

## **FEDERICO T. MONTEBON AND ELEANOR M. ONDOY, PETITIONERS, VS. COMMISSION ON ELECTION AND SESINANDO F. POTENCIOSO, JR., RESPONDENTS.**

*G.R. No. 180444. April 09, 2008*

Ponente: YNARES-SATIAGO, J.

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### **YNARES-SATIAGO, J.:**

This petition[1] for certiorari assails the June 2, 2007 Resolution[2] of the First Division of the Commission on Elections (COMELEC) in SPA No. 07-421, denying the petition for disqualification filed by petitioners Federico T. Montebon and Eleanor M. Ondoy against respondent Sesinando F. Potencioso, Jr., as well as the September 28, 2007 Resolution[3] of the COMELEC En Banc denying the motion for reconsideration.

Petitioners Montebon and Ondoy and respondent Potencioso, Jr. were candidates for municipal councilor of the Municipality of Tuburan, Cebu for the May 14, 2007 Synchronized National and Local Elections. On April 30, 2007, petitioners and other candidates[4] for municipal councilor filed a petition for disqualification against respondent with the COMELEC alleging that respondent had been elected and served three consecutive terms as municipal councilor in 1998-2001, 2001-2004, and 2004-2007. Thus, he is proscribed from running for the same position in the 2007 elections as it would be his fourth consecutive term.

In his answer, respondent admitted that he had been elected for three consecutive terms as municipal councilor. However, he claimed that the service of his second term in 2001-2004 was interrupted on January 12, 2004 when he succeeded as vice mayor of Tuburan due to the retirement of Vice Mayor Petronilo L. Mendoza. Consequently, he is not disqualified from vying for the position of municipal councilor in the 2007 elections.

In the hearing of May 10, 2007, the parties were directed to file their respective memoranda.

In petitioners' memorandum, they maintained that respondent's assumption of office as vice-mayor in January 2004 should not be considered an interruption in the service of his second term since it was a voluntary renunciation of his office as municipal councilor. They argued that, according to the law, 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 official concerned was elected.

On the other hand, respondent alleged that a local elective official is not disqualified from running for the fourth consecutive time to the same office if there was an interruption in one of the previous three terms.

On June 2, 2007, the COMELEC First Division denied the petition for disqualification ruling that respondent's assumption of office as vice-mayor should be considered an interruption in the continuity of his service. His second term having been involuntarily interrupted, respondent should thus not be disqualified to seek reelection as municipal councilor.[5]

On appeal, the COMELEC En Banc upheld the ruling of the First Division, as follows:

Respondent's assumption to the office of the vice-mayor of Tuburan in January 2004 during his second term as councilor is not a voluntary renunciation of the latter office. The same therefore operated as an effective disruption in the full service of his second term as councilor. Thus, in running for councilor again in the May 14, 2007 Elections, respondent is deemed to be running only for a second consecutive term as councilor of Tuburan, the first consecutive term fully served being his 2004-2007 term.

Petitioner Montebon's and Ondoy's June 9, 2007 manifestation and omnibus motion are hereby declared moot and academic with the instant disposition of their motion for reconsideration.

WHEREFORE, premises considered, petitioners' motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[6]

Petitioners filed the instant petition for certiorari on the ground that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that respondent's assumption of office as vice-mayor in January 2004 interrupted his 2001-2004 term as municipal councilor.

The petition lacks merit.

The 1987 Constitution bars and disqualifies local elective officials from serving more than three consecutive terms in the same post. Section 8, Article X thereof states:

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 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.

Section 43 of the Local Government Code also provides:

Sec. 43. Term of Office.

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

In *Lonzanida v. Commission on Elections*,<sup>[7]</sup> the Court 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.<sup>[8]</sup> In *Borja, Jr. v. Commission on Elections*,<sup>[9]</sup> the Court emphasized that the term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Thus, for the disqualification to apply, it is not enough that the official has been elected three consecutive times; he must also have served three consecutive terms in the same position.<sup>[10]</sup>

While it is undisputed that respondent was elected municipal councilor for three consecutive terms, the issue lies on whether he is deemed to have fully served his second term in view of his assumption of office as vice-mayor of Tuburan on January 12, 2004.

Succession in local government offices is by operation of law.<sup>[11]</sup> Section 44<sup>[12]</sup> of Republic Act No. 7160, otherwise known as the Local Government Code, provides that if a permanent vacancy occurs in the office of the vice mayor, the highest ranking sanggunian member shall become vice mayor. Thus:

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 vice mayor concerned

shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. x x x

In this case, a permanent vacancy occurred in the office of the vice mayor due to the retirement of Vice Mayor Mendoza. Respondent, being the highest ranking municipal councilor, succeeded him in accordance with law. It is clear therefore that his assumption of office as vice-mayor can in no way be considered a voluntary renunciation of his office as municipal councilor.

In *Lonzanida v. Commission on Elections*, the Court explained the concept of voluntary renunciation as follows:

The second sentence of the constitutional provision under scrutiny states, 'Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected.' The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service.[13] (Emphasis added)

Thus, respondent's assumption of office as vice-mayor in January 2004 was an involuntary severance from his office as municipal councilor, resulting in an interruption in the service of his 2001-2004 term. It cannot be deemed to have been by reason of voluntary renunciation because it was by operation of law. We quote with approval the ruling of the COMELEC that -

The legal successor is not given any option under the law on whether to accept the vacated post or not. Section 44 of the Local Government Code makes no exception. Only if the highest-ranking councilor is permanently unable to succeed to the post does the law speak of alternate succession. Under no circumstances can simple refusal of the official concerned be considered as permanent inability within the contemplation of law. Essentially therefore, the successor cannot refuse to assume the office that he is mandated to occupy by virtue of succession. He can only do so if for some reason he is permanently unable to succeed and occupy the post vacated.

x x x x

Thus, succession by law to a vacated government office is characteristically not voluntary since it involves the performance of a public duty by a government official, the non-performance of which exposes said official to possible administrative and criminal charges of dereliction of duty and neglect in the performance of public functions. It is therefore more compulsory and obligatory rather than voluntary.[14]

WHEREFORE, the petition is DISMISSED for lack of merit. The June 2, 2007 Resolution of the COMELEC First Division denying the petition for disqualification and the September 28, 2007 Resolution of the COMELEC en banc denying the motion for reconsideration, are AFFIRMED.

### **SO ORDERED.**

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.  
Azcuna, J., on official leave.

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[1] Rollo, pp. 3-17.

[2] Id. at 32-35. Penned by Commissioner Romeo A. Brawner and concurred in by Presiding Commissioner Resurreccion Z. Borra.

[3] Id. at 18-29. Per curiam.

[4] Jesus C. Mendoza, Teopisto C. Prosia, Jr., Nicolas Y. Edillon, Ernesto B. Caga, Albaerto T. Gallarde, and Eugenio M. Arigo.

[5] Rollo, p. 34.

[6] Id. at 27-28.

[7] 370 Phil. 625 (1999).

[8] Id. at 636.

[9] 356 Phil. 467 (1998).

[10] Id. at 478.

[11] See *Borja, Jr. v. Commission on Elections*, 356 Phil. 467, 476-477 (1998).

[12] 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 vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein. x x x.

[13] *Supra* note 7 at 638.

[14] Rollo, p. 26.

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