auditor General is limited to examining papers and documents including the designation papers of Ramon Morada to determine whether they are complete in order to approve payment of his salary, allowances and other benefits accruing to him as city councilor.

In his answer filed on February 26, 1970, respondent Ramon Morada averred, among others, that Pantaleon V. Pelayo, Jr. was an official candidate of the Nacionalista Party as shown by his certificate of candidacy for city councilor (Annex "9", p. 68, rec.), which fact was also admitted in petitioners' memorandum (pp. 1, 6, petitioners' memo. Annex "A", petitioners' memo.); that under its Charter, Republic Act No. 4354, before it was amended by Republic Act No. 5501, Davao City was entitled to 10 city councilors; that by virtue of Republic Act No. 5501 approved on June 21, 1969, the membership in the Davao City council was increased from 10 to 14; that pursuant to Sections 9 and 10 of Republic Act No. 5185, the President of the Philippines on July 23, 1969 appointed four additional city councilors of Davao City, namely, Gaudioso Tiongco, Victorio Advincula, Napoleon B. Nidea, and Apolinario Tabicon (Annexes "1", "2", "3", & "4", pp. 45, 50-53, rec.), who accordingly took their oath of office (Annexes "5", "6", "7" & "8", pp. 54-57, rec.); that since the 10th councilor-elect Pantaleon V. Pelayo, Jr. succeeded to the 9th position by virtue of the succession of 3rd placer Felicidad Santos to the second position vacated by Cornelio Maskariño under Sections 7 and 8 of Republic Act No. 5185, the designation by the President of respondent Ramon Morada as the 10th councilor is valid, because Pantaleon V. Pelayo, Jr. was the Nacionalista candidate for city councilor in the 1967 elections; that even if Pantaleon V. Pelayo, Jr. were a Liberal candidate then, as erroneously stated by the city board of canvassers in G.R. No. L-28869, still Morada's designation as the 14th councilor would still be valid because the four additional councilors including Apolinario Tabicon are all

Nacionalistas; and that the phrase "vice Cornelio P. Maskariño" in the designation extended to him by the President on October 6, 1969 (Annex "C", p. 121, rec.), should be considered either as a surplusage or an immaterial error, which does not affect the validity of the designation.

In their memorandum filed on May 7, 1970, petitioners further contended that the officer — not the office or position — to be replaced is Cornelio Maskariño, the LP councilor who was considered resigned upon his filing of a certificate of candidacy for congressman; because Section 21 (b) of Republic Act No. 180 or the Revised Election Code provides that in case of a permanent vacancy in any local elective office, "the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, * * *" (pp. 75, 81, rec.).

On the other hand, private respondent Ramon Morada in his memorandum filed on May 29, 1970, insisted that Section 8 of Republic Act No. 5185 — and not Section 21 (b) of Republic Act No. 180, as amended, nor Section 12 of Republic Act No. 4354 (Revised Charter of Davao City) — should govern; that any vacancy in the local legislative body "shall be filled automatically by the next ranking council member and the resulting succeeding vacancies must also be filled up automatically by the other council members, as ranked according to law"; that this "automatic succession rule applies to all incumbent councilors on the date when the vacancy occurs irrespective of the manner (by election or by appointment) by which they became council members"; and that consequently, "the only remaining vacancy in the city council would be the 'last ranking seat' therein and this is the position which is authorized by law to be filled either by election or by presidential appointment" (pp. 110, 112, rec.).

After the parties filed their respective memoranda, in Our resolution dated April 25, 1972, the parties were required to show cause within ten (10) days from notice why this case should not be considered moot and academic (pp. 126-127, rec.), which resolution was received on May 5, 1972 by the parties (see dorsal side of pp. 126 & 127, rec.).

On June 20, 1972, the Solicitor General filed a manifestation praying that he be allowed to file the proper pleading in relation to the aforesaid resolution as soon as he receives the desired information from respondent Auditor General (pp. 128-129, rec.).

On October 10, 1972, the Solicitor General, in behalf of respondent Auditor General, filed a motion to dismiss on the ground that this case had become moot and academic, because respondent Ramon Morada was not re-elected councilor of Davao City in the 1971 elections (pp. 131-132, rec.).

Until this date, neither the petitioner nor respondent Ramon Morada had filed the appropriate pleading as required by Our resolution of April 25, 1972, from which failure may be inferred their lack of interest to prosecute as well as their conformity to the dismissal of this case as moot and academic.

From the institution of this petition, no person claims any superior right to the office of city councilor of Davao City, by reason of the vacancy created when LP city councilor Cornelio Maskariño ran for congressman, as against respondent Ramon Morada, who was designated on October 6, 1969 by the President as acting city councilor to fill up such resulting vacancy. And respondent Morada is no longer councilor as he was not elected in the last local elections on November 9, 1971. Moreover, said position must be presently occupied by somebody else who was elected thereto in the 1971 elections. Consequently, a discussion of the issues raised by the parties would be purely academic.

WHEREFORE, this case is hereby dismissed as moot and academic, without pronouncement as to costs.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

Makalintal, J., on official leave.

[1] 23 SCRA 1377, italics supplied.

[2] 23 SCRA 1378, 1398.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.