

ATTY. MIGUEL M. LINGATING, PETITIONER, VS. COMMISSION ON ELECTIONS AND CESAR B. SULONG, RESPONDENTS.*G.R. No. 153475. November 13, 2002*

Ponente: MENDOZA, J.

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This is a petition for certiorari to set aside the resolution,[1] dated April 4, 2002, of the Commission on Elections (COMELEC) en banc, reversing the resolution,[2] dated August 1, 2001, of its First Division and dismissing the petition for disqualification filed by petitioner Miguel M. Lingating against respondent Cesar B. Sulong as candidate for mayor of Lapuyan, Zamboanga del Sur in the May 14, 2001 elections.

On May 3, 2001, petitioner filed with the Provincial Election Supervisor in Pagadian City a petition for the disqualification of respondent Sulong, pursuant to §40(b) of Republic Act No. 7160 (Local Government Code), which disqualifies from running for any elective local position “those removed from office as a result of an administrative case.”[3] It appears that respondent Sulong had previously won as mayor of Lapuyan on January 18, 1988. In the May 11, 1992, and again in the May 8, 1995 elections, he was reelected. In a petition for disqualification, petitioner alleged that in 1991, during his first term as mayor of Lapuyan, respondent Sulong, along with a municipal councilor of Lapuyan and several other individuals,[4] was administratively charged (AC No. 12-91) with various offenses,[5] and that, on February 4, 1992, the Sangguniang Panlalawigan of Zamboanga del Sur found him guilty of the charges and ordered his removal from office. Petitioner claimed that this decision had become final and executory, and consequently the then vice-mayor of Lapuyan, Vicente Imbing, took his oath as mayor vice respondent Sulong on March 3, 1992.[6]

Respondent Sulong denied that the decision in AC No. 12-91 had become final and executory. He averred that after receiving a copy of the decision on February 17, 1992, he filed a motion for reconsideration and/or notice of appeal thereof on February 18, 1992; that on February 27, 1992, the Sangguniang Panlalawigan required Jim Lingating, the complainant in AC No. 12-91, to comment on respondent Sulong’s motion for reconsideration and/or notice of appeal; that the said complainant had not yet complied therewith and his (respondent Sulong’s) motion had consequently remained pending. Respondent Sulong denied he had been removed from office by virtue of the decision in AC No. 12-91.

After the parties had filed their memoranda, the case was submitted for resolution. Because the COMELEC was unable to render judgment before the elections of May 14, 2001, respondent Sulong was voted for in the elections, receiving 4,882 votes as against the 3,611 votes for petitioner. On May 16, 2001, respondent Sulong was proclaimed by the Municipal Board of Canvassers of Lapuyan as the duly elected mayor of that municipality.

In a resolution dated August 1, 2001, the COMELEC’s First Division declared respondent Cesar B. Sulong disqualified. It held:

Section 40(b) of the Local Government Code is clear that any person removed from office by reason of an administrative case is disqualified from running for any elective local office.

From such point, it is clear that Respondent Sulong was declared guilty of having violated the Anti-Graft and Corrupt Practices Act by the Sangguniang Panlalawigan of Zamboanga del Sur. . .which. . .has become final and executory, thereby depriving him of his right to run for public office.

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WHEREFORE, in the light of the foregoing, this Commission hereby resolves to GRANT this Petition and DISQUALIFY Respondent Cesar B. Sulong to run for Municipal mayor for Lapuyan, Zamboanga del Sur in the May 14, 2001 Elections in violation of Section 40[b] of the Local Government Code.[7]

Respondent Sulong filed a motion for reconsideration citing a certification, dated August 7, 2001, of Provincial Secretary of Zamboanga del Sur (OIC) Wilfredo Cimafranca that the decision in AC No. 12-91 “has not become final and executory as the final disposition thereof was overtaken by the local elections of May 1992.” He reiterated his claim that at no time had he been removed by virtue of the said decision.[8]

Petitioner filed an opposition contending, among other things, that the fact that Zamboanga del Sur Governor Ariosa had ordered the enforcement of the decision signified that respondent Sulong’s motion for reconsideration and/or notice of appeal had not been given due course by the Sangguniang Panlalawigan; and that respondent Sulong’s claim that he had not been removed from office was belied by the fact that he (respondent Sulong) brought charges against Vicente Imbing for Usurpation of Official Functions (I.S. No. 92-35), in support of which respondent Sulong attested under oath that Imbing had succeeded him as mayor of Lapuyan.[9]

In a separate motion, petitioner prayed that the resolution of August 1, 2001 be executed and that he be installed as mayor of Lapuyan in view of private respondent’s disqualification. On August 30, 2001, the COMELEC’s First Division denied petitioner’s motion for execution on the ground that the disqualification of an elected candidate does not entitle the candidate who obtained the second highest number of votes to occupy the office vacated.[10] Petitioner then filed a motion for reconsideration of this order.[11]

On April 4, 2002, the COMELEC en banc issued its resolution subject of the petition in this case, reversing the resolution, dated August 1, 2001, of its First Division insofar as it found respondent Sulong disqualified from running as mayor. It held:

The only issue in this case is whether or not the foregoing decision [in AC No. 12-91], assuming it has become final and executory, constitutes a ground for the disqualification of herein respondent-movant as a candidate in the elections [of May 14, 2001].

The records of the case reveal that the decision of the Sangguniang Panlalawigan was promulgated on February [4] , 1992 finding respondent Sulong “guilty of dishonesty, falsification of public documents, malversation. . .”

In the May 1992 elections, respondent Sulong was re-elected mayor of Lapuyan, Zamboanga del Sur despite the decision of the Sangguniang dismissing him from office. In the 1995 May elections, respondent Sulong ran and won the mayoralty elections of Lapuyan, Zamboanga del Sur.

While it is true that one of the disqualifications from running in an elective position is removal from office as a result of an administrative case, said provision no longer applies if the candidate whose qualification is questioned got re-elected to another term. In *Aguinaldo vs. Santos*, 212 SCRA 768, the Supreme Court ruled that re-election renders an administrative case moot and academic.

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Obviously, the re-election of [r]espondent Sulong in the 1992 and 1995 elections would be tantamount to a condonation of the Sangguniang Panlalawigan decision promulgated 04 February 1992 which found him guilty

of dishonesty, malversation of public funds etc[.], granting said decision has become final and executory.

Moreover, the people of LAPUYAN have already expressed their will when they cast their votes in the recent elections as evidenced by the results which found respondent Sulong to have won convincingly.

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WHEREFORE, premises considered, the Commission En Banc RESOLVED as it hereby RESOLVES to reverse the First Division Resolution [dated August 1, 2001] and DISMISS the petition for lack of merit.[12]

The COMELEC en banc also ruled that, in any event, respondent Sulong was not entitled to occupy the office thus vacated. Hence, this petition by Lingating.

Petitioner contends that the COMELEC en banc erred in applying the ruling in *Aguinaldo v. Commission on Elections*[13] in holding that the reelection of respondent Sulong in 1992 and 1995 as mayor of Lapuyan had the effect of condoning the misconduct for which he was ordered dismissed by the Sangguniang Panlalawigan of Zamboanga del Sur. Petitioner cites *Reyes v. Commission on Elections*[14] in which we held that an elective local executive officer, who is removed before the expiration of the term for which he was elected, is disqualified from being a candidate for a local elective position under §40(b) of the Local Government Code.

We stated in *Reyes*:

Petitioner invokes the ruling in *Aguinaldo v. COMELEC*, 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. 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, . . . the decision in the administrative case, . . . 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.

However, *Reyes* cannot be applied to this case because it appears that the 1992 decision of the Sangguniang Panlalawigan, finding respondent Sulong guilty of dishonesty, falsification and malversation of public funds, has not until now become final. The records of this case show that the Sangguniang Panlalawigan of Zamboanga del Sur rendered judgment in AC No. 12-91 on February 4, 1992, a copy of which was received by respondent Sulong on February 17, 1992; that on February 18, 1992, he filed a "motion for reconsideration and/or notice of appeal;" that on February 27, 1992, the Sangguniang Panlalawigan, required Jim Lingating, the complainant in AC No. 12-91, to comment; and that the complainant in AC No. 12-91 has not filed a comment nor has the Sangguniang Panlalawigan resolved respondent's motion. The filing of his motion for reconsideration prevented the decision of Sangguniang Panlalawigan from becoming final.

While R.A. No. 7160 on disciplinary actions is silent on the filing of a motion for reconsideration, the same

cannot be interpreted as a prohibition against the filing of a motion for reconsideration. Thus, it was held[15] that a party in a disbarment proceeding under Rule 139-B, §12(c) can move for a reconsideration of a resolution of the Integrated Bar of the Philippines although Rule 139-B does not so provide:

Although Rule 139-B, §12(c) makes no mention of a motion for reconsideration, nothing in its text or history suggests that such motion is prohibited. It may therefore be filed Indeed, the filing of such motion should be encouraged before [an appeal is] resort[ed] to . . . as a matter of exhaustion of administrative remedies, to afford the agency rendering the judgment [an] opportunity to correct any error it may have committed through a misapprehension of facts or misappreciation of evidence.

There is thus no decision finding respondent guilty to speak of. As Provincial Secretary of Zamboanga del Sur Wilfredo Cimafranca attested, the Sangguniang Panlalawigan simply considered the matter as having become moot and academic because it was “overtaken by the local elections of May [11,]1992.”

Neither can the succession of the then vice-mayor of Lapuyan, Vicente Imbing, and the highest ranking municipal councilor of Lapuyan, Romeo Tan, to the offices of mayor and vice-mayor, respectively, be considered proof that the decision in AC No. 12-91 had become final because it appears to have been made pursuant to §68[16] of the Local Government Code, which makes decisions in administrative cases immediately executory.

Indeed, considering the failure of the Sangguniang Panlalawigan to resolve respondent’s motion, it is unfair to the electorate to be told after they have voted for respondent Sulong that after all he is disqualified, especially since, at the time of the elections on May 14, 2001, the decision of the Sangguniang Panlalawigan had been rendered nearly ten years ago.

Having come to the conclusion that respondent Sulong is not disqualified from holding the position of mayor of Lapuyan, it is unnecessary to pass upon petitioner’s contention that, as the candidate who obtained the second highest number of votes, he is entitled to be installed as mayor because the votes cast in favor of respondent Sulong were void.

WHEREFORE, the petition for certiorari is DISMISSED and the resolution, dated April 4, 2002, of the COMELEC en banc, dismissing petitioner’s petition for disqualification, is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.
Austria-Martinez, J., on leave.

[1] Per Commissioner Luzviminda G. Tancangco, concurred in by Commissioners Rufino S.B. Javier and Ralph C. Lantion, with Commissioners Alfredo L. Benipayo, Mehol K. Sadain, and Florentino A. Tuason, Jr. concurring in the result. Commissioner Resurreccion Z. Borra filed a dissenting opinion.

[2] Per Commissioner Resurreccion Z. Borra, concurred in by Commissioners Luzviminda G. Tancangco and Rufino S.B. Javier.

[3] Disqualifications. - The following persons are disqualified from running for any elective local position:

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

[4] Arno S. Madrigal, Victor S. Apostol, Lucas Cabot, Sr., and Yolanda Galeza.

[5] Dishonesty, Falsification of Public Documents, Malversation of Public Funds and “violation of R.A. No. 3019.”

[6] Petition, Annexes A & C; Rollo, pp. 20-22, 30-36. The highest ranking municipal councilor of Lapuyan, Romeo Tan, also succeeded to the position vacated by Vicente Imbing. It appears that the Sangguniang Panlalawigan issued a resolution (Resolution No. 74) requesting the Philippine National Police (PNP) to assist in the enforcement of its decision in AC No. 12-91.

[7] Rollo, pp. 38-39.

[8] Petition, Annex G; Rollo, pp. 49-55.

[9] Id., Annex H; id., pp. 63-72.

[10] Id., Annex I; id., pp. 74-76.

[11] Id., Annex J; id., pp. 77-79.

[12] Rollo, pp. 86-87

[13] 212 SCRA 768 (1992).

[14] 254 SCRA 514, 525-526 (1996).

[15] *Halimao v. Villanueva*, 253 SCRA SCRA 1, 6 (1996).

[16] Section 68 of R.A. No. 7160 allows for the execution pending appeal of administrative decisions, thus

“Execution Pending Appeal. An appeal shall not prevent a decision from becoming final or executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal.”

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