

FRANCIS G. ONG, PETITIONER, VS. JOSEPH STANLEY ALEGRE AND COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. NO. 163295. January 23, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Before the Court are these two separate petitions under Rule 65 of the Rules of Court to nullify and set aside certain issuances of the Commission on Elections (COMELEC) en banc.

The first, docketed as G.R. No. 163295, is a petition for certiorari with petitioner Francis G. Ong impugning the COMELEC en banc resolution[1] dated May 7, 2004 in SPA Case No. 04-048, granting private respondent Joseph Stanley Alegre's motion for reconsideration of the resolution dated March 31, 2004[2] of the COMELEC's First Division.

The second, G.R. No. 163354, is for certiorari, prohibition and mandamus, with application for injunctive relief, filed by petitioner Rommel Ong, brother of Francis, seeking, among other things, to stop the COMELEC from enforcing and implementing its aforesaid May 7, 2004 en banc resolution in SPA Case No. 04-048 pending the outcome of the petition in G.R. No. 163295.

Per its en banc Resolution of June 1, 2004, the Court ordered the consolidation of these petitions.

The recourse stemmed from the following essential and undisputed factual backdrop:

Private respondent Joseph Stanley Alegre (Alegre) and petitioner Francis Ong (Francis) were candidates who filed certificates of candidacy for mayor of San Vicente, Camarines Norte in the May 10, 2004 elections. Francis was then the incumbent mayor.

On January 9, 2004, Alegre filed with the COMELEC Provincial Office a Petition to Disqualify, Deny Due Course and Cancel Certificate of Candidacy[3] of Francis. Docketed as SPA Case No. 04-048, the petition to disqualify was predicated on the three-consecutive term rule, Francis having, according to Alegre, ran in the May 1995, May 1998, and May 2001 mayoralty elections and have assumed office as mayor and discharged the duties thereof for three (3) consecutive full terms corresponding to those elections.

To digress a bit, the May 1998 elections saw both Alegre and Francis opposing each other for the office of mayor of San Vicente, Camarines Norte, with the latter being subsequently proclaimed by COMELEC winner in that contest. Alegre subsequently filed an election protest, docketed as Election Case No. 6850 before the Regional Trial Court (RTC) at Daet, Camarines Norte. In it, the RTC declared Alegre as the duly elected mayor in that 1998 mayoralty contest,[4] albeit the decision came out only on July 4, 2001, when Francis had fully served the 1998-2001 mayoralty term and was in fact already starting to serve the 2001-2004 term as mayor-elect of the municipality of San Vicente.

Acting on Alegre's petition to disqualify and to cancel Francis' certificate of candidacy for the May 10, 2004

elections, the First Division of the COMELEC rendered on March 31, 2004 a resolution[5] dismissing the said petition of Alegre, rationalizing as follows:

We see the circumstances in the case now before us analogous to those obtaining in the sample situations addressed by the Highest Court in the Borja case. Herein, one of the requisites for the application of the three term rule is not present. Francis Ong might have indeed fully served the mayoral terms of 1995 to 1998; 1998 to 2001 and 2001 to 2004. The mayoral term however, from 1998 to 2001 cannot be considered his because he was not duly elected thereto. The [RTC] of Daet, Camarines Norte, Branch 41 has voided his election for the 1998 term when it held, in its decision that Stanley Alegre was the "legally elected mayor in the 1998 mayoralty election in San Vicente, Camarines Norte." This disposition had become final after the [COMELEC] dismissed the appeal filed by Ong, the case having become moot and academic.

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On the basis of the words of the Highest Court pronounced in the Lonzanida case and applicable in the case at bench, Ong could not be considered as having served as mayor from 1998 to 2001 because "he was not duly elected to the post; he merely assumed office as a presumptive winner; which presumption was later overturned ... when [the RTC] decided with finality that [he] lost in the May 1998 elections." (Words in bracket and emphasis in the original).

Undaunted, Alegre filed a timely motion for reconsideration, contending, in the main, that there was a misapplication of the three-term rule, as applied in the cited cases of Borja vs. Comelec and Lonzanida vs. Comelec, *infra*.

On May 7, 2004, the COMELEC en banc issued, in SPA No. 04-048, a resolution[6] reversing the March 31, 2004 resolution of the COMELEC's First Division and thereby (a) declaring Francis "as disqualified to run for mayor of San Vicente, Camarines Norte in the ...May 10, 2004"; (b) ordering the deletion of Francis' name from the official list of candidates; and (c) directing the concerned board of election inspectors not to count the votes cast in his favor.

The following day, May 8, Francis received a fax machine copy of the aforecited May 7, 2004 resolution, sending him posthaste to seek the assistance of his political party, the Nationalist People's Coalition, which immediately nominated his older brother, Rommel Ong (Rommel), as substitute candidate. At about 5:05 p.m. of the very same day - which is past the deadline for filing a certificate of candidacy, Rommel filed his own certificate of candidacy for the position of mayor, as substitute candidate for his brother Francis.

The following undisputed events then transpired:

- On May 9, 2004, or a day before the May 10 elections, Alegre filed a Petition to Deny Due Course to or Cancel Certificate of Rommel Ong.
- Atty. Evillo C. Pormento, counsel for the Ong brothers, addressed a letter[7] to Provincial Election Supervisor (PES) of Camarines Norte Liza Z. Cariño and Acting Election Officer Emily G. Babilonia in which he appealed that, owing to the COMELEC's inaction on Alegre's petition to cancel Rommel's certificate of candidacy, the name "Rommel Ong" be included in the official certified list of candidates for mayor of San Vicente, Camarines Norte. The desired listing was granted by the PES Carino.
- On May 10, 2004, Alegre wrote[8] to then COMELEC Commissioner Virgilio Garcillano, Commissioner-in-Charge for Regions IV and V, seeking clarification on the legality of the action thus taken by the PES Cariño. Responding, Commissioner Garcillano issued a Memorandum under date May 10, 2004[9] addressed to PES Liza D. Zabala-Cariño, ordering her to implement the resolution of the COMELEC en banc in SPA No. 04-048 promulgated on May 7, 2004.[10] Said Memorandum partly stated:

The undersigned ADOPTS the recommendation of Atty. Alioden D. Dalaig [Director IV, Law Department], which he quote your stand, "that substitution is not proper if the certificate of the substituted candidacy is denied due course. In the Resolution of the Commission En banc, the Certificate of candidacy of Francis Ong was denied due course," and elaborated further that:

"x x x there is an existing policy of the Commission not to include the name of a substitute candidate in the certified list of candidates unless the substitution is approved by the Commission.

In view, thereof, it is recommended that 1) the substitute certificate of candidacy of Rommel Ong Gan Ong, should be denied due course; and 2) the election officer be directed to delete his name from the list of candidates."

The above position of the Commission was in line with the pronouncement of Supreme Court in *Miranda vs. Abaya* (311 SCRA 617) which states:

"There can no valid substitution where a candidate is excluded not only by disqualification but also by denial and cancellation of his certificate of candidacy."

In view thereof, you are hereby directed to faithfully implement the said Resolution of the Commission En Banc in SPA No. 04-048 promulgated on May 7, 2004. (Emphasis in the original; words in bracket added).

- Owing to the aforementioned Garcillano Memorandum, it would seem that the Chairman of the Municipal Board of Canvasser of San Vicente issued an order enjoining all concerned not to canvass the votes cast for Rommel, prompting the latter to file a protest with that Board.[11]

- On May 11, 2004, the Municipal Board of Canvassers proclaimed Alegre as the winning candidate for the mayoralty post in San Vicente, Camarines Norte.[12]

On May 12, 2004, Francis filed before the Court a petition for certiorari, presently docketed as G.R. No. 163295. His brother Rommel's petition in G.R. No. 163354 followed barely a week after.

In our en banc resolution dated June 1, 2004, G.R. No. 163295 and G.R. No. 163354 were consolidated.[13]

Meanwhile, on June 4, 2004, the COMELEC issued an order dismissing private respondent Alegre's Petition to Deny Due Course to or Cancel Certificate of Candidacy of Rommel Ong, for being moot and academic.[14]

The issues for resolution of the Court are:

In G.R. No. 163295, whether the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its en banc resolution dated May 7, 2004 declaring petitioner Francis as disqualified to run for Mayor of San Vicente, Camarines Norte in the May 10, 2004 elections and consequently ordering the deletion of his name from the official list of candidates so that any vote cast in his favor shall be considered stray.

In G.R. No. 163354, whether the COMELEC committed grave abuse of discretion when it denied due course to Rommel's certificate of candidacy in the same mayoralty election as substitute for his brother Francis.

A resolution of the issues thus formulated hinges on the question of whether or not petitioner Francis's assumption of office as Mayor of San Vicente, Camarines Norte for the mayoralty term 1998 to 2001 should be considered as full service for the purpose of the three-term limit rule.

Respondent COMELEC resolved the question in the affirmative. Petitioner Francis, on the other hand, disagrees. He argues that, while he indeed assumed office and discharged the duties as Mayor of San Vicente for three consecutive terms, his proclamation as mayor-elect in the May 1998 election was contested and eventually nullified per the decision of the RTC of Daet, Camarines Norte dated July 4, 2001. Pressing the point, petitioner

argues, citing *Lonzanida vs. Comelec*[15], that a proclamation subsequently declared void is no proclamation at all and one assuming office on the strength of a protested proclamation does so as a presumptive winner and subject to the final outcome of the election protest.

The three-term limit rule for elective local officials is found in Section 8, Article X of the 1987 Constitution, which 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.

Section 43 (b) of the Local Government Code restates the same rule as follows:

Sec. 43. Term of Office.

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

For the three-term limit for elective local government officials to apply, two conditions or requisites must concur, to wit: (1) that the official concerned has been elected for three (3) consecutive terms in the same local government post, and (2) that he has fully served three (3) consecutive terms.[16]

With the view we take of the case, the disqualifying requisites are present herein, thus effectively barring petitioner Francis from running for mayor of San Vicente, Camarines Norte in the May 10, 2004 elections. There can be no dispute about petitioner Francis Ong having been duly elected mayor of that municipality in the May 1995 and again in the May 2001 elections and serving the July 1, 1995- June 30, 1998 and the July 1, 2001-June 30, 2004 terms in full. The herein controversy revolves around the 1998-2001 mayoral term, albeit there can also be no quibbling that Francis ran for mayor of the same municipality in the May 1998 elections and actually served the 1998-2001 mayoral term by virtue of a proclamation initially declaring him mayor-elect of the municipality of San Vicente. The question that begs to be addressed, therefore, is whether or not Francis's assumption of office as Mayor of San Vicente, Camarines Norte from July 1, 1998 to June 30, 2001, may be considered as one full term service in the context of the consecutive three-term limit rule.

We hold that such assumption of office constitutes, for Francis, "service for the full term", and should be counted as a full term served in contemplation of the three-term limit prescribed by the constitutional and statutory provisions, *supra*, barring local elective officials from being elected and serving for more than three consecutive term for the same position.

It is true that the RTC-Daet, Camarines Norte ruled in Election Protest Case No. 6850,[17] that it was Francis' opponent (Alegre) who "won" in the 1998 mayoralty race and, therefore, was the legally elected mayor of San Vicente. However, that disposition, it must be stressed, was without practical and legal use and value, having been promulgated after the term of the contested office has expired. Petitioner Francis' contention that he was only a presumptive winner in the 1998 mayoralty derby as his proclamation was under protest did not make him less than a duly elected mayor. His proclamation by the Municipal Board of Canvassers of San Vicente as the duly elected mayor in the 1998 mayoralty election coupled by his assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.

The absurdity and the deleterious effect of a contrary view is not hard to discern. Such contrary view would mean that Alegre would – under the three-term rule - be considered as having served a term by virtue of a veritably meaningless electoral protest ruling, when another actually served such term pursuant to a proclamation made in due course after an election.

Petitioner cites, but, to our mind, cannot seek refuge from the Court's ruling in, *Lonzanida vs. Comelec*,^[18] citing *Borja vs. Comelec*^[19]. In *Lonzanida*, petitioner Lonzanida was elected and served for two consecutive terms as mayor of San Antonio, Zambales prior to the May 8, 1995 elections. 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 RTC of Zambales, which, in a decision dated January 9, 1997, ruled that there was a failure of elections and declared the position vacant. The COMELEC affirmed this ruling and petitioner Lonzanida acceded to the order to vacate the post. Lonzanida assumed the office and performed his duties up to March 1998 only. Now, during the May 1998 elections, Lonzanida again ran for mayor of the same town. A petition to disqualify, under the three-term rule, was filed and was eventually granted. There, the Court held that Lonzanida cannot be considered as having been duly elected to the post in the May 1995 election, and that he did not fully serve the 1995-1998 mayoralty term by reason of involuntary relinquishment of office. As the Court pointedly observed, Lonzanida "cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate [and in fact vacated] his post before the expiration of the term."

The difference between the case at bench and *Lonzanida* is at once apparent. For one, in *Lonzanida*, the result of the mayoralty election was declared a nullity for the stated reason of "failure of election", and, as a consequence thereof, the proclamation of Lonzanida as mayor-elect was nullified, followed by an order for him to vacate the office of mayor. For another, Lonzanida did not fully serve the 1995-1998 mayoral term, there being an involuntary severance from office as a result of legal processes. In fine, there was an effective interruption of the continuity of service.

On the other hand, the failure-of-election factor does not obtain in the present case. But more importantly, here, there was actually no interruption or break in the continuity of Francis' service respecting the 1998-2001 term. Unlike *Lonzanida*, Francis was never unseated during the term in question; he never ceased discharging his duties and responsibilities as mayor of San Vicente, Camarines Norte for the entire period covering the 1998-2001 term.

The ascription, therefore, of grave abuse of discretion on the part of the COMELEC en banc when it disqualified Francis from running in the May 10, 2004 elections for the mayoralty post of San Vicente and denying due course to his certificate of candidacy by force of the constitutional and statutory provisions regarding the three-term limit rule for any local elective official cannot be sustained. What the COMELEC en banc said in its May 7, 2004 assailed Resolution commends itself for concurrence:

As correctly pointed out by Petitioner-Movant [Alegre] in applying the ruling in the *Borja* and *Lonzanida* cases in the instant petition will be erroneous because the factual milieu in those cases is different from the one obtaining here. Explicitly, the three-term limit was not made applicable in the cases of *Borja* and *Lonzanida* because there was an interruption in the continuity of service of the three consecutive terms. Here, Respondent Ong would have served continuously for three consecutive terms, from 1995 to 2004. His full term from 1998 to 2001 could not be simply discounted on the basis that he was not duly elected thereto on account of void proclamation because it would have iniquitous effects producing outright injustice and inequality as it rewards a legally disqualified and repudiated loser with a crown of victory. (Word in bracket added; emphasis in the original)

Given the foregoing consideration, the question of whether or not then Commissioner Virgilio Garcillano overstepped his discretion when he issued the May 10, 2004 Memorandum, ordering the implementation of

aforesaid May 7, 2004 COMELEC en banc resolution even before its finality[20] is now of little moment and need not detain us any longer.

Just as unmeritorious as Francis' petition in G.R. No. 163295 is Rommel's petition in G.R. No. 163354 in which he (Rommel) challenges the COMELEC's act of not including his name as a substitute candidate in the official list of candidates for the May 10, 2004 elections. As it were, existing COMELEC policy[21] provides for the non-inclusion of the name of substitute candidates in the certified list of candidates pending approval of the substitution.

Not to be overlooked is the Court's holding in *Miranda vs. Abaya*,[22] that a candidate whose certificate of candidacy has been cancelled or not given due course cannot be substituted by another belonging to the same political party as that of the former, thus:

While there is no dispute as to whether or not a nominee of a registered or accredited political party may substitute for a candidate of the same party who had been disqualified for any cause, this does not include those cases where the certificate of candidacy of the person to be substituted had been denied due course and cancelled under Section 78 of the Code.

Expressio unius est exclusio alterius. While the law enumerated the occasions where a candidate may be validly substituted, there is no mention of the case where a candidate is excluded not only by disqualification but also by denial and cancellation of his certificate of candidacy. Under the foregoing rule, there can be no valid substitution for the latter case, much in the same way that a nuisance candidate whose certificate of candidacy is denied due course and/or cancelled may not be substituted. If the intent of the lawmakers were otherwise, they could have so easily and conveniently included those persons whose certificates of candidacy have been denied due course and/or cancelled under the provisions of Section 78 of the Code.

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A person without a valid certificate of candidacy cannot be considered a candidate in much the same way as any person who has not filed any certificate of candidacy at all can not, by any stretch of the imagination, be a candidate at all.

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After having considered the importance of a certificate of candidacy, it can be readily understood why in *Bautista [Bautista vs. Comelec, G.R. No. 133840, November 13, 1998]* we ruled that a person with a cancelled certificate is no candidate at all. Applying this principle to the case at bar and considering that Section 77 of the Code is clear and unequivocal that only an official candidate of a registered or accredited party may be substituted, there demonstrably cannot be any possible substitution of a person whose certificate of candidacy has been cancelled and denied due course.

In any event, with the hard reality that the May 10, 2004 elections were already pass', Rommel Ong's petition in G.R. No. 163354 is already moot and academic.

WHEREFORE, the instant petitions are DISMISSED and the assailed en banc Resolution dated May 7, 2004 of the COMELEC, in SPA No. 04-048 AFFIRMED.

Costs against petitioners.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.

- [1] Rollo in G.R. No. 163295, pp. 29-34.
- [2] Rollo in G.R. No. 163295, pp. 20-28.
- [3] Annex "A", Francis Ong's Petition for Certiorari, Rollo in G.R. No. 163295, pp. 15-19.
- [4] Annex "D", Francis Ong's Petition for Certiorari, Rollo in G.R. No. 163295, pp. 35-41.
- [5] Annex "B", Francis Ong's Petition for Certiorari, Rollo in G.R. No. 163295, pp. 20-28.
- [6] Annex "C", Francis Ong's Petition for Certiorari, Rollo in G.R. No. 163295, pp. 29-34.
- [7] Annex "E", Rommel Ong's Petition for Certiorari, Rollo in G.R. No. 163354, p. 46.
- [8] Annex "3", Alegre's Comment on Rommel Ong's Petition for Certiorari, Rollo in G.R. No. 163354, pp. 113-114.
- [9] Annex "4", Alegre's Comment on Rommel Ong's Petition for Certiorari, Rollo in G.R. No. 163354, pp. 115-116.
- [10] Vide Note #7, supra.
- [11] Annex "J", Rommel Ong's Petition, Rollo in G.R. No. 163354, p. 53.
- [12] Annex "5" Alegre's Comment on Rommel Ong's Petition for Certiorari, Rollo in G. R. No. 163354, p. 117.
- [13] Rollo in G.R. No. 163354, p. 63.
- [14] Ibid, pp.124-125.

[15] 311 SCRA 602 [1999].

- [16] Adorneo vs. Comelec, 376 SCRA 90 [2002] citing Lonzanida vs. Comelec, 311 SCRA 602 [1999].
- [17] See Note # 4, supra.
- [18] See Note No. 15, supra.

[19] 295 SCRA 157 (1998).

[20] Section 13, Rule 18 of the COMELEC Rules of Procedure on the Finality of its Decision provides: Sec. 13. Finality of Decision or Resolutions. - (a) In ordinary actions, special proceedings, provisional remedies, and special reliefs, a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation. (b) In Special Actions and Special cases, [such as a petition to disqualify} a decision or resolution of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

- [21] Cited in Commissioner Garcillano's Memorandum of May 10, 2004; see Note #9, supra.
- [22] G.R. No. 136351, July 28, 1999, 311 SCRA 617, 624-626.

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