

BENJAMIN U. BORJA, JR., PETITIONER VS. COMMISSION ON ELECTIONS AND JOSE T. CAPCO, JR., RESPONDENTS.*G.R. No. 133495. September 03, 1998*

Ponente: MENDOZA, J.

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This case presents for determination the scope of the constitutional provision barring elective officials, with the exception of barangay officials, from serving more than three consecutive terms. In particular, the question is whether a vice-mayor who succeeds to the office of mayor by operation of law and serves the remainder of the term is considered to have served a term in that office for the purpose of the three-term limit.

Private respondent Jose T. Capco, Jr. was elected vice-mayor of Pateros on January 18, 1988 for a term ending June 30, 1992. On September 2, 1989, he became mayor, by operation of law, upon the death of the incumbent, Cesar Borja. On May 11, 1992, he ran and was elected mayor for a term of three years which ended on June 30, 1995. On May 8, 1995, he was reelected mayor for another term of three years ending June 30, 1998.[1]

On March 27, 1998, private respondent Capco filed a certificate of candidacy for mayor of Pateros relative to the May 11, 1998 elections. Petitioner Benjamin U. Borja, Jr., who was also a candidate for mayor, sought Capco's disqualification on the theory that the latter would have already served as mayor for three consecutive terms by June 30, 1998 and would therefore be ineligible to serve for another term after that.

On April 30, 1998, the Second Division of the Commission on Elections ruled in favor of petitioner and declared private respondent Capco disqualified from running for reelection as mayor of Pateros.[2] However, on motion of private respondent, the COMELEC en banc, voting 5-2, reversed the decision and declared Capco eligible to run for mayor in the May 11, 1998 elections.[3] The majority stated in its decision:

In both the Constitution and the Local Government Code, the three-term limitation refers to the term of office for which the local official was elected. It made no reference to succession to an office to which he was not elected. In the case before the Commission, respondent Capco was not elected to the position of mayor in the January 18, 1988 local elections. He succeeded to such office by operation of law and served for the unexpired term of his predecessor. Consequently, such succession into office is not counted as one (1) term for purposes of the computation of the three-term limitation under the Constitution and the Local Government Code.

Accordingly, private respondent was voted for in the elections. He received 16,558 votes against petitioner's 7,773 votes and was proclaimed elected by the Municipal Board of Canvassers.

This is a petition for certiorari brought to set aside the resolution, dated May 7, 1998, of the COMELEC and to issue a declaration that private respondent is disqualified to serve another term as Mayor of Pateros, Metro Manila.

Petitioner contends that private respondent Capco's service as mayor from September 2, 1989 to June 30, 1992 should be considered as service for full one term, and since he thereafter served from 1992 to 1998 two more terms as mayor, he should be considered to have served three consecutive terms within the contemplation of Art.

X, §8 of the Constitution and §43(b) of the Local Government Code. Petitioner stresses the fact that, upon the death of Mayor Cesar Borja on September 2, 1989, private respondent became the mayor and thereafter served the remainder of the term. Petitioner argues that it is irrelevant that private respondent became mayor by succession because the purpose of the constitutional provision in limiting the number of terms elective local officials may serve is to prevent a monopolization of political power.

This contention will not bear analysis. Article X, §8 of the Constitution provides:

SEC. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

This provision is restated in §43(b) of the Local Government Code (R.A. No. 7160):

Sec. 43. Term of Office - . . .

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected".

First, to prevent the establishment of political dynasties is not the only policy embodied in the constitutional provision in question. The other policy is that of enhancing the freedom of choice of the people. To consider, therefore, only stay in office regardless of how the official concerned came to that office - whether by election or by succession by operation of law - would be to disregard one of the purposes of the constitutional provision in question.

Thus, a consideration of the historical background of Art. X, §8 of the Constitution reveals that the members of the Constitutional Commission were as much concerned with preserving the freedom of choice of the people as they were with preventing the monopolization of political power. Indeed, they rejected a proposal put forth by Commissioner Edmundo F. Garcia that after serving three consecutive terms or nine years there should be no further reelection for local and legislative officials. Instead, they adopted the alternative proposal of Commissioner Christian Monsod that such officials be simply barred from running for the same position in the succeeding election following the expiration of the third consecutive term.[4] Monsod warned against "prescreening candidates [from] whom the people will choose" as a result of the proposed absolute disqualification, considering that the draft constitution provision "recognizing people's power." [5]

Commissioner Blas F. Ople, who supported the Monsod proposal, said:

The principle involved is really whether this Commission shall impose a temporary or a perpetual disqualification on those who have served their terms in accordance with the limits on consecutive service as decided by the Constitutional Commission. I would be very wary about this Commission exercising a sort of omnipotent power in order to disqualify those who will already have served their terms from perpetuating themselves in office. I think the Commission achieves its purpose in establishing safeguards against the excessive accumulation of power as a result of consecutive terms. We do put a cap on consecutive service - in the case of the President, six years; in the case of the Vice-President, unlimited; and in the case of the Senators, one reelection. In the case of the Members of Congress, both from the legislative districts and from the party list and sectoral representation, this is now under discussion and later on the policy concerning local officials will be taken up by the Committee on Local Governments. The principle remains the same. I think we want to prevent future situations where, as a result of continuous service and frequent reelections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their position and to accumulate those powers and perquisites that permit them to stay on indefinitely or to transfer these posts to

members of their families in a subsequent election. I think that is taken care of because we put a gap on the continuity or the unbroken service of all of these officials. But where we now decide to put these prospective servants of the people or politicians, if we want to use the coarser term, under a perpetual disqualification, I have a feeling that we are taking away too much from the people, whereas we should be giving as much to the people as we can in terms of their own freedom of choice".[6]

Other commissioners went on record against "perpetually disqualifying" elective officials who have served a certain number of terms as this would deny the right of the people to choose. As Commissioner Yusup R. Abubakar asked, "why should we arrogate unto ourselves the right to decide what the people want?"[7]

Commissioner Felicitas S. Aquino spoke in the same vein when she called on her colleagues to "allow the people to exercise their own sense of proportion and [rely] on their own strength to curtail power when it overreaches itself."[8]

Commissioner Teodoro C. Bacani stressed: - Why should we not leave [perpetual disqualification after serving a number of terms] to the premise accepted by practically everybody here that our people are politically mature? Should we use this assumption only when it is convenient for us, and not when it may also lead to a freedom of choice for the people and for politicians who may aspire to serve them longer?"[9]

Two ideas thus emerge from a consideration of the proceedings of the Constitutional Commission. The first is the notion of service of term, derived from the concern about the accumulation of power as a result of a prolonged stay in office. The second is the idea of election, derived from the concern that the right of the people to choose those whom they wish to govern them be preserved.

It is likewise noteworthy that, in discussing term limits, the drafters of the Constitution did so on the assumption that the officials concerned were serving by reason of reelection. This is clear from the following exchange in the Constitutional Commission concerning term limits, now embodied in Art. VI §§4 and 7 of the Constitution, for members of Congress:

MR. GASCON. I would like to ask a question with regard to the issue after the second term. We will allow the Senator to rest for a period of time before he can run again?

MR. DAVIDE. That is correct.

MR. GASCON. And the question that we left behind before - if the Gentlemen will remember- was: How long will that period of rest be? Will it be one election which is three years or one term which is six years?

MR. DAVIDE. If the Gentlemen will remember, Commissioner Rodrigo expressed the view that during the election following the expiration of the first 12 years, whether such election will be on the third year or on the sixth year thereafter, this particular member of the Senate can run. So it is not really a period of hibernation for six years. That was the Committee's stand.[10]

Indeed, a fundamental tenet of representative democracy is that the people should be allowed to choose whom they please to govern them.[11] To bar the election of a local official because he has already served three terms, although the first as a result of succession by operation of law rather than election, would therefore be to violate this principle.

Second, not only historical examination but textual analysis as well supports the ruling of the COMELEC that Art. X, §8 contemplates service by local officials for three consecutive terms as a result of election. The first sentence speaks of "the term of office of elective local officials" and bars "such official[s]" from serving for more than three consecutive terms. The second sentence, in explaining when an elective local official may be deemed to have served his full term of office, states that "voluntary renunciation of the office for any length of time shall not

be considered as an interruption in the continuity of his service for the full term for which he was elected." The term served must therefore be one "for which [the official concerned] was elected." The purpose of this provision is to prevent a circumvention of the limitation on the number of terms an elective official may serve. Conversely, if he is not serving a term for which he was elected because he is simply continuing the service of the official he succeeds, such official cannot be considered to have fully served the term now withstanding his voluntary renunciation of office prior to its expiration.

Reference is made to Commissioner Bernas' comment on Art. VI, §7, which similarly bars members of the House of Representatives from serving for more than three terms. Commissioner Bernas states that "if one is elected Representative to serve the unexpired term of another, that unexpired term, no matter how short, will be considered one term for the purpose of computing the number of successive terms allowed." [12]

This is actually based on the opinion expressed by Commissioner Davide in answer to a query of Commissioner Suarez: "For example, a special election is called for a Senator, and the Senator newly elected would have to serve the unexpired portion of the term. Would that mean that serving the unexpired portion of the term is already considered one term? So, half a term, which is actually the correct statement, plus one term would disqualify the Senator concerned from running? Is that the meaning of this provision on disqualification, Madam President?" Commissioner Davide said: "Yes, because we speak of "term" and if there is a special election, he will serve only for the unexpired portion of that particular term plus one more term for the Senator and two more terms for the Members of the Lower House." [13]

There is a difference, however, between the case of a vice-mayor and that of a member of the House of Representatives who succeeds another who dies, resigns, becomes incapacitated, or is removed from office. The vice-mayor succeeds to the mayorship by operation of law. [14] On the other hand, the Representative is elected to fill the vacancy. [15] In a real sense, therefore, such Representative serves a term for which he was elected. As the purpose of the constitutional provision is to limit the right to be elected and to serve in Congress, his service of the unexpired term is rightly counted as his first term. Rather than refute what we believe to be the intent of Art. X, §8 with regard to elective local officials, the case of a Representative who succeeds another confirms the theory.

Petitioner also cites Art. VII, §4 of the Constitution which provides for succession of the Vice-President to the Presidency in case of vacancy in that office. After stating that "The President shall not be eligible for any reelection," this provision says that "No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time." Petitioner contends that, by analogy, the vice-mayor should likewise be considered to have served a full term as mayor if he succeeds to the latter's office and serves for the remainder of the term.

The framers of the Constitution included such a provision because, without it, the Vice-President, who simply steps into the Presidency by succession would be qualified to run for President even if he has occupied that office for more than four years. The absence of a similar provision in Art. X, §8 on elective local officials throws in bold relief the difference between the two cases. It underscores the constitutional intent to cover only the terms of office to which one may have been elected for purpose of the three-term limit on local elective officials, disregarding for this purpose service by automatic succession.

There is another reason why the Vice-President who succeeds to the Presidency and serves in that office for more than four years is ineligible for election as President. The Vice-President is elected primarily to succeed the President in the event of the latter's death, permanent disability, removal or resignation. While he may be appointed to the cabinet, his becoming so is entirely dependent on the good graces of the President. In running for

Vice-President, he may thus be said to also seek the Presidency. For their part, the electors likewise choose as Vice-President the candidate who they think can fill the Presidency in the event it becomes vacant. Hence, service in the presidency for more than four years may rightly be considered as service for a full term.

This is not so in the case of the vice-mayor. Under the local Government Code, he is the presiding officer of the sanggunian and he appoints all officials and employees of such local assembly. He has distinct powers and functions, succession to mayorship in the event of vacancy therein being only one of them.[16] It cannot be said of him, as much as of the Vice-President in the event of a vacancy in the Presidency, that in running for vice-mayor, he also seeks the mayorship. His assumption of the mayorship in the event of vacancy is more a matter of chance than of design. Hence, his service in that office should not be counted in the application of any term limit.

To recapitulate, the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times before the disqualification can apply. This point can be made clearer by considering the following cases or situations:

Case No. 1. Suppose A is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election.

Yes, because although he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served three full terms in all for the purpose of applying the term limit. Under Art. X, §8, voluntary renunciation of the office is not considered as an interruption in the continuity of his service for the full term only if the term is one "for which he was elected." Since A is only completing the service of the term for which the deceased and not he was elected. A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

Case No. 2. Suppose B is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of 1 year. If he is twice reelected after that, can he run for one more term in the next election?

Yes, because he has served only two full terms successively.

In both cases, the mayor is entitled to run for reelection because the two conditions for the application of the disqualification provisions have not concurred, namely, that the local official concerned has been elected three consecutive times and that he has fully served three consecutive terms. In the first case, even if the local official is considered to have served three full terms notwithstanding his resignation before the end of the first term, the fact remains that he has not been elected three times. In the second case, the local official has been elected three consecutive times, but he has not fully served three consecutive terms.

Case No. 3. The case of vice-mayor C who becomes mayor by succession involves a total failure of the two conditions to concur for the purpose of applying Art. X §8. Suppose he is twice elected after that term, is he qualified to run again in the next election?

Yes, because he was not elected to the office of the mayor in the first term but simply found himself thrust into it by operation of law. Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor.

To consider C in the third case to have served the first term in full and therefore ineligible to run a third time for reelection would be not only to falsify reality but also to unduly restrict the right of the people to choose whom they wish to govern them. If the vice-mayor turns out to be a bad mayor, the people can remedy the situation by

simply not reelecting him for another term. But if, on the other hand, he proves to be a good mayor, there will be no way the people can return him to office (even if it is just the third time he is standing for reelection) if his service of the first term is counted as one of the purpose of applying the term limit.

To consider C as eligible for reelection would be in accord with the understanding of the Constitutional Commission that while the people should be protected from the evils that a monopoly of political power may bring about, care should be taken that their freedom of choice is not unduly curtailed.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Martinez, Quisumbing and Purisima, JJ., concur.

Regalado, J., on official leave.

[1] Rollo, pp. 5-6, 124-125.

[2] Id., pp. 63-71.

[3] Id., pp. 30-32.

[4] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 236-243 (Session of July 25, 1986) (hereafter cited as RECORD)

[5] Id., at 236.

[6] Id., at 239-240.

[7] Id., at 242.

[8] Id., at 242.

[9] Id., at 243.

[10] Id., 590 (August 7, 1986).

[11] U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 131 L. Ed. 2d 881 (1995)

[12] JOAQUIN BERNAS, THE 1987 CONSTITUTION 637 (1996).

[13] 2 RECORD 592 (Session of August 7, 1986).

[14] LOCAL GOVERNMENT CODE of 1991, R.A. No. 7160, §44(a).

[15] Art. VI, §8.

[16] R.A. No. 7160, §445 (1991).

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