

ROMEO LONZANIDA, PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTION AND EUFEMIO MULI, RESPONDENTS.

G.R. No. 135150. July 28, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to set aside the resolutions issued by the COMELEC First Division dated May 21, 1998 and by the COMELEC En Banc dated August 11, 1998 in SPA 98-190 entitled, In the matter of the Petition to Disqualify Mayoralty Candidate Romeo Lonzanida of San Antonio, Zambales. Eufemio Muli, petitioner, vs. Romeo Lonzanida, respondent. The assailed resolutions declared herein petitioner Romeo Lonzanida disqualified to run for Mayor in the municipality of San Antonio, Zambales in the May 1998 elections and that all votes cast in his favor shall not be counted and if he has been proclaimed winner the said proclamation is declared null and void.

Petitioner Romeo Lonzanida was duly elected and served two consecutive terms as municipal mayor of San Antonio, Zambales prior to the May 8, 1995 elections. In the May 1995 elections Lonzanida ran for mayor of San Antonio, Zambales and was again proclaimed winner. He assumed office and discharged the duties thereof. His proclamation in 1995 was however contested by his then opponent Juan Alvez who filed an election protest before the Regional Trial Court of Zambales, which in a decision dated January 9, 1997 declared a failure of elections. The court ruled:

"PREMISES CONSIDERED, this court hereby renders judgment declaring the results of the election for the office of the mayor in San Antonio, Zambales last May 8, 1995 as null and void on the ground that there was a failure of election.

Accordingly, the office of the mayor of the Municipality of San Antonio, Zambales is hereby declared vacant."

Both parties appealed to the COMELEC. On November 13, 1997 the COMELEC resolved the election protest filed by Alvez and after a revision and re-appreciation of the contested ballots declared Alvez the duly elected mayor of San Antonio, Zambales by plurality of votes cast in his favor totaling 1,720 votes as against 1,488 votes for Lonzanida. On February 27, 1998 the COMELEC issued a writ of execution ordering Lonzanida to vacate the post, which obeyed, and Alvez assumed office for the remainder of the term.

In the May 11, 1998 elections Lonzanida again filed his certificate of candidacy for mayor of San Antonio. On April 21, 1998 his opponent Eufemio Muli timely filed a petition to disqualify Lonzanida from running for mayor of San Antonio in the 1998 elections on the ground that he had served three consecutive terms in the same post. On May 13, 1998, petitioner Lonzanida was proclaimed winner. On May 21, 1998 the First Division of the COMELEC issued the questioned resolution granting the petition for disqualification upon a finding that Lonzanida had served three consecutive terms as mayor of San Antonio, Zambales and he is therefore disqualified to run for the same post for the fourth time. The COMELEC found that Lonzanida's assumption of office by virtue of his proclamation in May 1995, although he was later unseated before the expiration of the term, should

be counted as service for one full term in computing the three term limit under the Constitution and the Local Government Code. The finding of the COMELEC First Division was affirmed by the COMELEC En Banc in a resolution dated August 11, 1998.

Petitioner Lonzanida challenges the validity of the COMELEC resolutions finding him disqualified to run for mayor of San Antonio Zambales in the 1998 elections. He maintains that he was duly elected mayor for only two consecutive terms and that his assumption of office in 1995 cannot be counted as service of a term for the purpose of applying the three term limit for local government officials, because he was not the duly elected mayor of San Antonio in the May 1995 elections as evidenced by the COMELEC decision dated November 13, 1997 in EAC no. 6-97 entitled *Juan Alvez, Protestant-Appellee vs. Romeo Lonzanida, Protestee-Appellant*, wherein the COMELEC declared Juan Alvez as the duly elected mayor of San Antonio, Zambales. Petitioner also argues that the COMELEC ceased to have jurisdiction over the petition for disqualification after he was proclaimed winner in the 1998 mayoral elections; as the proper remedy is a petition for quo warranto with the appropriate regional trial court under Rule 36 of the COMELEC Rules of Procedure.

Private respondent Eufemio Muli filed comment to the petition asking this court to sustain the questioned resolutions of the COMELEC and to uphold its jurisdiction over the petition for disqualification. The private respondent states that the petition for disqualification was filed on April 21, 1998 or before the May 1998 mayoral elections. Under section 6, RA 6646 and Rule 25 of the COMELEC Rules of Procedure petitions for disqualification filed with the COMELEC before the elections and/or proclamation of the party sought to be disqualified may still be heard and decided by the COMELEC after the election and proclamation of the said party without distinction as to the alleged ground for disqualification, whether for acts constituting an election offense or for ineligibility. Accordingly, it is argued that the resolutions of the COMELEC on the merits of the petition for disqualification were issued within the commission's jurisdiction. As regards the merits of the case, the private respondent maintains that the petitioner's assumption of office in 1995 should be considered as service of one full term because he discharged the duties of mayor for almost three years until March 1, 1998 or barely a few months before the next mayoral elections.

The Solicitor-General filed comment to the petition for the respondent COMELEC praying for the dismissal of the petition. The Solicitor-General stressed that section 8, Art. X of the Constitution and section 43 (b), Chapter I of the Local Government Code which bar a local government official from serving more than three consecutive terms in the same position speaks of "service of a term " and so the rule should be examined in this light. The public respondent contends that petitioner Lonzanida discharged the rights and duties of mayor from 1995 to 1998 which should be counted as service of one full term, albeit he was later unseated, because he served as mayor for the greater part of the term. The issue of whether or not Lonzanida served as a *de jure* or *de facto* mayor for the 1995-1998 term is inconsequential in the application of the three term limit because the prohibition speaks of "service of a term" which was intended by the framers of the Constitution to foil any attempt to monopolize political power. It is likewise argued by the respondent that a petition for quo warranto with the regional trial court is proper when the petition for disqualification is filed after the elections and so the instant petition for disqualification which was filed before the elections may be resolved by the COMELEC thereafter regardless of the imputed basis of disqualification.

The petitioner filed Reply to the comment. It is maintained that the petitioner could not have served a valid term from 1995 to 1998 although he assumed office as mayor for that period because he was not lawfully elected to the said office. Moreover, the petitioner was unseated before the expiration of the term and so his service for the period cannot be considered as one full term. As regards the issue of jurisdiction, the petitioner reiterated in his Reply that the COMELEC ceased to have jurisdiction to hear the election protest after the petitioner's

proclamation.

The petition has merit.

Section 8, Art. X 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 officials 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."

Section 43 of the Local Government Code (R.A. No. 7160) restates the same rule:

"Sec. 43. Term of Office.

(b) No local elective official shall serve for more than three 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."

The issue before us is whether petitioner Lonzanida's assumption of office as mayor of San Antonio Zambales from May 1995 to March 1998 may be considered as service of one full term for the purpose of applying the three-term limit for elective local government officials.

The records of the 1986 Constitutional Commission show that the three-term limit which is now embodied in section 8, Art. X of the Constitution was initially proposed to be an absolute bar to any elective local government official from running for the same position after serving three consecutive terms. The said disqualification was primarily intended to forestall the accumulation of massive political power by an elective local government official in a given locality in order to perpetuate his tenure in office. The delegates also considered the need to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials from running for the same office after a term of nine years. The mayor was compared by some delegates to the President of the Republic as he is a powerful chief executive of his political territory and is most likely to form a political dynasty.[1] The drafters however, recognized and took note of the fact that some local government officials run for office before they reach forty years of age; thus to perpetually bar them from running for the same office after serving nine consecutive years may deprive the people of qualified candidates to choose from. As finally voted upon, it was agreed that an elective local government official should be barred from running for the same post after three consecutive terms. After a hiatus of at least one term, he may again run for the same office.[2]

The scope of the constitutional provision barring elective officials with the exception of barangay officials from serving more than three consecutive terms was discussed at length in the case of Benjamin Borja, Jr., vs. COMELEC and Jose Capco, Jr.[3] where the issue raised was whether a vice-mayor who succeeds to the office of the mayor by operation of law upon the death of the incumbent mayor and served the remainder of the term should be considered to have served a term in that office for the purpose of computing the three term limit. This court pointed out that from the discussions of the Constitutional Convention it is evident that the delegates proceeded from the premise that the official's assumption of office is by reason of election. This Court stated:[4]

"Two ideas 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 election. This is clear from the following exchange in the Constitutional Commission concerning term limits, now embodied in Art. VI sections 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, his particular member of the Senate can run. So it is not really a period of hibernation for six years. That was the Committees' stand.

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Second, not only historical examination but textual analysis as well supports the ruling of the COMELEC that Art X, section 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 officials" from serving for more than three consecutive terms. The second sentence, in explaining when an elective 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 the official concerned was elected." The purpose of the provision is to prevent a circumvention of the limitation on the number of terms an elective official may serve."

This Court held that two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post and 2) that he has fully served three consecutive terms. It stated:

"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."

It is not disputed that the petitioner was previously elected and served two consecutive terms as mayor of San Antonio Zambales prior to the May 1995 mayoral elections. In the May 1995 elections he again ran for mayor of San Antonio, Zambales and was proclaimed winner. He assumed office and discharged the rights and duties of mayor until March 1998 when he was ordered to vacate the post by reason of the COMELEC decision dated November 13, 1997 on the election protest against the petitioner which declared his opponent Juan Alvez, the duly elected mayor of San Antonio. Alvez served the remaining portion of the 1995-1998 mayoral term.

The two requisites for the application of the three term rule are absent. First, the petitioner cannot be considered as having been duly elected to the post in the May 1995 elections, and second, the petitioner did not fully serve the 1995-1998 mayoral term by reason of involuntary relinquishment of office. After a re-appreciation and revision of the contested ballots the COMELEC itself declared by final judgment that petitioner Lonzanida lost in the May 1995 mayoral elections and his previous proclamation as winner was declared null and void. His assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of a void proclamation. It has been repeatedly held by this court that a proclamation subsequently declared void is no proclamation at all[5] and while a proclaimed candidate may assume office on the strength of the proclamation of

the Board of Canvassers he is only a presumptive winner who assumes office subject to the final outcome of the election protest.[6] Petitioner Lonzanida did not serve a term as mayor of San Antonio, Zambales from May 1995 to March 1998 because he was not duly elected to the post; he merely assumed office as presumptive winner, which presumption was later overturned by the COMELEC when it decided with finality that Lonzanida lost in the May 1995 mayoral elections.

Second, the petitioner cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate his post before the expiration of the term. The respondents' contention that the petitioner should be deemed to have served one full term from May 1995-1998 because he served the greater portion of that term has no legal basis to support it; it disregards the second requisite for the application of the disqualification, i.e., that he has fully served three consecutive terms. The second sentence of the constitutional provision under scrutiny states, "Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected. "The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service and thus, the petitioner did not fully serve the 1995-1998 mayoral term.

In sum, the petitioner was not the duly elected mayor and that he did not hold office for the full term; hence, his assumption of office from May 1995 to March 1998 cannot be counted as a term for purposes of computing the three term limit. The Resolution of the COMELEC finding him disqualified on this ground to run in the May 1998 mayoral elections should therefore be set aside.

The respondents harp on the delay in resolving the election protest between petitioner and his then opponent Alvez which took roughly about three years and resultantly extended the petitioner's incumbency in an office to which he was not lawfully elected. We note that such delay cannot be imputed to the petitioner. There is no specific allegation nor proof that the delay was due to any political maneuvering on his part to prolong his stay in office. Moreover, protestant Alvez, was not without legal recourse to move for the early resolution of the election protest while it was pending before the regional trial court or to file a motion for the execution of the regional trial court's decision declaring the position of mayor vacant and ordering the vice-mayor to assume office while the appeal was pending with the COMELEC. Such delay which is not here shown to have been intentionally sought by the petitioner to prolong his stay in office cannot serve as basis to bar his right to be elected and to serve his chosen local government post in the succeeding mayoral election.

The petitioner's contention that the COMELEC ceased to have jurisdiction over the petition for disqualification after he was proclaimed winner is without merit. The instant petition for disqualification was filed on April 21, 1998 or before the May 1998 elections and was resolved on May 21, 1998 or after the petitioner's proclamation. It was held in the case of *Sunga vs. COMELEC and Trinidad*[7] that the proclamation nor the assumption of office of a candidate against whom a petition for disqualification is pending before the COMELEC does not divest the COMELEC of jurisdiction to continue hearing the case and to resolve it on the merits.

Section 6 of RA 6646 specifically mandates that:

"Sec. 6. Effects of disqualification Case.- any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate

is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the court or commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong."

This court held that the clear legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion i.e., until judgment is rendered. The outright dismissal of the petition for disqualification filed before the election but which remained unresolved after the proclamation of the candidate sought to be disqualified will unduly reward the said candidate and may encourage him to employ delaying tactics to impede the resolution of the petition until after he has been proclaimed.

The court stated:

"Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered thereon. The word "shall" signified that this requirement of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. Thus, in providing for the outright dismissal of the disqualification case which remains unresolved after the election, *Silvestre vs. Duavit* in effect disallows what R. A. No. 6646 imperatively requires. This amounts to a quasi-judicial legislation by the COMELEC which cannot be countenanced and is invalid for having been issued beyond the scope of its authority. Interpretative rulings of quasi-judicial bodies or administrative agencies must always be in perfect harmony with statutes and should be for the sole purpose of carrying their general provisions into effect. By such interpretative or administrative rulings, of course, the scope of the law itself cannot be limited. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.

Besides, the deleterious effect of the *Silvestre* ruling is not difficult to foresee. A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.

The fact that Trinidad was already proclaimed and had assumed the position of mayor did not divest the COMELEC of authority and jurisdiction to continue the hearing and eventually decide the disqualification case. In *Aguam v. COMELEC* this Court held-

'Time and again this Court has given its imprimatur on the principle that COMELEC is with authority to annul any canvass and proclamation which was illegally made. The fact that a candidate proclaimed has assumed office, we have said, is no bar to the exercise of such power. It of course may not be availed of where there has been a valid proclamation. Since private respondent's petition before the COMELEC is precisely directed at the annulment of the canvass and proclamation, we perceive that inquiry into this issue is within the area allocated by the Constitution and law to COMELEC xxx Really, were a victim of a proclamation to be precluded from challenging the validity thereof after that proclamation and the assumption of office thereunder, baneful effects may easily supervene.'

It must be emphasized that the purpose of a disqualification proceeding is to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. Obviously, the fact that a candidate has been proclaimed elected does not signify that his disqualification is deemed condoned and may no

longer be the subject of a separate investigation."

ACCORDINGLY, the petition is granted. The assailed resolutions of the COMELEC declaring petitioner Lonzanida disqualified to run for mayor in the 1998 mayoral elections are hereby set aside.

SO ORDERED.

Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and Ynares-Santiago, JJ., concur.

Davide, Jr., CJ., on leave.

Pardo, J., no part.

[1] Records, Constitutional Commission, July 25, 1986, pp. 236, 238.

[2] Ibid., pp. 236, 243-244; August 16, 1986, pp. 407-408.

[3] G.R. No. 133495, September 3, 1998.

[4] Ibid., pp. 7-8.

[5] Torres vs. COMELEC, G.R. No. 121031, March 26, 1997; Ramirez vs. COMELEC, G.R. No. 122013, March 26, 1997.

[6] Ramas vs. COMELEC, G. R. No. 130831, February 10, 1998.

[7] G. R. No. 125629, March 25, 1998, 288 SCRA 76.

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