URBANO M. MORENO, PETITIONER, COMMISSION ON ELECTIONS AND NORMA L. MEJES, RESPONDENTS.

G.R. NO. 168550. August 10, 2006

Ponente: TINGA, J.

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TINGA, J.:

In this Petition[1] dated July 6, 2005, Urbano M. Moreno (Moreno) assails the Resolution[2] of the Commission on Elections (Comelec) en banc dated June 1, 2005, affirming the Resolution[3] of the Comelec First Division dated November 15, 2002 which, in turn, disqualified him from running for the elective office of Punong Barangay of Barangay Cabugao, Daram, Samar in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

The following are the undisputed facts:

Norma L. Mejes (Mejes) filed a petition to disqualify Moreno from running for Punong Barangay on the ground that the latter was convicted by final judgment of the crime of Arbitrary Detention and was sentenced to suffer imprisonment of Four (4) Months and One (1) Day to Two (2) Years and Four (4) Months by the Regional Trial Court, Branch 28 of Catbalogan, Samar on August 27, 1998.

Moreno filed an answer averring that the petition states no cause of action because he was already granted probation. Allegedly, following the case of Baclayon v. Mutia,[4] the imposition of the sentence of imprisonment, as well as the accessory penalties, was thereby suspended. Moreno also argued that under Sec. 16 of the Probation Law of 1976 (Probation Law), the final discharge of the probation shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed. The order of the trial court dated December 18, 2000 allegedly terminated his probation and restored to him all the civil rights he lost as a result of his conviction, including the right to vote and be voted for in the July 15, 2002 elections.

The case was forwarded to the Office of the Provincial Election Supervisor of Samar for preliminary hearing. After due proceedings, the Investigating Officer recommended that Moreno be disqualified from running for Punong Barangay.

The Comelec First Division adopted this recommendation. On motion for reconsideration filed with the Comelec en banc, the Resolution of the First Division was affirmed. According to the Comelec en banc, Sec. 40(a) of the Local Government Code provides that those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence, are disqualified from running for any elective local position.[5] Since Moreno was released from probation on December 20, 2000, disqualification shall commence on this date and end two (2) years thence. The grant of probation to Moreno merely suspended the execution of his sentence but did not affect his disqualification from running for an elective local office.

Further, the Comelec en banc held that the provisions of the Local Government Code take precedence over the case of Baclayon v. Mutia cited by Moreno and the Probation Law because it is a much later enactment and a special law setting forth the qualifications and disqualifications of elective local officials.

In this petition, Moreno argues that the disqualification under the Local Government Code applies only to those who have served their sentence and not to probationers because the latter do not serve the adjudged sentence. The Probation Law should allegedly be read as an exception to the Local Government Code because it is a special law which applies only to probationers. Further, even assuming that he is disqualified, his subsequent election as Punong Barangay allegedly constitutes an implied pardon of his previous misconduct.

In its Comment[6] dated November 18, 2005 on behalf of the Comelec, the Office of the Solicitor General argues that this Court in Dela Torre v. Comelec[7] definitively settled a similar controversy by ruling that conviction for an offense involving moral turpitude stands even if the candidate was granted probation. The disqualification under Sec. 40(a) of the Local Government Code subsists and remains totally unaffected notwithstanding the grant of probation.

Moreno filed a Reply to Comment[8] dated March 27, 2006, reiterating his arguments and pointing out material differences between his case and Dela Torre v. Comelec which allegedly warrant a conclusion favorable to him. According to Moreno, Dela Torre v. Comelec involves a conviction for violation of the Anti-Fencing Law, an offense involving moral turpitude covered by the first part of Sec. 40(a) of the Local Government Code. Dela Torre, the petitioner in that case, applied for probation nearly four (4) years after his conviction and only after appealing his conviction, such that he could not have been eligible for probation under the law.

In contrast, Moreno alleges that he applied for and was granted probation within the period specified therefor. He never served a day of his sentence as a result. Hence, the disqualification under Sec. 40(a) of the Local Government Code does not apply to him.

The resolution of the present controversy depends on the application of the phrase "within two (2) years after serving sentence" found in Sec. 40(a) of the Local Government Code, which reads:

> Sec. 40. Disqualifications. – The following persons are disqualified from running for any elective local position:
>
> (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; [Emphasis supplied.]
>
> . . . .

We should mention at this juncture that there is no need to rule on whether Arbitrary Detention, the crime of which Moreno was convicted by final judgment, involves moral turpitude falling under the first part of the above-quoted provision. The question of whether Arbitrary Detention is a crime involving moral turpitude was never raised in the petition for disqualification because the ground relied upon by Mejes, and which the Comelec used in its assailed resolutions, is his alleged disqualification from running for a local elective office within two (2) years from his discharge from probation after having been convicted by final judgment for an offense punishable by Four (4) Months and One (1) Day to Two (2) Years and Four (4) Months. Besides, a determination that the crime of Arbitrary Detention involves moral turpitude is not decisive of this case, the crucial issue being whether Moreno's sentence was in fact served.

In this sense, Dela Torre v. Comelec is not squarely applicable. Our pronouncement therein that the grant of probation does not affect the disqualification under Sec. 40(a) of the Local Government Code was based primarily on the finding that the crime of fencing of which petitioner was convicted involves moral turpitude, a

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circumstance which does not obtain in this case. At any rate, the phrase "within two (2) years after serving sentence" should have been interpreted and understood to apply both to those who have been sentenced by final judgment for an offense involving moral turpitude and to those who have been sentenced by final judgment for an offense punishable by one (1) year or more of imprisonment. The placing of the comma (,) in the provision means that the phrase modifies both parts of Sec. 40(a) of the Local Government Code.

The Court's declaration on the effect of probation on Sec. 40(a) of the Local Government Code, we should add, ought to be considered an obiter in view of the fact that Dela Torre was not even entitled to probation because he appealed his conviction to the Regional Trial Court which, however, affirmed his conviction. It has been held that the perfection of an appeal is a relinquishment of the alternative remedy of availing of the Probation Law, the purpose of which is to prevent speculation or opportunism on the part of an accused who, although already eligible, did not at once apply for probation, but did so only after failing in his appeal.[9]

Sec. 40(a) of the Local Government Code appears innocuous enough at first glance. The phrase "service of sentence," understood in its general and common sense, means the confinement of a convicted person in a penal facility for the period adjudged by the court.[10] This seemingly clear and unambiguous provision, however, has spawned a controversy worthy of this Court's attention because the Comelec, in the assailed resolutions, is alleged to have broadened the coverage of the law to include even those who did not serve a day of their sentence because they were granted probation.

Moreno argues, quite persuasively, that he should not have been disqualified because he did not serve the adjudged sentence having been granted probation and finally discharged by the trial court.

In Baclayon v. Mutia, the Court declared that an order placing defendant on probation is not a sentence but is rather, in effect, a suspension of the imposition of sentence. We held that the grant of probation to petitioner suspended the imposition of the principal penalty of imprisonment, as well as the accessory penalties of suspension from public office and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. We thus deleted from the order granting probation the paragraph which required that petitioner refrain from continuing with her teaching profession.

Applying this doctrine to the instant case, the accessory penalties of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, attendant to the penalty of arresto mayor in its maximum period to prision correccional in its minimum period[11] imposed upon Moreno were similarly suspended upon the grant of probation.

It appears then that during the period of probation, the probationer is not even disqualified from running for a public office because the accessory penalty of suspension from public office is put on hold for the duration of the probation.

Clearly, the period within which a person is under probation cannot be equated with service of the sentence adjudged. Sec. 4 of the Probation Law specifically provides that the grant of probation suspends the execution of the sentence. During the period of probation,[12] the probationer does not serve the penalty imposed upon him by the court but is merely required to comply with all the conditions prescribed in the probation order.[13]

It is regrettable that the Comelec and the OSG have misapprehended the real issue in this case. They focused on the fact that Moreno's judgment of conviction attained finality upon his application for probation instead of the question of whether his sentence had been served.

The Comelec could have correctly resolved this case by simply applying the law to the letter. Sec. 40(a) of the Local Government Code unequivocally disqualifies only those who have been sentenced by final judgment for an

offense punishable by imprisonment of one (1) year or more, within two (2) years after serving sentence.

This is as good a time as any to clarify that those who have not served their sentence by reason of the grant of probation which, we reiterate, should not be equated with service of sentence, should not likewise be disqualified from running for a local elective office because the two (2)-year period of ineligibility under Sec. 40(a) of the Local Government Code does not even begin to run.

The fact that the trial court already issued an order finally discharging Moreno fortifies his position. Sec. 16 of the Probation Law provides that "[t]he final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted." Thus, when Moreno was finally discharged upon the court's finding that he has fulfilled the terms and conditions of his probation, his case was deemed terminated and all civil rights lost or suspended as a result of his conviction were restored to him, including the right to run for public office.

Even assuming that there is an ambiguity in Sec. 40(a) of the Local Government Code which gives room for judicial interpretation,[14] our conclusion will remain the same.

It is unfortunate that the deliberations on the Local Government Code afford us no clue as to the intended meaning of the phrase "service of sentence," i.e., whether the legislature also meant to disqualify those who have been granted probation. The Court's function, in the face of this seeming dissonance, is to interpret and harmonize the Probation Law and the Local Government Code. Interpretare et concordare legis legibus est optimus interpretandi.

Probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the state, which is granted to a deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense of which he was convicted.[15] Thus, the Probation Law lays out rather stringent standards regarding who are qualified for probation. For instance, it provides that the benefits of probation shall not be extended to those sentenced to serve a maximum term of imprisonment of more than six (6) years; convicted of any offense against the security of the State; those who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one (1) month and one (1) day and/or a fine of not less than P200.00; those who have been once on probation; and those who are already serving sentence at the time the substantive provisions of the Probation Law became applicable.[16]

It is important to note that the disqualification under Sec. 40(a) of the Local Government Code covers offenses punishable by one (1) year or more of imprisonment, a penalty which also covers probationable offenses. In spite of this, the provision does not specifically disqualify probationers from running for a local elective office. This omission is significant because it offers a glimpse into the legislative intent to treat probationers as a distinct class of offenders not covered by the disqualification.

Further, it should be mentioned that the present Local Government Code was enacted in 1991, some seven (7) years after Baclayon v. Mutia was decided. When the legislature approved the enumerated disqualifications under Sec. 40(a) of the Local Government Code, it is presumed to have knowledge of our ruling in Baclayon v. Mutia on the effect of probation on the disqualification from holding public office. That it chose not to include probationers within the purview of the provision is a clear expression of the legislative will not to disqualify probationers.

On this score, we agree with Moreno that the Probation Law should be construed as an exception to the Local Government Code. While the Local Government Code is a later law which sets forth the qualifications and disqualifications of local elective officials, the Probation Law is a special legislation which applies only to

probationers. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute.[17]

In construing Sec. 40(a) of the Local Government Code in a way that broadens the scope of the disqualification to include Moreno, the Comelec committed an egregious error which we here correct. We rule that Moreno was not disqualified to run for Punong Barangay of Barangay Cabugao, Daram, Samar in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

Finally, we note that Moreno was the incumbent Punong Barangay at the time of his conviction of the crime of Arbitrary Detention. He claims to have obtained a fresh mandate from the people of Barangay Cabugao, Daram, Samar in the July 15, 2002 elections. This situation calls to mind the poignant words of Mr. Justice now Chief Justice Artemio Panganiban in Frivaldo v. Comelec[18] where he said that "it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms."

WHEREFORE, the petition is GRANTED. The Resolution of the Commission on Elections en banc dated June 1, 2005 and the Resolution of its First Division dated November 15, 2002, as well as all other actions and orders issued pursuant thereto, are ANNULLED and SET ASIDE. The Commission on Elections is directed to proceed in accordance with this Decision. No pronouncement as to costs.

SO ORDERED.

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

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[1] Rollo, pp. 3-19.

[2] Id. at 20-26; Penned by Commissioner F.A. Tuason, Jr.

[3] Id. at 27-31; Penned by Commissioner R.Z. Borra.

[4] No. L-59298, April 30, 1984, 129 SCRA 148.

[5] Comelec Resolution No. 4801, otherwise known as the "Guidelines on the Filing of Certificates of Candidacy in Connection with the Synchronized Barangay and Sangguniang Kabataan Elections," has a similar provision in Sec. 3(a) thereof.

[6] Rollo, pp. 37-47.

[7] 327 Phil. 1144 (1996).

[8] Rollo, pp. 60-70.

[9] Lagrosa v. People, G.R. No. 152044, July 3, 2003, 405 SCRA 357.

[10]Art. 86 of the Revised Penal Code provides that the penalties of reclusion perpetua, reclusion temporal, prision mayor, prison correccional and arresto mayor, shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

[11] Revised Penal Code, Art. 43.

[12] Presidential Decree No. 968 (1976), as amended, Probation Law of 1976. Sec. 14. The period of probation of a defendant sentenced to a term of imprisonment of not more than one (1) year shall not exceed two (2) years, and in all other cases, said period shall not exceed six (6) years.

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[13] Presidential Decree No. 968 (1976), as amended, Probation Law of 1976. Sec. 10.

[14] Abello v. Commissioner of Internal Revenue, G.R. No. 120721, February 23, 2005, 452 SCRA 162.

[15] Santos v. Court of Appeals, 377 Phil. 642, 652 (1999).

[16] Presidential Decree No. 968, as amended, Probation Law of 1976, Sec. 9.

[17] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[18] 327 Phil. 521 (1996).

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