

**RENATO U. REYES, PETITIONER, VS.COMMISSION ON ELECTIONS,
AND ROGELIO DE CASTRO, RESPONDENTS.***G.R. No. 120905. March 07, 1996*

Ponente: MENDOZA, J.

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For resolution are special civil actions of certiorari. The petition in G.R. No. 120905 seeks to annul the resolution dated May 9, 1995 of the Second Division of the Commission on Elections, declaring petitioner Renato U. Reyes disqualified from running for local office and cancelling his certificate of candidacy, and the resolution dated July 3, 1995 of the Commission en banc, denying petitioner's motion for reconsideration. On the other hand, the petition in G.R. No. 120940, filed by Julius O. Garcia, has for its purpose the annulment of the aforesaid resolution of July 3, 1995 of the Commission en banc insofar as it denies his motion to be proclaimed the elected mayor of Bongabong, Oriental Mindoro, in view of the disqualification of Renato U. Reyes.

On August 1, 1995, the Court issued a temporary restraining order directing the Commission on Elections en banc to cease and desist from implementing its resolution of July 3, 1995. It also ordered the two cases to be consolidated, inasmuch as they involved the same resolutions of the COMELEC.

The facts are as follows:

Petitioner Renato U. Reyes was the incumbent mayor of the municipality of Bongabong, Oriental Mindoro, having been elected to that office on May 11, 1992. On October 26, 1994, an administrative complaint was filed against him with the Sangguniang Panlalawigan by Dr. Ernesto Manalo. It was alleged, among other things, that petitioner exacted and collected P50,000.00 from each market stall holder in the Bongabong Public Market; that certain checks issued to him by the National Reconciliation and Development Program of the Department of Interior and Local government were never received by the Municipal Treasurer nor reflected in the books of accounts of the same officer; and that he took twenty-seven (27) heads of cattle from beneficiaries of a cattle dispersal program after the latter had reared and fattened the cattle for seven months.

In its decision, dated February 6, 1995, the Sangguniang Panlalawigan found petitioner guilty of the charges and ordered his removal from office.

It appears that earlier, after learning that the Sanggunian had terminated the proceedings in the case and was about to render judgment, petitioner filed a petition for certiorari, prohibition and injunction with the Regional Trial Court of Oriental Mindoro, Branch 42, alleging that the proceedings had been terminated without giving him a chance to be heard. A temporary restraining order was issued by the court on February 7, 1995, enjoining the Sangguniang Panlalawigan from proceeding with the case. As a result, the decision of the Sangguniang Panlalawigan could not be served upon Reyes. But on March 3, 1995, following the expiration of the temporary restraining order and without any injunction being issued by the Regional Trial Court, an attempt was made to serve the decision upon petitioner's counsel in Manila. However, the latter refused to accept the decision. Subsequent attempts to serve the decision upon petitioner himself also failed, as he also refused to accept the

decision.

On March 23, 1995, the Presiding Officer of the Sangguniang Panlalawigan, Vice Governor Pedrito A. Reyes, issued an order for petitioner to vacate the position of mayor and peacefully turn over the office to the incumbent vice mayor. But service of the order upon petitioner was also refused.

Meanwhile, on March 20, 1995, petitioner filed a certificate of candidacy with the Office of the Election Officer of the COMELEC in Bongabong.

On March 24, 1995, private respondent Rogelio de Castro, as registered voter of Bongabong, sought the disqualification of petitioner as candidate for mayor, citing the Local Government Code of 1991 (R.A. No. 7160) which states:

§ 40. Disqualification. - The following persons are disqualified from running for any elective local position:

.....

(b) Those removed from office as a result of an administrative case.

Nonetheless, because of the absence of any contrary order from the COMELEC, petitioner Reyes was voted for in the elections held on May 8, 1995.

On May 9, 1995, the COMELEC's Second Division issued the questioned resolution, the dispositive portion of which reads as follows:

WHEREFORE, respondent having been removed from office by virtue of Administrative Case 006-94, he is hereby DISQUALIFIED from running for public office, in conformity with Section 40, paragraph (b) of the 1991 Local Government Code. The respondent's Certificate of Candidacy is CANCELLED in conformity with this resolution. The Election Officer of Bongabong, Oriental Mindoro is ordered to amend the official list of candidates in Bongabong to reflect the respondent's disqualification and to IMMEDIATELY circulate the amendment to the different Boards of Election Inspectors in Bongabong upon the receipt of this decision.

On May 10, 1995, the Municipal Board of Canvassers of Bongabong, apparently unaware of the disqualification of Reyes by the COMELEC, proclaimed him the duly-elected mayor.

On July 3, 1995, petitioner filed a motion for reconsideration of the resolution of the COMELEC's Second Division, but his motion was denied. The COMELEC en banc declared him to have been validly disqualified as candidate and, consequently, set aside his proclamation as municipal mayor of Bongabong. Hence the petition in G.R. No. 120905, which was filed on July 20, 1995, alleging grave abuse of discretion by the COMELEC on the ground that the decision in the administrative case against petitioner Reyes was not yet final and executory and therefore could not be used as basis for his disqualification. It is contended that the charges against him were rendered moot and academic by the expiration of the term during which the acts complained of had allegedly been committed. Invoking the ruling in the case of *Aguinaldo v. Santos*,^[1] petitioner argues that his election on May 8, 1995 is a bar to his disqualification.

On the other hand, it appears that petitioner Julius M. Garcia, who obtained the second highest number of votes next to petitioner Reyes in the same elections of May 8, 1995, intervened in the COMELEC on June 13, 1995 (after the main decision disqualifying Renato Reyes was promulgated), contending that because Reyes was disqualified, he (Garcia) was entitled to be proclaimed mayor of Bongabong, Oriental Mindoro.

In its resolution of July 3, 1995, the COMELEC en banc denied Garcia's prayer, citing the ruling in *Republic v. De la Rosa*^[2] that a candidate who obtains the second highest number of votes in an election cannot be declared winner. Hence the petition in G.R. No. 120940. Petitioner contends that (1) the COMELEC en banc should have

decided his petition at least 15 days before the May 8, 1995 elections as provided in § 78 of the Omnibus Elections Code, and that because it failed to do so, many votes were invalidated which could have been for him had the voters been told earlier who were qualified to be candidates; (2) that the decision of the Sangguniang Panlalawigan was final and executory and resulted in the automatic disqualification of petitioner, and the COMELEC did not need much time to decide the case for disqualification against Reyes since the latter did not appeal the decision in the administrative case ordering his removal; (3) that the COMELEC should have considered the votes cast for Reyes as stray votes.

After deliberating on the petitions filed in these cases, the Court resolved to dismiss them for lack of showing that the COMELEC committed grave abuse of discretion in issuing the resolutions in question.

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First. Petitioner Reyes claims that the decision of the Sangguniang Panlalawigan, ordering him removed from office, is not yet final because he has not been served a copy thereof.

It appears, however, that the failure of the Sangguniang Panlalawigan to deliver a copy of its decision was due to the refusal of petitioner and his counsel to receive the decision. As the secretary to the Sangguniang Panlalawigan, Mario Manzo, stated in his certification, repeated attempts had been made to serve the decision on Reyes personally and by registered mail, but Reyes refused to receive the decision. Manzo's certification states:

On March 3, 1995, Mr. Marcelino B. Macatangay went to Manila to furnish a copy of the decision to the Counsel for Respondent, Atty. Rogelio V. Garcia, which said counsel refused to accept.

On March 23, 1995, Mr. Mario I. C. Manzo, Secretary to the Sangguniang Panlalawigan with Mr. Marcelino B. Macatangay again went to the office of the Mayor of Bongabong to serve the decision. Mayor Renato U. Reyes, himself present, refused to accept the ORDER enforcing the decision citing particularly the pending case filed in the Sala of Judge Manuel A. Roman as the basis of his refusal.

On [sic] 4:40 p.m., of the same date, the Secretary to the Sangguniang Panlalawigan, unable to serve the ORDER, mailed the same (registered mail receipt No. 432) on the Bongabong Post Office to forward the ORDER to the Office of Mayor Renato U. Reyes.

On March 28, 1995 said registered mail was returned to the Sangguniang Panlalawigan with the following inscriptions on the back by the Postmaster:

- 1) 1st attempt - addressee out of town-9:15 a.m., 3-23-95
- 2) 2nd attempt - addressee cannot be contacted, out of town, 8:50 a.m., 3-24-95
- 3) 3rd attempt - addressee not contacted-out of town, 8:15 a.m., 3-24-95
- 4) 4th attempt - addressee refused to accept 8:15 a.m., 3-27-95

On March 24, 1995, Mr. Marcelino B. Macatangay, again went to Bongabong to serve the same ORDER enforcing the decision. Mayor Renato U. Reyes was not present so the copy was left on the Mayor's Office with comments from the employees that they would not accept the same.[3]

Rule 13, §§ 3 and 7 of the Rules of Court provide for the service of final orders and judgments either personally or by mail. Personal service is completed upon actual or constructive delivery, which may be made by delivering a copy personally to the party or his attorney, or by leaving it in his office with a person having charge thereof, or at his residence, if his office is not known.[4] Hence service was completed when the decision was served upon petitioner's counsel in his office in Manila on March 3, 1995. In addition, as the secretary of the Sangguniang

Panalawigan certified, service by registered mail was also made on petitioner Reyes. Although the mail containing the decision was not claimed by him, service was deemed completed five days after the last notice to him on March 27, 1995.[5]

If a judgment or decision is not delivered to a party for reasons attributable to him, service is deemed completed and the judgment or decision will be considered validly served as long as it can be shown that the attempt to deliver it to him would be valid were it not for his or his counsel's refusal to receive it.

Indeed that petitioner's counsel knew that a decision in the administrative case had been rendered is evident in his effort to bargain with the counsel for the Sangguniang Panlalawigan not to have the decision served upon him and his client while their petition for certiorari in the Regional Trial Court was pending.[6] His refusal to receive the decision may, therefore, be construed as a waiver on his part to have a copy of the decision.

The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests, i.e., enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.

In practice, service means the delivery or communication of a pleading, notice or other papers in a case to the opposite party so as to charge him with receipt of it, and subject him to its legal effect.[7]

In the case at bar, petitioner was given sufficient notice of the decision. Prudence required that, rather than resist the service, he should have received the decision and taken an appeal to the Office of the President in accordance with R.A. No. 7160, § 67.[8] But petitioner did not do so. Accordingly, the decision became final on April 2, 1995, 30 days after the first service upon petitioner.

The net result is that when the elections were held on May 8, 1995, the decision of the Sangguniang Panlalawigan had already become final and executory. The filing of a petition for certiorari with the Regional Trial Court did not prevent the administrative decision from attaining finality. An original action of certiorari is an independent action and does not interrupt the course of the principal action nor the running of the reglementary period involved in the proceeding.[9]

Consequently, to arrest the course of the principal action during the pendency of the certiorari proceedings, there must be a restraining order or a writ of preliminary injunction from the appellate court directed to the lower court.[10]

In the case at bar, although a temporary restraining order was issued by the Regional Trial Court, no preliminary injunction was subsequently issued. The temporary restraining order issued expired after 20 days. From that moment on, there was no more legal barrier to the service of the decision upon petitioner.

Petitioner claims that the decision cannot be served upon him because at the hearing held on February 15, 1995 of the case which he filed in the RTC, the counsel of the Sangguniang Panlalawigan, Atty. Nestor Atienza, agreed not to effect service of the decision of the Sangguniang Panlalawigan pending final resolution of the petition for certiorari.

The alleged agreement between the counsels of Reyes and the Sangguniang Panlalawigan cannot bind the Sangguniang Panlalawigan. It was illegal. And it would have been no less illegal for the Sangguniang Panlalawigan to have carried it out because R.A. No. 7160, § 66(a) makes it mandatory that "[c]opies of the decision [of the Sangguniang Panlalawigan] shall immediately be furnished to respondent and/or interested parties." It was the Sangguniang Panlalawigan's duty to serve it upon the parties without unnecessary delay. To have delayed the service of the decision would have resulted in the Sangguniang Panlalawigan's failure to perform a legal duty. It, therefore, properly acted in having its decision served upon petitioner Reyes.

Second. The next question is whether the reelection of petitioner rendered the administrative charges against him moot and academic. Petitioner invokes the ruling in *Aguinaldo v. COMELEC*,^[11] in which it was held that a public official could not be removed for misconduct committed during a prior term and that his reelection operated as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. But that was because in that case, before the petition questioning the validity of the administrative decision removing petitioner could be decided, the term of office during which the alleged misconduct was committed expired.^[12] Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term. This is the rationale for the ruling in the two *Aguinaldo* cases.

The case at bar is the very opposite of those cases. Here, although petitioner Reyes brought an action to question the decision in the administrative case, the temporary restraining order issued in the action he brought lapsed, with the result that the decision was served on petitioner and it thereafter became final on April 3, 1995, because petitioner failed to appeal to the Office of the President. He was thus validly removed from office and, pursuant to § 40 (b) of the Local Government Code, he was disqualified from running for reelection.

It is noteworthy that at the time the *Aguinaldo* cases were decided there was no provision similar to § 40 (b) which disqualifies any person from running for any elective position on the ground that he has been removed as a result of an administrative case. The Local Government Code of 1991 (R.A. No. 7160) could not be given retroactive effect. Said the Court in the first *Aguinaldo* case:^[13]

The COMELEC applied Section 40 (b) of the Local Government Code (Republic Act 7160) which provides:
Sec. 40. The following persons are disqualified from running for any elective local positions:

xxx xxx xxx

(b) Those removed from office as a result of an administrative case.

Republic Act 7160 took effect only on January 1, 1992 x x x. There is no provision in the statute which would clearly indicate that the same operates retroactively.

It, therefore, follows that 40(b) of the Local Government Code is not applicable to the present case.

Furthermore, the decision has not yet attained finality. As indicated earlier, the decision of the then Secretary of Local Government was questioned by the petitioner in this Court and that to date, the petition remains unresolved x x x.

At any rate, petitioner's claim that he was not given time to present his evidence in the administrative case has no basis, as the following portion of the decision of the *Sangguniang Panlalawigan* makes clear:

On November 28, 1994 the Sanggunian received from respondent's counsel a motion for extension of time to file a verified answer within 15 days from November 23, 1994. In the interest of justice another fifteen (15) day period was granted the respondent.

On December 5, 1994 which is the last day for filing his answer, respondent instead filed a motion to dismiss and set the same for hearing on December 22, 1994.

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On January 4, 1995, the motion to dismiss was denied for lack of merit and the order of denial was received by respondent on January 7, 1995. Considering the fact that the last day within which to file his answer fell on December 5, 1994, respondent is obliged to file the verified answer on January 7, 1995 when he received the order denying his motion to dismiss.

In the hearing of the instant case on January 26, 1995, the counsel for the complainant manifested that he be allowed to present his evidence for failure of the respondent to file his answer albeit the lapse of 19 days from January 7, 1995.

The manifestation of complainant's counsel was granted over the objection of the respondent, and the Sanggunian in open session, in the presence of the counsel for the respondent, issued an order dated January 26, 1995 quoted as follows:

"As shown from the record of this case, Mayor Renato U. Reyes of Bongabong failed to file his answer within the time prescribed by law, after the motion to dismiss was denied by this Sanggunian. The Sanggunian declares that respondent Mayor Renato U. Reyes failed to file his answer to the complaint filed against him within the reglementary period of fifteen (15) days. Counsel for respondent requested for reconsideration twice, which oral motions for reconsideration were denied for lack of merit.

Art. 126 (a) (1) provides that failure of respondent to file his verified answer within fifteen (15) days from receipt of the complaint shall be considered a waiver of his rights to present evidence in his behalf.

It is important to note that this case should be heard in accordance with what is provided for in the constitution that all parties are entitled to speedy disposition of their cases. It is pivotal to state that the Sanggunian Panlalawigan will lose its authority to investigate this case come February 8, 1995 and therefore, in the interest of justice and truth the Sanggunian must exercise that authority by pursuing the hearing of this case.

Accordingly, the counsel for complainant Dr. Ernesto L. Manalo, et al., will present his evidence on February 2, 3, and 6, 1995, and the counsel for respondent will be given a chance to cross-examine the witnesses that may be presented thereat."

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On February 2, 1995, the respondent through counsel despite due notice in open session, and by registered mail (registry receipt No. 1495) dated January 27, 1995, failed to appear. No telegram was received by this body to the effect that he will appear on any of the dates stated in the Order of January 26, 1995. Indeed, such inaction is a waiver of the respondent to whatever rights he may have under our laws.

All in all, herein respondent Mayor Reyes was given by this Sanggunian a period of sixty one (61) days to file his verified answer however, he resorted to dilatory motions which in the end proved fatal to his cause. Veritably, he neither filed nor furnished the complainant a copy of his answer. Failure of the respondent to file his verified answer within fifteen (15) days from receipt of the complaint shall be considered a waiver of his rights to present evidence in his behalf ((1). Art. 126 of Rules and Regulations implementing the Local Government Code of 1991). All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies (Sec. 16, Art. III of the Constitution).

Indeed, it appears that petitioner was given sufficient opportunity to file his answer. He failed to do so. Nonetheless, he was told that the complainant would be presenting his evidence and that he (petitioner) would then have the opportunity to cross-examine the witnesses. But on the date set, he failed to appear. He would say later that this was because he had filed a motion for postponement and was awaiting a ruling thereon. This only betrays the pattern of delay he employed to render the case against him moot by his election.

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We likewise find no grave abuse of discretion on the part of the COMELEC in denying petitioner Julius O. Garcia's petition to be proclaimed mayor in view of the disqualification of Renato U. Reyes.

That the candidate who obtains the second highest number of votes may not be proclaimed winner in case the

winning candidate is disqualified is now settled.[14] The doctrinal instability caused by see-sawing rulings[15] has since been removed. In the latest ruling[16] on the question, this Court said:

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under the circumstances.

Garcia's plea that the votes cast for Reyes be invalidated is without merit. The votes cast for Reyes are presumed to have been cast in the belief that Reyes was qualified and for that reason can not be treated as stray, void, or meaningless.[17] The subsequent finding that he is disqualified cannot retroact to the date of the elections so as to invalidate the votes cast for him.

As for Garcia's contention that the COMELEC committed a grave abuse of discretion in not deciding the case before the date of the election, suffice it to say that under R.A. No. 6646, § 6, the COMELEC can continue proceedings for disqualification against a candidate even after the election and order the suspension of his proclamation whenever the evidence of his guilt is strong. For the same reason, we find no merit in the argument that the COMELEC should have seen right away that Reyes had not exhausted administrative remedies by appealing the decision of the Sangguniang Panlalawigan and, therefore, should have disqualified him before the elections.

WHEREFORE, the petition in G.R. NO. 120905 and G.R. No. 120940 are DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.
Padilla, J., concurs and dissents.

[1] 212 SCRA 768(1992).

[2] 232 SCRA 785(1994). Also cited by the COMELEC were Geronimo v. Ramos, 136 SCRA 435(1985); Topacio v. Paredes, 23 Phil. 238 (1912).

[3] Certification issued by Mario Inocencio C. Manzo, Secretary to the Sangguniang Panlalawigan, Rollo, p. 80.

[4] Rules 13, § 4.

[5] Id., § 8.

[6] Petition, p. 6; Rollo, p. 7.

[7] 1 VICENTE J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES 759(1973), citing Neff v. City of Indianapolis, 198 N.E. 328 hid. 203

[8] This provision states:

Sec. 67. Administrative Appeals. - Decisions in administrative cases may, within thirty (30) days from receipt thereof, be appealed to the following:

(a) The sangguniang panlalawigan, in the case of decisions of the sangguniang panlungsod of component cities and the sangguniang bayan; and

(b) The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities.

Decision of the Office of the President shall be final and executory.

[9] Palomares v. Jimenez, 90 Phil. 773 (1952).

[10] 1 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 456(1989).

[11] Res., G.R. Nos. 105 128-30, May 14, 1992.

[12] Aguinaldo v. Santos, 212 SCRA 768 (1992).

[13] Supra note 11.

[14] Frivaldo v. COMELEC, 174 SCRA 245 (1989); Labo, Jr., v. COMELEC, 176 SCRA 1(1989); Abella v. COMELEC, 201 SCRA 253 (1991); Labo, Jr. v. COMELEC, 211 SCRA 297 (1992); Benito v. COMELEC, 235 SCRA 436(1994).

[15] Compare Topacio v. Paredes, 23 Phil. 238 (1912) with Ticson v. COMELEC, 103 SCRA 687(1981); Geronimo v. Ramos, 136 SCRA 435 (1985), with Santos v. COMELEC, 137 SCRA 740(1985).

[16] Aquino v. COMELEC, G.R. No. 120265, September 18, 1995.

[17] Geronimo v. Ramos, supra note 15.

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