

## **ATTY. VENANCIO Q. RIVERA III AND ATTY. NORMANDICK DE GUZMAN, PETITIONERS, VS. COMELEC AND MARINO BOKING; MORALES, RESPONDENTS.**

*G.R. No. 167591. May 09, 2007*

Ponente: SANDOVAL-GUTIERREZ, J.

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### **SANDOVAL-GUTIERREZ, J.:**

For our resolution are two consolidated petitions for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions dated March 14, 2005 and November 8, 2005 of the COMELEC En Banc.

G.R. No. 167591

ATTY. VENANCIO Q. RIVERA III and ATTY. NORMANDICK DE GUZMAN v. COMELEC and MARINO "BOKING" MORALES

In the May 2004 Synchronized National and Local Elections, respondent Marino "Boking" Morales ran as candidate for mayor of Mabalacat, Pampanga for the term commencing July 1, 2004 to June 30, 2007. Prior thereto or on January 5, 2004, he filed his Certificate of Candidacy.

On January 10, 2004, Attys. Venancio Q. Rivera and Normandick De Guzman, petitioners, filed with the Second Division of the Commission on Elections (COMELEC) a petition to cancel respondent Morales' Certificate of Candidacy on the ground that he was elected and had served three previous consecutive terms as mayor of Mabalacat. They alleged that his candidacy violated Section 8, Article X of the Constitution and Section 43 (b) of Republic Act (R.A.) No. 7160, also known as the Local Government Code.

In his answer to the petition, respondent Morales admitted that he was elected mayor of Mabalacat for the term commencing July 1, 1995 to June 30, 1998 (first term) and July 1, 2001 to June 30, 2004 (third term), but he served the second term from July 1, 1998 to June 30, 2001 only as a "caretaker of the office" or as a "de facto officer" because of the following reasons:

- He was not validly elected for the second term 1998 to 2001 since his proclamation as mayor was declared void by the Regional Trial Court (RTC), Branch 57, Angeles City in its Decision dated April 2, 2001 in Election Protest Case (EPC) No. 98-131. The Decision became final and executory on August 6, 2001; and
- He was preventively suspended by the Ombudsman in an anti-graft case from January 16, 1999 to July 15, 1999.

On May 6, 2004, the COMELEC Second Division rendered its Resolution finding respondent Morales disqualified to run for the position of municipal mayor on the ground that he had already served three (3) consecutive terms. Accordingly, his Certificate of Candidacy was cancelled. On May 7, 2004, he filed with the COMELEC En Banc a motion for reconsideration.

On March 14, 2005, the COMELEC En Banc issued a Resolution granting respondent Morales' motion for reconsideration and setting aside that of the Second Division. The COMELEC En Banc held that since the Decision in EPC No. 98-131 of the RTC, Branch 57, Angeles City declared respondent Morales' proclamation void, his discharge of the duties in the Office of the Mayor in Mabalacat is that of a de facto officer or a de facto mayor. Therefore, his continuous service for three consecutive terms has been severed.

Hence, this petition for certiorari.

G.R. No. 170577

ANTHONY DEE v. COMMISSION ON ELECTIONS and MARIO "BOKING" MORALES

On May 24, 2004, after respondent Morales was proclaimed the duly elected mayor of Mabalacat for the term commencing July 1, 2004 to June 30, 2007, petitioner Anthony Dee, also a candidate for mayor, filed with the RTC, Branch 61, Angeles City a petition for quo warranto against the said respondent. Petitioner alleged that respondent Morales, having served as mayor for three consecutive terms, is ineligible to run for another term or fourth term. The case was docketed as Civil Case No. 11503.

In his answer, respondent Morales raised the following defenses:

- He was not validly elected for the term 1998 to 2001 since the RTC, Branch 57, Angeles City declared in its Decision that his proclamation as mayor of Mabalacat was void. Petitioner Dee was then proclaimed the duly elected mayor; and
- He was preventively suspended for six months by the Ombudsman, during the same term in an anti-graft case, an interruption in the continuity of his service as municipal mayor of Mabalacat.[1]

In its Decision dated November 22, 2004, the RTC dismissed petitioner Dee's petition for quo warranto on the ground that respondent Morales did not serve the three-term limit since he was not the duly elected mayor of Mabalacat, but petitioner Dee in the May 1998 elections for the term 1998 to 2001, thus:

Respondent, Marino Morales, was not the duly elected mayor of Mabalacat, Pampanga in the May 1998 elections for the term 1998 to 2001 because although he was proclaimed as the elected mayor of Mabalacat, Pampanga by the Municipal Board of Canvassers, had assumed office and discharged the duties of mayor, his close rival, the herein petitioner, Anthony D. Dee, was declared the duly elected Mayor of Mabalacat, Pampanga in the Decision promulgated on April 2, 2001 in Election Protest EPC No. 98-131 filed by Anthony Dee against herein respondent, Marino Morales, and decided by RTC, Br. 57, Angeles City. x x x.

Petitioner Dee interposed an appeal to the COMELEC First Division, alleging that respondent Morales violated the three-term limit rule when he ran for re-election (fourth time) as mayor in the 2004 elections. Consequently, his proclamation as such should be set aside. In a Resolution dated July 29, 2005 the COMELEC First Division issued a Resolution dismissing the appeal. It held that respondent Morales cannot be deemed to have served as mayor of Mabalacat during the term 1998 to 2001 because his proclamation was declared void by the RTC, Branch 57 of Angeles City. He only served as a caretaker, thus, his service during that term should not be counted.

On August 12, 2005, petitioner Dee filed with the COMELEC En Banc a motion for reconsideration. In a Resolution dated November 8, 2005, the COMELEC En Banc affirmed the questioned Resolution of the Second Division.

Hence, petitioner Dee's instant petition for certiorari.

Both cases may be decided based on the same facts and issues.

It is undisputed that respondent Morales was elected to the position of mayor of Mabalacat for the following consecutive terms:

- a) July 1, 1995 to June 30, 1998
- b) July 1, 1998 to June 30, 2001
- c) July 1, 2001 to June 30, 2004
- d) July 1, 2004 to June 30, 2007

### **THE PRINCIPAL ISSUE. -**

Respondent Morales argued and the Comelec held that the July 1, 2003 to June 30, 2007 term is not his fourth because his second term, July 1, 1998 to June 30, 2001 to which he was elected and which he served, may not be counted since his proclamation was declared void by the RTC, Branch 57 of Angeles City.

Respondent Morales is wrong. This Court, through Mr. Justice Cancio C. Garcia, resolved the same issue in *Ong v. Alegre*[2] with identical facts, thus:

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 the COMELEC winner in the 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, 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-elected for the municipality of San Vicente.

x x x

A resolution of the issues thus formulated hinges on the question of whether or not petitioner Francis' 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-elected 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 v. Comelec*, 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.

x x x

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.

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' 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 terms for the same position.

It is true that the RTC-Daet, Camarines Norte ruled in Election Protest Case No. 6850, 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 v. Comelec*, citing *Borja v. Comelec*. 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 8, 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 elections 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 the 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.

It bears stressing that in *Ong v. Alegre* cited above, Francis Ong was elected and assumed the duties of the mayor of San Vicente, Camarines Norte for three consecutive terms. But his proclamation as mayor in the May 1998 election was declared void by the RTC of Daet, Camarines Norte in its Decision dated July 4, 2001. As ruled by this Court, his service for the term 1998 to 2001 is for the full term. Clearly, the three-term limit rule applies to him. Indeed, there is no reason why this ruling should not also apply to respondent Morales who is similarly situated.

Here, respondent Morales invoked not only *Lonzanida v. COMELEC*,<sup>[3]</sup> but also *Borja, Jr. v. Commission on Elections*<sup>[4]</sup> which is likewise inapplicable. The facts in *Borja* are:

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

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

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

This Court held that Capco's assumption of the office of mayor upon the death of the incumbent may not be regarded as a "term" under Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160 (the Local Government Code). He held the position from September 2, 1989 to June 30, 1992, a period of less than three years. Moreover, he was not elected to that position.

Similarly, in *Adormeo v. COMELEC*,<sup>[5]</sup> this Court ruled that assumption of the office of mayor in a recall election for the remaining term is not the "term" contemplated under Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160 (the Local Government Code). As the Court observed, there was a "break" in the service of private respondent Ramon T. Talanga as mayor. He was a "private citizen" for a time before running for mayor in the recall elections.

Here, respondent Morales was elected for the term July 1, 1998 to June 30, 2001. He assumed the position. He served as mayor until June 30, 2001. He was mayor for the entire period notwithstanding the Decision of the RTC in the electoral protest case filed by petitioner Dee ousting him (respondent) as mayor. To reiterate, as held in *Ong v. Alegre*,<sup>[6]</sup> such circumstance does not constitute an interruption in serving the full term.

Section 8, Article X of the Constitution can not be more clear and explicit -

The term of the office of elected local officials x x x, shall be three years and no such official shall serve for more than three consecutive terms. x x x

Upon the other hand, Section 43 (b) of R.A. No. 7160 (the Local Government Code) clearly provides:

No local official shall serve for more than three consecutive terms in the same position. x x x

Respondent Morales is now serving his fourth term. He has been mayor of Mabalacat continuously without any break since July 1, 1995. In just over a month, by June 30, 2007, he will have been mayor of Mabalacat for twelve (12) continuous years.

In *Latasa v. Comelec*,<sup>[7]</sup> the Court explained the reason for the maximum term limit, thus:

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 prerequisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. x x x

x x x

It is evident that in the abovementioned cases, there exists a rest period or a break in the service of 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 municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive term 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.

This is the very situation in the instant case. Respondent *Morales* maintains that he served his second term (1998 to 2001) only as a "caretaker of the office" or as a "de facto officer." Section 8, Article X of the Constitution is violated and its purpose defeated when an official serves in the same position for three consecutive terms. Whether as "caretaker" or "de facto" officer, he exercises the powers and enjoys the prerequisites of the office which enables him "to stay on indefinitely".

Respondent *Morales* should be promptly ousted from the position of mayor of Mabalacat.

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Having found respondent *Morales* ineligible, his Certificate of Candidacy dated December 30, 2003 should be cancelled. The effect of the cancellation of a Certificate of Candidacy is provided under Sections 6 and 7 of R.A. No. 6646, thus:

SECTION 6. Effect 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 guilt is strong.

SECTION 7. Petition to Deny Due Course To or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

in relation to Section 211 of the Omnibus Election Code, which provides:

SEC. 211. Rules for the appreciation of ballots. - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x

19. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.

x x x

In the light of the foregoing, respondent Morales can not be considered a candidate in the May 2004 elections. Not being a candidate, the votes cast for him SHOULD NOT BE COUNTED and must be considered stray votes.

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Since respondent Morales is DISQUALIFIED from continuing to serve as mayor of Mabalacat, the instant petition for quo warranto has become moot.

Going back to G.R. No. 167591, the question now is whether it is the vice-mayor or petitioner Dee who shall serve for the remaining portion of the 2004 to 2007 term.

In *Labo v. Comelec*,<sup>[8]</sup> this Court has ruled that a second place candidate cannot be proclaimed as a substitute winner, thus:

The rule, therefore, is: the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office.

x x x

It is therefore incorrect to argue that since a candidate has been disqualified, the votes intended for the disqualified candidate should, in effect, be considered null and void. This would amount to disenfranchising the electorate in whom sovereignty resides. At the risk of being repetitious, the people of Baguio City opted to elect petitioner Labo bona fide, without any intention to misapply their franchise, and in the honest belief that Labo was then qualified to be the person to whom they would entrust the exercise of the powers of the government. Unfortunately, petitioner Labo turned out to be disqualified and cannot assume the office.

Whether or not the candidate whom the majority voted for can or cannot be installed, under no circumstances can minority or defeated candidate be deemed elected to the office. Surely, the 12,602 votes cast for petitioner Ortega is not a larger number than the 27,471 votes cast for petitioner Labo (as certified by the Election Registrar of Baguio City; rollo, p. 109; GR No. 105111).

x x x

As a consequence of petitioner's ineligibility, a permanent vacancy in the contested office has occurred. This should now be filled by the vice-mayor in accordance with Section 44 of the Local Government Code, to wit: Sec. 44. Permanent vacancies in the Offices of the Governor, Vice-Governor, Mayor and Vice-Mayor. - (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or the vice-mayor concerned shall become the governor or mayor. x x x

WHEREFORE, the petition in G.R. No. 167591 is GRANTED. Respondent Morales' Certificate of Candidacy dated December 30, 2003 is cancelled. In view of the vacancy in the Office of the Mayor in Mabalacat, Pampanga, the vice-mayor elect of the said municipality in the May 10, 2004 Synchronized National and Local Elections is hereby declared mayor and shall serve as such for the remaining duration of the term July 1, 2004 to June 30, 2007. The petition in G.R. No. 170577 is DISMISSED for being moot.

This Decision is immediately executory.

### **SO ORDERED.**

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio-Morales, Azcuna, and Chico-Nazario, JJ., concur.  
Austria-Martinez, and Corona, JJ., on leave.

Tinga, J., Please see concurring opinion.

Velasco, Jr., J., Please see separate opinion.

Garcia, and Nachura, JJ., No part.

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[1] The COMELEC Second Division, in its Resolution dated May 6, 2004 (Annex "A," Petition in G.R. No. 167591) ruled that respondent Morales' term of office was not interrupted by the preventive suspension imposed upon him by the Ombudsman. This ruling was sustained by the COMELEC En Banc in its Resolution of May 14, 2005 (Annex "B," Petition in G.R. No. 167591).

[2] G.R. Nos. 163295 & 163354, January 23, 2006, 479 SCRA 473.

[3] G.R. No. 135150, July 28, 1999, 311 SCRA 602.

[4] G.R. No. 133495, September 3, 1998, 295 SCRA 157.

[5] G.R. No. 147927, February 4, 2002, 376 SCRA 90.

[6] *Supra*.

[7] G.R. No. 154829, December 10, 2003, 417 SCRA 601.

[8] G.R. Nos. 105111 & 105384, July 3, 1992, 211 SCRA 297; *Abella v. COMELEC*, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 253; and *Benito v. COMELEC*, G.R. No. 106053, August 17, 1994, 235 SCRA 436.

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### **SEPARATE OPINION**

#### **VELASCO, JR., J.:**

In *Borja Jr. v. Commission on Elections*, we held the requisites for the three (3)-term limit to apply, thus: "[I]t 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." [1] And in *Lonzanida v. Commission on Elections*, we reiterated these two (2) conditions which must concur for the three (3)-term limit to apply: "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." [2] In my view, these requisites prescribed in *Borja, Jr.* and reiterated in *Lonzanida*, more particularly the first condition, have been modified in the later case of *Ong v. Alegre* [3] where we held in gist that where a proclaimed candidate had served the full

term of office but was either disqualified or his/her proclamation voided only after the term of the contested office had expired, such service is counted and is legally taken as service for a full term in contemplation of the three (3)-term rule. Lonzanida applied the two requisites prescribed in *Borja, Jr.* by explicating that the requisite valid election is not met if the proclamation is subsequently voided in an election protest. Then came *Ong* which is factually akin to *Lonzanida* except for the fact that *Ong* was able to serve the full term while *Lonzanida* did not. A second look over the *Lonzanida* facts unmistakably reveals that although the Zambales RTC initially declared the San Antonio, Zambales mayoral election as null and void due to "failure of election," the Commission on Elections (COMELEC), on appeal, decided the protest on the merits, voided the 1995 proclamation of *Lonzanida*, and declared his opponent *Alvez* the duly elected mayor of San Antonio, Zambales.[4] This nullification is therefore similar to the invalidation of the *Ong* proclamation. If *Lonzanida* were strictly applied to *Ong*, then the first condition of a valid election would not be satisfied as both proclamations in *Lonzanida* and *Ong* were voided. It is for this reason that I take the view that the *Lonzanida* ruling, finding no valid election due to the void proclamation, has been superseded or supplanted by the *Ong* ruling.

Therefore, the present rule is as long as there is a proclamation made by the canvassing board or the COMELEC, such declaration of the winner results in a valid election that applies and corresponds to the service actually rendered by the proclaimed official. This substantially complies with the prescribed valid election regardless of whether the nullification came prior to or after the term's expiration. The reason is the election of the proclaimed winner to the local government position is legal and valid until annulled in the protest or quo warranto proceedings. Consequently, the service of the official prior to nullification by virtue of such proclamation is for all intents and purposes based on a valid election. The proclaimed winner, who takes his oath, assumes the position, and serves in said capacity by virtue of the proclamation, is a *de jure* official by virtue of a presumptively legal proclamation until voided. He is not merely a *de facto* official who is a person who has been declared winner by the court or by the COMELEC in an election protest and assumed office based on said protest and who has thereafter been adjudged not entitled to the office.[5] Even if an election protest is filed, the proclaimed winner is accepted as the duly elected official and the legal occupant of the office possessed with the authority to exercise its powers and prerogatives until ordered to abdicate. To prevent perpetuity in the position and to avoid circumvention of the three (3)-term limit rule, the first condition on valid election embraces the situation where a candidate has been proclaimed and served in the position even though the proclamation is subsequently voided before or after the lapse of the term.

Moreover, the second sentence of Section 8, Article X of the Constitution refers to "service for the full term for which he was elected." A proclaimed winner, though his/her victory is under protest, is actually serving the term of the office for which s/he was proclaimed as the elected candidate. This equitable construction must be applied to enlarge the letter of the provision to attain its intended objective or carry out its intent.

Likewise, nowhere in Sec. 43 of the Local Government Code is it stated that the service by a local elective official shall be by virtue of a valid election. It can broadly refer to a proclamation of the election of a candidate though later on protested. The liberal interpretation extended to this provision is necessary to include situations which are clearly within the spirit or reason of the provision itself. By such liberal application, the provision will receive a fair and reasonable interpretation so as to attain the intent, spirit, and purpose of the law.[6]

With respect to the situation where a protestant is declared the winner in an election protest and serves the unexpired portion of the term, such service, with certitude, is by virtue of a valid election. Hence, the first condition is met.

However, an instance where there is no valid election is when an elective official succeeds to a higher office due to death, disqualification, or incapacity of the incumbent as s/he serves by operation of law[7] and not by election.

Such is the case of Vice Mayor Capco who became mayor of Pateros due to the demise of then Mayor Cesar Borja in the Borja, Jr. case. Another situation not covered by the three (3)-term limit rule is when a candidate won in a recall election and served the unexpired portion of the term as in the case of Mayor Ramon Y. Talaga, Jr. of Lucena City. His victory in the recall election was not considered a term of office because the continuity of his mayoralty was disrupted by his defeat in the 1998 elections.[8]

Now, focusing on the second condition laid down in Borja, Jr. as applied in Lonzanida that the official must have served the full three (3)-year term for local elective officials, we find that this prescription was likewise followed in Ong.

It is my view which is shared by the Solicitor General in Lonzanida[9] that the service of the official for the greater part of the term should be considered as "service of a term" under Sec. 8, Art. X of the Constitution and Sec. 43 (b), Chapter 1 of Republic Act No. (RA) 7160 otherwise known as the Local Government Code. Those who occupy an elective position to which they have been proclaimed and have served for more than two (2) years are deemed to have fully served the term in contemplation of the three (3)-term rule regardless of whether the proclamation is subsequently voided or s/he is subsequently disqualified.

Sec. 8, Art. X of the Constitution simply says "no such official shall serve for more than three consecutive terms." It does not say full service of the three terms. Likewise, Sec. 43 of RA 7160 provides that "no local elective official shall serve for more than three consecutive terms in the same position." Again, there is no mention of full service. The two provisions should be liberally construed to mean that service of the greater portion of the term is substantial compliance with the prescribed service under Sec. 8, Art. X of the Constitution and Section 43, Chapter 1 of RA 7160.

The substantial compliance rule is defined as "[c]ompliance with the essential requirements, whether of a contract or of a statute." [10] In our jurisdiction, we have applied this rule or principle in numerous issues relative to the scope and application of constitutional and legal provisions. In particular, we applied the rule in criminal cases to comply with the constitutional requirement that the accused be informed of the charge against him/her as embodied in the Information filed with the court.[11] In other cases, we applied the rule both primarily in compliance with the essential statutory requirements and in liberally construing and applying remedial laws for just and compelling reasons in order to promote the orderly administration of justice.[12] We see no reason why the doctrine of substantial compliance should not be applied to the provisions in question. Indeed, the realization of the laudable goal behind the three (3)-term limit rule is imperative to foil any scheme to monopolize political power and circumvent the proscription against perpetual stay in elective positions. As tersely explained in Borja, Jr.:

I think we want to prevent future situations where, as a result of continuous service and frequent reelections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their positions and to accumulate those powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. I think that is taken care of because we put a gap on the continuity or the unbroken service of all of these officials.[13]

In Ong and Lonzanida, as in this case, the ruling was that the second condition should be satisfied by the full service of the entire term. Such strict interpretation of the constitutional provision in Sec. 8, Art. X and the provision in Sec. 43 of RA 7160 however does not support and enhance the commendable objective behind the three (3)-term limit but even weakens it. To define service as full service of the entire three (3) years of the term would tolerate, entice, and, in effect, sanction circumvention of the three (3)-term ceiling as not all proclaimed winners are able to fully serve the term. Many proclaimed winners have been ordered to vacate their offices prior to the expiry date of the term and hence, are not effectively covered by Lonzanida and Ong. This situation would

become even more prevalent when the newly crafted special rules for election contests take effect on May 15, 2007 in time for the 2007 elections as election contests are required to be decided by the trial courts in six (6) months.[14] Take for example Lonzanida: while the protestant Avez won the case and assumed the elective office, it was only for a paltry couple of months as the position was vacated by Lonzanida only in April of the election year. Consequently, Lonzanida was not credited that term despite practically serving all of it. The fact that prior to his ouster he was elected and served two full terms means that Lonzanida was eligible to run for another three terms after his ouster or disqualification. If Lonzanida were successful for his bid for a three-year term, he would thereafter practically have been in position for 18 consecutive years except for an intervening period of over two months. Indeed, if he were credited the full term although he served only the greater portion of it, he would have been barred by the three (3)-term limit. This position would be more in keeping with the intent of the framers of the Constitution in setting the three (3)-term limit to curtail permanence in office and monopoly of power. Indeed, "[t]he fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it." [15]

With regard to the service of more than two (2) years in the local elective position as benchmark in the determination of the length of service under the three (3)-term limit rule, two (2) years out of the full three (3)-year term constitutes 66% of the term. This is reasonable and fair for it clearly comprises a greater part of the three (3)-year term. Even the members of the 1986 Constitutional Commission had accepted this yardstick when they approved the provision that "no person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time." [16] Four (4) years out of the six (6)-year term for the president is also 66%. Thus, service for a period of more than two (2) years in the term is a fair standard in determining the application of the three (3)-term limit.

In sum and substance, I find that the first requirement of a valid election encompasses the proclamation of a local elective official as a valid election to the position the official was elected. On the second condition, I opine that service of more than two (2) years in the elective position constitutes substantial compliance of the service prescribed under Sec. 8, Art. X of the Constitution and Sec. 43, Chapter I of the Local Government Code.

While respondent Morales was ousted from office for having served more than three (3) consecutive terms (1995-1998, 1998-2001, and 2001-2004), the obvious outcome however from the interregnum of 2004-2007 is that he is qualified to run for a fresh three terms (2007-2010, 2010-2013, and 2013-2016). If we had applied the Lonzanida ruling, Morales would only be allowed to run for the last time for the term 2007-2010 under the three (3)-term quota since there would be a gap in his service during the 1998-2001 term due to a void proclamation. It is because of unique and diverse possibilities that can arise from the application of the three (3)-term limit—that a revisit and elucidation of the Borja, Jr. doctrine on the prescribed valid election and full service of term are in order.

With the foregoing premises, I concur in the result.

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[1] G.R. No. 133495, September 3, 1998, 295 SCRA 157, 169. [2] G.R. No. 135150, July 28, 1999, 311 SCRA 602, 611; applied and reiterated in the later cases of Ong v. Alegre, G.R. Nos. 163295 & 163354, January 23, 2006, 479 SCRA 473; and Adorneo v. Comelec, G.R. No. 147927, February 4, 2002, 376 SCRA 90. [3] G.R. Nos. 163295 & 163354, January 23, 2006, 479 SCRA 473, 482-483.

[4] Supra note 2, at 605. The pertinent portion reads:

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 he obeyed, and Alvez assumed office for the remainder of the term.[5] *Malaluan v. Comelec*, G.R. No. 120193, March 6, 1996, 254 SCRA 397, 407.[6] *Agpalo*, STATUTORY CONSTRUCTION 223; citation omitted.

[7] R.A. No. 7160, "An Act Providing for a Local Government Code of 1991," Sec. 44.[8] See *Adorneo v. Comelec*, G.R. No. 147927, February 4, 2002, 376 SCRA 90.

[9] *Supra* note 2, at 607.[10] H. Black, BLACK'S LAW DICTIONARY 1428 (6th ed., 1990).

[11] See *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465.

[12] See *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. Court of Appeals*, G.R. No. 159828, April 19, 2006, 487 SCRA 487; *Testate Estate of the Late Alipio Abada v. Abaja*, G.R. No. 147145, January 31, 2005, 450 SCRA 264; *Gutierrez v. Secretary of the Department of Labor and Employment*, G.R. No. 142248, December 16, 2004, 447 SCRA 107.[13] *Supra* note 1, at 164; quoted from then Commissioner Blas F. Ople.[14] A.M. No. 07-4-15-SC, Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, April 24, 2007.

[15] *Sarmiento v. Mison*, G.R. No. 79974, December 17, 1987, 156 SCRA 549, 552; citation omitted.

[16] CONSTITUTION, Art. VII, Sec. 4.

## CONCURRING OPINION

### TINGA, J.:

Respondent Marino Morales had already fully served three consecutive terms as mayor of Mabalacat, Pampanga as of 2004. He pleads that this Court not only uphold his election to a fourth consecutive term, but even affirm his right to be elected to a fifth. The Court has rightfully rejected this outlandish claim, violative as it is of the three "term limit rule provided in Section 8, Article X of the Constitution.[1] While I concur with the judgment of the Court, I write separately to emphasize a few points I feel important.

Our jurisprudence on the constitutional term limits on local elective officials is recent in origin. In 1998, *Borja v. COMELEC*[2] pronounced that "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." [3] The rule was reiterated in *Lonzanida v. COMELEC*, [4] where it was held that the 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. Both these cases featured two officials who were not able to fully serve three consecutive terms. In the first, the official concerned succeeded into office midway in his predecessor's term by operation of law, while in the second the official involuntarily relinquished office prior to the completion of one of the consecutive terms.

It is *Ong v. Alegre*,<sup>[5]</sup> decided last year, which governs in cases where the official concerned had actually fully served three consecutive terms. In truth, the decision today is but a reiteration of the doctrine we have already laid down in *Ong*, a case with facts similar to those at bar. The case expressly rebuts respondent's claim that the subsequent nullification of his proclamation in 1998 could not have resulted in a "valid election". In both *Ong* and the case at bar, such nullification became final only after the expiration of the contested term.<sup>[6]</sup> The Court in *Ong* stressed that the nullification "was without practical and legal use and value, having been promulgated after the term of the contested office has expired."<sup>[7]</sup>

*Ong* does not explicitly address the legal fiction adverted to in *Lonzanida* that the nullification of the proclamation results in "no proclamation at all 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."<sup>[8]</sup> I submit though that a different rule should obtain if the official concerned had already fully served the contested term before the nullification could become final and the ensuing ouster from office, executory. That the official has fully served his term despite the challenge to his assumption of office, as is respondent's situation, renders inconsequential and unnecessary any inquiry as to whether he was validly elected. Within that context, any subsequent finding that the official had in fact, finished the term and performed the functions of office only in the capacity as the "presumptive winner" holds no utile purpose.

It might be argued that a nullified proclamation evinces the absence of a valid election, which *Borja* and *Lonzanida* hold as a requirement for the constitutional term limit to apply. In that case, the lack of a valid election would still fail to negate any full service of term actually rendered by the official concerned, as may occur if the nullification becomes enforceable only after the expiration of the term. Normally, actual full service of the term gives rise to the presumption that there was a valid election, and as a corollary, an invalid election should cause the official to relinquish office before full service of the term can be completed. It should indeed be recognized as an aberration if a court or the COMELEC would have the gall to promulgate a final and executory issuance nullifying an election only after the term of office for that election had already expired. Such recourse is not only an exercise in futility, but a demonstration of inutility.

The seeming confusion arises from a failure to recognize that the election for three terms for the same post as first requirement of the three-term limit rule, apart from serving as the basis for excluding succession by operation of law from the ambit of the rule as exemplified by *Borja*, is itself the initial expression of the second requirement which is the full service of three consecutive terms. The election dimension is only the initial element that gives rise to the operation of the three-term limit rule but once the election is voided the inevitable effect is that the term would not be fully served. It is this break of service that eventually takes the situation out of the three-term limit rule.

But if the anomaly is present, as it is in this case, should the aberrant nullification be allowed legal fruition as applied to constitutional term limits? *Borja* may have fostered due solicitude to the principle that the voters should have consciously elected the official to serve for three consecutive terms for the limits to take hold, yet the text of the Constitution itself demonstrates that the service of three consecutive terms already suffices. As earlier noted, full service of three terms normally equates to three consecutive valid elections, so the conflict should be rare. But if the conflict does arise, where the full service of three terms did not arise as a consequence of three consecutive

valid elections, As earlier intimated, the full service dimension should bear greater impact than the valid election dimension. Full service of three terms is sufficient to put into effect the constitutional term limits for local elective officials. After all, the text of Section 8, Article X of the Constitution itself lays greater emphasis on the fact of service than on the fact of election.

It may be added that whatever private doubts of the framers may have had as to the wisdom of term limits, the Constitution itself imposes such term limits on every elective national and local office. The Constitution itself regulates through these limits the ability of voters to choose their representative officials. The system of term limits as a tool to democratize opportunity for public office as well as the field of voters' choice is a policy move embedded by the people in the fundamental law of the land. As such, the scope and definition of term limits must be framed from the context of the Constitution itself.

In his ponencia in *Latas v. COMELEC*,<sup>[9]</sup> Justice Azcuna, himself a member of the 1986 Constitutional Commission, eloquently explained the constitutional purpose of term limits:

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 *Latas* 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.<sup>[10]</sup>

The same considerations should militate against the present cause of respondent. It cannot be denied that he has fully served without interruption as mayor for the last 12 years and, had his arguments been upheld, could do so for another three (3) years. His continued stay in office is abhorrent to the Constitution. Now even if the stale claim of the respondent that he was not validly elected to a second term is accepted for the nonce, it would not undo the fact that respondent did perform the functions of the public office during the entirety of his 1998-2001 term, and was at no point during that term, under legal compulsion to relinquish the same. The nullification of respondent's 1998 proclamation was never enforced.

Thus, the original petition for disqualification in G.R. No. 167591 should be granted and respondent removed from office on what is now his fourth consecutive term. Pursuant to Section 44 of the Local Government Code, it should be the Vice-Mayor of Mabalacat who shall succeed into office since the disqualification of respondent has caused a permanent vacancy in the office of Mayor.

There is no basis to accept the claim of petitioner in G.R. No. 170577 that he, the "runner-up" in the 2004 mayoralty race, should be installed in lieu of respondent. The hornbook rule is that a second place candidate cannot be proclaimed as a substitute winner. Said general rule remains unaffected even with the Court's recent ruling in *Cayat v. COMELEC*.<sup>[11]</sup> *Cayat* was predicated on a particular finding that the order of the COMELEC disqualifying the candidate therein had become final even before election day, thus rendering the votes nonetheless cast in favor of that candidate as stray. No such finding exists in this case. While the COMELEC Second Division did disqualify Morales a few days before Election Day, 2004, the said decision was seasonably elevated to the COMELEC en banc, which in fact reversed the Second Division some months after the election and proclamation of Morales.

It is suggested by petitioner in G.R. No. 170577 that the general rule should nonetheless not apply to this case, owing to the obiter dicta in *Labo v. COMELEC*<sup>[12]</sup> that perhaps the second placer could possibly be declared the winner "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." [13] It should weigh that the Court has never to date applied the Labo obiter in order to elevate the second placer into office. This is because the bar set therein is actually quite high. It entails a conclusion that the voters intentionally wasted their ballots knowing that, in spite of their vote for him or her, the candidate was ineligible. [14] As phrased, the Labo obiter requires a finding of spectacular flagrancy on the part of the voting public. In order to actualize the Labo obiter to seat a second placer, the Court has to be prepared to impugn the character and mental acuity of the voters in the particular territory.

The standard in the Labo obiter is not that the voters were deceived into believing that the candidate was eligible, it is that the voters were well aware that the candidate was disqualified yet still chose to cast a vote they knew would be counted as stray in favor of the candidate. Such votes, under the Labo obiter, could not have been cast with the intention to install the candidate into office, but instead were elected to stroke the ego of the candidate.

Ironically, a losing candidate who proposes the application of the Labo obiter to his or her benefit will have to, in the process, denigrate the good faith and intelligence of the voting public. If that strikes as incongruous, it may be because that the general rule in Labo that the second placer can never assume the office is so intrinsically sound, it should take a convergence of highly unusual, absurd or malevolent circumstances in order that the exception may be properly had. No harm to the legal order would have ensued if the Labo obiter did not exist in our jurisprudence.

It cannot be assumed that the people of Mabalacat knew that respondent was running for a fourth consecutive legal term and even if the assumption is accepted, it cannot immediately translate into a "notorious" awareness that he was disqualified from running for the office, especially since there was a ruling, albeit it did not obtain finality before the expiration of his second term, that decreed that he had actually lost the 1998 elections. Besides, in Labo itself, the people of Baguio, by the same measure, knew that Labo had been previously disqualified from running as Mayor in 1988 due to his citizenship predicament, yet still voted him into office anyway when he ran again in 1992. Still, the Court declined to install the second placer in lieu of Labo. I see no need for a different result to obtain in this case.

Even as the two petitions before us raise similar issues relating to the ineligibility of respondents, the petition in G. R. No. 167591 originated from the disqualification case which was filed even before the 2004 elections, while the petition in G. R. 17577 arose from a quo warranto action initiated after respondent had already been proclaimed. Since the disqualification case were indeed valid, the disqualification of respondent effectively moots the quo warranto petition, since the effect of disqualification is similarly to unseat the respondent. Hence, the Court could dispense with the petition in G.r. no. 170577 on the ground of mootness, while granting the petition in G.R. No. 167591.

WHEREFORE, I VOTE to grant the petition in G.R. No. 167591 and to DISMISS the petition in G.R. No. 170577.

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[1] 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 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.

[2] 356 Phil. 467 (1998).

[3]Id. at 478.[4]370 Phil. 625 (1999).[5] G.R. Nos. 163295 & 163354, 23 January 2006, 479 SCRA 473.

[6]The decision of the Angeles City RTC declaring that respondent had actually lost the 1998 elections was promulgated only on 2 April 2001, and more pertinently, became final and executory only on 6 August 2001, or after the expiration of the 1998-2001 term of office.[7] Ong v. Alegre, supra note 5, at 482.

[8] Lonzanida v. COMELEC, supra note 4, at 637.

[9]G.R. No. 154829, 10 December 2003, 417 SCRA 601.

[10]Id. at 614-615.[11] G.R. No. 163776, 24 April 2007.

[12] G.R. No. 105111 & 105384, 3 July 1992, 211 SCRA 297. See also Latasa v. COMELEC, supra note 9, at 615.

[13] Id. at 312.[14] See Frivaldo v. COMELEC, G.R. Nos. 120295 & 123755, 26 June 1996, 257 SCRA 727, 764.

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