

**ARSENIO A. LATASA, PETITIONER, VS. COMMISSION ON ELECTIONS,  
AND ROMEO SUNGA, RESPONDENTS.***G.R. No. 154829. December 10, 2003*

Ponente: AZCUNA, J.

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This is a petition for certiorari under Rule 65 of the Rules of Court which seeks to challenge the resolution issued by the First Division of the Commission on Elections (COMELEC) dated April 27, 2001 in SPA Case No. 01-059 entitled, Romeo M. Sunga, petitioner, versus Arsenio A. Latasa, respondent, and the Resolution of the COMELEC en banc denying herein petitioner's Motion for Reconsideration. The assailed Resolution denied due course to the certificate of candidacy of petitioner Arsenio A. Latasa, declaring him disqualified to run for mayor of Digos City, Davao del Sur Province in the May 14, 2001 elections, ordering that all votes cast in his favor shall not be counted, and if he has been proclaimed winner, declaring said proclamation null and void.

The facts are fairly simple.

Petitioner Arsenio A. Latasa, was elected mayor of the Municipality of Digos, Davao del Sur in the elections of 1992, 1995, and 1998. During petitioner's third term, the Municipality of Digos was declared a component city, to be known as the City of Digos. A plebiscite conducted on September 8, 2000 ratified Republic Act No. 8798 entitled, "An Act Converting the Municipality of Digos, Davao del Sur Province into a Component City to be known as the City of Digos" or the Charter of the City of Digos. This event also marked the end of petitioner's tenure as mayor of the Municipality of Digos. However, under Section 53, Article IX of the Charter, petitioner was mandated to serve in a hold-over capacity as mayor of the new City of Digos. Hence, he took his oath as the city mayor.

On February 28, 2001, petitioner filed his certificate of candidacy for city mayor for the May 14, 2001 elections. He stated therein that he is eligible therefor, and likewise disclosed that he had already served for three consecutive terms as mayor of the Municipality of Digos and is now running for the first time for the position of city mayor.

On March 1, 2001, private respondent Romeo M. Sunga, also a candidate for city mayor in the said elections, filed before the COMELEC a Petition to Deny Due Course, Cancel Certificate of Candidacy and/ or For Disqualification[1] against petitioner Latasa. Respondent Sunga alleged therein that petitioner falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City since petitioner had already been elected and served for three consecutive terms as mayor from 1992 to 2001.

On March 5, 2001, petitioner Latasa filed his Answer,[2] arguing that he did not make any false representation in his certificate of candidacy since he fully disclosed therein that he had served as mayor of the Municipality of Digos for three consecutive terms. Moreover, he argued that this fact does not bar him from filing a certificate of candidacy for the May 14, 2001 elections since this will be the first time that he will be running for the post of city mayor.

Both parties submitted their position papers on March 19, 2001.[3]

On April 27, 2001, respondent COMELEC's First Division issued a Resolution, the dispositive portion of which reads, as follows:

Wherefore, premises considered, the respondent's certificate of candidacy should be cancelled for being a violation of the three (3)-term rule proscribed by the 1987 Constitution and the Local Government Code of 1991.[4]

Petitioner filed his Motion for Reconsideration dated May 4, 2001,[5] which remained unacted upon until the day of the elections, May 14, 2001. On May 16, 2001, private respondent Sunga filed an Ex Parte Motion for Issuance of Temporary Restraining Order Enjoining the City Board of Canvassers From Canvassing or Tabulating Respondent's Votes, and From Proclaiming Him as the Duly Elected Mayor if He Wins the Elections.[6] Despite this, however, petitioner Latasa was still proclaimed winner on May 17, 2001, having garnered the most number of votes. Consequently, private respondent Sunga filed, on May 27, 2001, a Supplemental Motion[7] which essentially sought the annulment of petitioner's proclamation and the suspension of its effects.

On July 1, 2001, petitioner was sworn into and assumed his office as the newly elected mayor of Digos City. It was only on August 27, 2002 that the COMELEC en banc issued a Resolution denying petitioner's Motion for Reconsideration.

Hence, this petition.

It cannot be denied that the Court has previously held in *Mamba-Perez v. COMELEC*[8] that after an elective official has been proclaimed as winner of the elections, the COMELEC has no jurisdiction to pass upon his qualifications. An opposing party's remedies after proclamation would be to file a petition for quo warranto within ten days after the proclamation.

On the other hand, certain peculiarities in the present case reveal the fact that its very heart is something which this Court considers of paramount interest. This Court notes from the very beginning that petitioner himself was already entertaining some doubt as to whether or not he is indeed eligible to run for city mayor in the May 14, 2001 elections. In his certificate of candidacy, after the phrase "I am eligible", petitioner inserted a footnote and indicated:

[\*]Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor.[9]

Time and again, this Court has held that rules of procedure are only tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation. We will not hesitate to set aside technicalities in favor of what is fair and just.[10]

The spirit embodied in a Constitutional provision must not be attenuated by a rigid application of procedural rules.

The present case raises a novel issue with respect to an explicit Constitutional mandate: whether or not petitioner Latasa is eligible to run as candidate for the position of mayor of the newly-created City of Digos immediately after he served for three consecutive terms as mayor of the Municipality of Digos.

As a rule, in a representative democracy, the people should be allowed freely to choose those who will govern them. Article X, Section 8 of the Constitution is an exception to this rule, in that it limits the range of choice of the people.

Section 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.

An examination of the historical background of the subject Constitutional provision 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. In fact, they rejected a proposal set forth by Commissioner Edmundo Garcia that after serving three consecutive terms or nine years, there should be no further re-election for local and legislative officials.[11] The members, instead, 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:

MR. MONSOD: Madam President, I was reflecting on this issue earlier and I asked to speak because in this draft Constitution, we are recognizing people's power. We have said that now there is a new awareness, a new kind of voter, a new kind of Filipino. And yet at the same time, we are prescreening candidates among whom they will choose. We are saying that this 48-member Constitutional Commission has decreed that those who have served for a period of nine years are barred from running for the same position.

The argument is that there may be other positions. But there are some people who are very skilled and good at legislation, and yet are not of a national stature to be Senators. They may be perfectly honest, perfectly competent and with integrity. They get voted into office at the age of 25, which is the age we provide for Congressmen. And at 34 years old we put them into pasture.

Second, we say that we want to broaden the choices of the people. We are talking here only of congressional or senatorial seats. We want to broaden the people's choice but we are making prejudgment today because we exclude a certain number of people. We are, in effect, putting an additional qualification for office - that the officials must have not have served a total of more than a number of years in their lifetime.

Third, we are saying that by putting people to pasture, we are creating a reserve of statesmen, but the future participation of these statesmen is limited. Their skills may be only in some areas, but we are saying that they are going to be barred from running for the same position.

Madam President, the ability and capacity of a statesman depend as well on the day-to-day honing of his skills and competence, in intellectual combat, in concern and contact with the people, and here we are saying that he is going to be barred from the same kind of public service.

I do not think it is in our place today to make such a very important and momentous decision with respect to many of our countrymen in the future who may have a lot more years ahead of them in the service of their country.

If we agree that we will make sure that these people do not set up structures that will perpetuate them, then let us give them this rest period of three years or whatever it is. Maybe during that time, we would even agree that their fathers or mothers or relatives of the second degree should not run. But let us not bar them for life after serving the public for number of years.[12]

The framers of the Constitution, by including this exception, wanted to establish some safeguards against the excessive accumulation of power as a result of consecutive terms. As Commissioner Blas Ople stated during the deliberations:

x x x I think we want to prevent future situations where, as a result of continuous service and frequent re-elections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their positions and to accumulate these powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. x x x [13]

An elective local official, therefore, is not barred from running again in for same local government post, unless two conditions concur: 1.) that the official concerned has been elected for three consecutive terms to the same local government post, and 2.) that he has fully served three consecutive terms.[14]

In the present case, petitioner states that a city and a municipality have separate and distinct personalities. Thus they cannot be treated as a single entity and must be accorded different treatment consistent with specific provisions of the Local Government Code. He does not deny the fact that he has already served for three consecutive terms as municipal mayor. However, he asserts that when Digos was converted from a municipality to a city, it attained a different juridical personality. Therefore, when he filed his certificate of candidacy for city mayor, he cannot be construed as vying for the same local government post.

For a municipality to be converted into a city, the Local Government Code provides:

SECTION 450. Requisites for Creation. - (a) A municipality or a cluster of barangays may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million pesos (20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisites:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or,

(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more island. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income.[15]

Substantial differences do exist between a municipality and a city. For one, there is a material change in the political and economic rights of the local government unit when it is converted from a municipality to a city and undoubtedly, these changes affect the people as well.[16] It is precisely for this reason why Section 10, Article X of the Constitution mandates that no province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, without the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

As may be gleaned from the Local Government Code, the creation or conversion of a local government unit is done mainly to help assure its economic viability. Such creation or conversion is based on verified indicators:

Section 7. Creation and Conversion. --- As a general rule, the creation of a local government unit or its conversion from one level to another shall be based on verifiable indicators or viability and projected capacity to provide services, to wit:

(a) Income. --- It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. --- It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land Area. --- It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[17]

On the other hand, Section 2 of the Charter of the City of Digos provides:

Section 2. The City of Digos --- The Municipality of Digos shall be converted into a component city to be known as the City of Digos, hereinafter referred to as the City, which shall comprise the present territory of the Municipality of Digos, Davao del Sur Province. The territorial jurisdiction of the City shall be within the present metes and bounds of the Municipality of Digos. x x x

Moreover, Section 53 of the said Charter further states:

Section 53. Officials of the City of Digos. --- The present elective officials of the Municipality of Digos shall continue to exercise their powers and functions until such a time that a new election is held and the duly-elected officials shall have already qualified and assumed their offices. x x x.

As seen in the aforementioned provisions, this Court notes that the delineation of the metes and bounds of the City of Digos did not change even by an inch the land area previously covered by the Municipality of Digos. This Court also notes that the elective officials of the Municipality of Digos continued to exercise their powers and functions until elections were held for the new city officials.

True, the new city acquired a new corporate existence separate and distinct from that of the municipality. This does not mean, however, that for the purpose of applying the subject Constitutional provision, the office of the municipal mayor would now be construed as a different local government post as that of the office of the city mayor. As stated earlier, the territorial jurisdiction of the City of Digos is the same as that of the municipality. Consequently, the inhabitants of the municipality are the same as those in the city. These inhabitants are the same group of voters who elected petitioner Latasa to be their municipal mayor for three consecutive terms. These are also the same inhabitants over whom he held power and authority as their chief executive for nine years.

This Court must distinguish the present case from previous cases ruled upon this Court involving the same Constitutional provision.

In *Borja, Jr. v. COMELEC*,<sup>[18]</sup> the issue therein was whether a vice-mayor who became the mayor by operation of law and who served the remainder of the mayor's term should be considered to have served a term in that office for the purpose of the three-term limit under the Constitution. Private respondent in that case was first elected as vice-mayor, but upon the death of the incumbent mayor, he occupied the latter's post for the unexpired term. He was, thereafter, elected for two more terms. This Court therein held that when private respondent occupied the post of the mayor upon the incumbent's death and served for the remainder of the term, he cannot be construed as having served a full term as contemplated under the subject constitutional provision. The term served must be one "for which [the official concerned] was elected."

It must also be noted that in *Borja*, the private respondent therein, before he assumed the position of mayor, first served as the vice-mayor of his local government unit. The nature of the responsibilities and duties of the vice-mayor is wholly different from that of the mayor. The vice-mayor does not hold office as chief executive over his local government unit. In the present case, petitioner, upon ratification of the law converting the

municipality to a city, continued to hold office as chief executive of the same territorial jurisdiction. There were changes in the political and economic rights of Digos as local government unit, but no substantial change occurred as to petitioner's authority as chief executive over the inhabitants of Digos.

In *Lonzanida v. COMELEC*,<sup>[19]</sup> petitioner was elected and served two consecutive terms as mayor from 1988 to 1995. He then ran again for the same position in the May 1995 elections, won and discharged his duties as mayor. However, his opponent contested his proclamation and filed an election protest before the Regional Trial Court, which ruled that there was a failure of elections and declared the position of mayor vacant. The COMELEC affirmed this ruling and petitioner acceded to the order to vacate the post. During the May 1998 elections, petitioner therein again filed his certificate of candidacy for mayor. A petition to disqualify him was filed on the ground that he had already served three consecutive terms. This Court ruled, however, that petitioner therein cannot be considered as having been duly elected to the post in the May 1995 elections, and that said petitioner did not fully serve the 1995-1998 mayoral term by reason of involuntary relinquishment of office.

In the present case, petitioner Latasa was, without a doubt, duly elected as mayor in the May 1998 elections. Can he then be construed as having involuntarily relinquished his office by reason of the conversion of Digos from municipality to city? This Court believes that he did involuntarily relinquish his office as municipal mayor since the said office has been deemed abolished due to the conversion. However, the very instant he vacated his office as municipal mayor, he also assumed office as city mayor. Unlike in *Lonzanida*, where petitioner therein, for even just a short period of time, stepped down from office, petitioner Latasa never ceased from acting as chief executive of the local government unit. He never ceased from discharging his duties and responsibilities as chief executive of Digos.

In *Adorneo v. COMELEC*,<sup>[20]</sup> this Court was confronted with the issue of whether or not an assumption to office through a recall election should be considered as one term in applying the three-term limit rule. Private respondent, in that case, was elected and served for two consecutive terms as mayor. He then ran for his third term in the May 1998 elections, but lost to his opponent. In June 1998, his opponent faced recall proceedings and in the recall elections of May 2000, private respondent won and served for the unexpired term. For the May 2001 elections, private respondent filed his certificate of candidacy for the office of mayor. This was questioned on the ground that he had already served as mayor for three consecutive terms. This Court held therein that private respondent cannot be construed as having been elected and served for three consecutive terms. His loss in the May 1998 elections was considered by this Court as an interruption in the continuity of his service as mayor. For nearly two years, private respondent therein lived as a private citizen. The same, however, cannot be said of petitioner Latasa in the present case.

Finally, in *Socrates v. COMELEC*,<sup>[21]</sup> the principal issue was whether or not private respondent Edward M. Hagedorn was qualified to run during the recall elections. Therein respondent Hagedorn had already served for three consecutive terms as mayor from 1992 until 2001 and did not run in the immediately following regular elections. On July 2, 2002, the barangay officials of Puerto Princesa convened themselves into a Preparatory Recall Assembly to initiate the recall of the incumbent mayor, Victorino Dennis M. Socrates. On August 23, 2002, respondent Hagedorn filed his certificate of candidacy for mayor in the recall election. A petition for his disqualification was filed on the ground that he cannot run for the said post during the recall elections for he was disqualified from running for a fourth consecutive term. This Court, however, ruled in favor of respondent Hagedorn, holding that the principle behind the three-term limit rule is to prevent consecutiveness of the service of terms, and that there was in his case a break in such consecutiveness after the end of his third term and before the recall election.

It is evident that in the abovementioned cases, there exists a rest period or a break in the service of the local

elective official. In Lonzanida, petitioner therein was a private citizen a few months before the next mayoral elections. Similarly, in Adormeo and Socrates, the private respondents therein lived as private citizens for two years and fifteen months respectively. Indeed, the law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.

This Court reiterates that the framers of the Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow petitioner Latasa to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Digos, petitioner would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen consecutive years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it.

Finally, respondent Sunga claims that applying the principle in *Labo v. COMELEC*,<sup>[22]</sup> he should be deemed the mayoralty candidate with the highest number of votes. On the contrary, this Court held in *Labo* that the disqualification of a winning candidate does not necessarily entitle the candidate with the highest number of votes to proclamation as the winner of the elections. As an obiter, the Court merely mentioned that the rule would have been different if the electorate, fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected. The same, however, cannot be said of the present case.

This Court has consistently ruled that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election, or that a candidate is later declared to be disqualified to hold office, does not entitle the candidate who garnered the second highest number of votes to be declared elected. The same merely results in making the winning candidate's election a nullity.<sup>[23]</sup> In the present case, moreover, 13,650 votes were cast for private respondent Sunga as against the 25,335 votes cast for petitioner Latasa.<sup>[24]</sup> The second placer is obviously not the choice of the people in that particular election. In any event, a permanent vacancy in the contested office is thereby created which should be filled by succession.<sup>[25]</sup>

WHEREFORE, the petition is DISMISSED. No pronouncement as to costs.

### **SO ORDERED.**

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

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[1] Annex D of Petition; Rollo, pp. 45-50.

[2] Annex E of Petition; Rollo, pp. 56-68.

[3] Annexes F and G of Petition; Rollo, pp. 69-97.

[4] Annex A of the Petition; Rollo, pp. 22-25.

[5] Annex C of the Petition; Rollo, pp. 34-40.

[6] Annex H of the Petition; Rollo, pp. 98-100.

[7] Annex J of the Petition; Rollo, pp. 105-110.

**[8] 317 SCRA 641, 647-648 (1999).**

[9] Annex A of the Petition; Rollo, p. 51.

[10] Valenzuela v. Court of Appeals, G.R. No. 131175, August 28, 2001.

[11] Borja, Jr. v. Commission on Elections, 295 SCRA 157, 163 (1998) citing 2 RECORD OF THE CONSTITUTIONAL COMMISSION 236-237 (Session of July 25, 1986) (Statement of Commissioner Garcia).

[12] 2 RECORD OF THE CONSTITUTIONAL RECORD 238 (Session of July 25, 1986) (Statement of Commissioner Monsod).

[13] Id., at 239.

[14] Lonzanida v. Commission on Elections, 311 SCRA 602, 611 (1999).

[15] Section 450, Chapter 1, Title Three, Book III, Local Government Code.

[16] Miranda v. Aguirre, 314 SCRA 603, 610 (1999).

[17] Section 7, Chapter 2, Book I, Local Government Code.

[18] Supra note 11.

[19] Supra note 14.

**[20] 376 SCRA 90 (2002).**

[21] G.R. Nos. 154512, 154683, 155083-84, November 12, 2002.

**[22] 211 SCRA 297, 309 (1992).**

[23] Republic v. De la Rosa, 237 SCRA 785 (1994).

[24] As certified by the City Election Officer, Annex K of the Petition; Rollo, p. 112.

[25] Reyes v. COMELEC, 254 SCRA 514 (1996).

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