

ROBERTO L. DIZON, PETITIONER, VS. COMMISSION ON ELECTIONS AND MARINO P. MORALES, RESPONDENTS.

G.R. No. 182088. January 30, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari and prohibition, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction under Rule 65 of the 1997 Rules of Civil Procedure. The present petition seeks the reversal of the Resolution dated 27 July 2007 of the Commission on Elections' (COMELEC) Second Division which dismissed the petition to disqualify and/or to cancel Marino P. Morales' (Morales) certificate of candidacy, as well as the Resolution dated 14 February 2008 of the COMELEC En Banc which denied Roberto L. Dizon's (Dizon) motion for reconsideration.

The Facts

The COMELEC Second Division stated the facts as follows:

Roberto L. Dizon, hereinafter referred to as petitioner, is a resident and taxpayer of the Municipality of Mabalacat, Pampanga. Marino P. Morales, hereinafter referred to as respondent, is the incumbent Mayor of the Municipality of Mabalacat, Pampanga.

Petitioner alleges respondent was proclaimed as the municipal mayor of Mabalacat, Pampanga during the 1995, 1998, 2001 and 2004 elections and has fully served the same. Respondent filed his Certificate of Candidacy on March 28, 2007 again for the same position and same municipality.

Petitioner argues that respondent is no longer eligible and qualified to run for the same position for the May 14, 2007 elections under Section 43 of the Local Government Code of 1991. Under the said provision, no local elective official is allowed to serve for more than three (3) consecutive terms for the same position.

Respondent, on the other hand, asserts that he is still eligible and qualified to run as Mayor of the Municipality of Mabalacat, Pampanga because he was not elected for the said position in the 1998 elections. He avers that the Commission en banc in SPA Case No. A-04-058, entitled Atty. Venancio Q. Rivera III and Normandick P. De Guzman vs. Mayor Marino P. Morales, affirmed the decision of the Regional Trial Court of Angeles City declaring Anthony D. Dee as the duly elected Mayor of Mabalacat, Pampanga in the 1998 elections.

Respondent alleges that his term should be reckoned from 2001 or when he was proclaimed as Mayor of Mabalacat, Pampanga. Respondent further asserts that his election in 2004 is only for his second term. Hence, the three term rule provided under the Local Government Code is not applicable to him.

Respondent further argues that the grounds stated in the instant petition are not covered under Section 78 of the Omnibus Election Code. Respondent further contend [sic] that even if it is covered under the aforementioned

provision, the instant petition failed to allege any material misrepresentation in the respondent's Certificate of Candidacy.[1]

The Ruling of the COMELEC Second Division

In its Resolution dated 27 July 2007, the COMELEC Second Division took judicial notice of this Court's ruling in the consolidated cases of Atty. Venancio Q. Rivera III v. COMELEC and Marino "Boking" Morales in G.R. No. 167591 and Anthony Dee v. COMELEC and Marino "Boking" Morales in G.R. No. 170577 (Rivera case) promulgated on 9 May 2007. The pertinent portions of the COMELEC Second Division's ruling read as follows:

Respondent was elected as mayor of Mabalacat from July 1, 1995 to June 30, 1998. There was no interruption of his second term from 1998 to 2001. He was able to exercise the powers and enjoy the position of a mayor as "caretaker of the office" or a "de facto officer" until June 30, 2001 notwithstanding the Decision of the RTC in an electoral protest case. He was again elected as mayor from July 1, 2001 to June 30, 2003 [sic].

It is worthy to emphasize that the Supreme Court ruled that respondent has violated the three-term limit under Section 43 of the Local Government Code. Respondent was considered not a candidate in the 2004 Synchronized National and Local Elections. Hence, his failure to qualify for the 2004 elections is a gap and allows him to run again for the same position in the May 14, 2007 National and Local Elections.

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to DENY the instant Petition to Cancel the Certificate of Candidacy and/or Petition for the Disqualification of Marino P. Morales for lack of merit.[2]

Dizon filed a motion for reconsideration before the COMELEC En Banc.

The Ruling of the COMELEC En Banc

The COMELEC En Banc affirmed the resolution of the COMELEC Second Division.

The pertinent portions of the COMELEC En Banc's Resolution read as follows:

Respondent's certificate of candidacy for the May 2004 Synchronized National and Local Elections was cancelled pursuant to the above-mentioned Supreme Court decision which was promulgated on May 9, 2007. As a result, respondent was not only disqualified but was also not considered a candidate in the May 2004 elections.

Another factor which is worth mentioning is the fact that respondent has relinquished the disputed position on May 16, 2007. The vice-mayor elect then took his oath and has assumed office as mayor of Mabalacat on May 17, 2007 until the term ended on June 30, 2007. For failure to serve for the full term, such involuntary interruption in his term of office should be considered a gap which renders the three-term limit inapplicable.

The three-term limit does not apply whenever there is an involuntary break. The Constitution does not require that the interruption or hiatus to be a full term of three years. What the law requires is for an interruption, break or a rest period from a candidate's term of office "for any length of time." The Supreme Court in the case of *Latasa v. Comelec* ruled:

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.

In sum, the three-term limit is not applicable in the instant case for lack of the two conditions: 1) respondent was not the duly-elected mayor of Mabalacat for the July 1, 2004 to June 30, 2007 term primordially because he was not even considered a candidate thereat; and 2) respondent has failed to serve the entire duration of the term of

office because he has already relinquished the disputed office on May 16, 2007 which is more than a month prior to the end of his supposed term.

x x x

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the instant Motion for Reconsideration for LACK OF MERIT. The Resolution of the Commission Second Division is hereby AFFIRMED.

SO ORDERED.[3]

The Issues

Dizon submits that the factual findings made in the Rivera case should still be applied in the present case because Morales had, except for one month and 14 days, served the full term of 2004-2007. Morales' assumption of the mayoralty position on 1 July 2007 makes the 2007-2010 term Morales' fifth term in office. Dizon raises the following grounds before this Court:

- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT RULED THAT RESPONDENT MORALES DID NOT VIOLATE THE THREE-YEAR TERM LIMIT WHEN HE RAN AND WON AS MAYOR OF MABALACAT, PAMPANGA DURING THE MAY 14, 2007 ELECTION.
- THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT DUE TO THIS HONORABLE COURT'S RULING IN THE AFORESAID CONSOLIDATED CASES, RESPONDENT MORALES' FOURTH TERM IS CONSIDERED A GAP IN THE LATTER'S SERVICE WHEN HE FILED HIS CERTIFICATE OF CANDIDACY FOR THE 2007 ELECTIONS.
- THE COMELEC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE FOURTH TERM OF MORALES WAS INTERRUPTED WHEN HE "RELINQUISHED" HIS POSITION FOR ONE MONTH AND 14 DAYS PRIOR TO THE MAY 14, 2007 ELECTION.[4]

The Ruling of the Court

The petition has no merit.

The present case covers a situation wherein we have previously ruled that Morales had been elected to the same office and had served three consecutive terms, and wherein we disqualified and removed Morales during his fourth term. Dizon claims that Morales is currently serving his fifth term as mayor. Is the 2007-2010 term really Morales' fifth term?

The Effect of our Ruling in the Rivera Case

In our decision promulgated on 9 May 2007, this Court unseated Morales during his fourth term. We cancelled his Certificate of Candidacy dated 30 December 2003. This cancellation disqualified Morales from being a candidate in the May 2004 elections. The votes cast for Morales were considered stray votes. The dispositive portion in the Rivera case reads:

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 of 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.[5]

Article X, Section 8 of the 1987 Constitution reads:

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 restated Article X, Section 8 of the 1987 Constitution as follows:

No local elective official shall serve for more than three (3) 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.

For purposes of determining the resulting disqualification brought about by the three-term limit, 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.[6] There should be a concurrence of two conditions for the application of the disqualification: (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.[7]

In the Rivera case, we found that Morales was elected as mayor of Mabalacat for four consecutive terms: 1 July 1995 to 30 June 1998, 1 July 1998 to 30 June 2001, 1 July 2001 to 30 June 2004, and 1 July 2004 to 30 June 2007. We disqualified Morales from his candidacy in the May 2004 elections because of the three-term limit. Although the trial court previously ruled that Morales' proclamation for the 1998-2001 term was void, there was no interruption of the continuity of Morales' service with respect to the 1998-2001 term because the trial court's ruling was promulgated only on 4 July 2001, or after the expiry of the 1998-2001 term.

Our ruling in the Rivera case served as Morales' involuntary severance from office with respect to the 2004-2007 term. 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.[8] Our decision in the Rivera case was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. The assumption by the vice mayor of the office of the mayor, no matter how short it may seem to Dizon, interrupted Morales' continuity of service. Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007.

2007-2010: Morales' Fifth Term?

Dizon claims that the 2007-2010 term is Morales' fifth term in office. Dizon asserts that even after receipt of our decision on 10 May 2007, Morales "waited for the election to be held on 14 May 2007 to ensure his victory for a fifth term." [9]

We concede that Morales occupied the position of mayor of Mabalacat for the following periods: 1 July 1995 to 30 June 1998, 1 July 1998 to 30 June 2001, 1 July 2001 to 30 June 2004, and 1 July 2004 to 16 May 2007. However, because of his disqualification, Morales was not the duly elected mayor for the 2004-2007 term. Neither did Morales hold the position of mayor of Mabalacat for the full term. Morales cannot be deemed to have served the full term of 2004-2007 because he was ordered to vacate his post before the expiration of the term.

Morales' occupancy of the position of mayor of Mabalacat from 1 July 2004 to 16 May 2007 cannot be counted as a term for purposes of computing the three-term limit. Indeed, the period from 17 May 2007 to 30 June 2007 served as a gap for purposes of the three-term limit rule. Thus, the present 1 July 2007 to 30 June 2010 term is effectively Morales' first term for purposes of the three-term limit rule.

Dizon alleges that Morales "was able to serve his fourth term as mayor through lengthy litigations. x x x In other words, he was violating the rule on three-term limit with impunity by the sheer length of litigation and profit from it even more by raising the technicalities arising therefrom." [10] To this, we quote our ruling in *Lonzanida v. COMELEC*:

The respondents harp on the delay in resolving the election protest between petitioner and his then opponent Alvez which took roughly about three years and resultantly extended the petitioner's incumbency in an office to which he was not lawfully elected. We note that such delay cannot be imputed to the petitioner. There is no specific allegation nor proof that the delay was due to any political maneuvering on his part to prolong his stay in office. Moreover, protestant Alvez, was not without legal recourse to move for the early resolution of the election protest while it was pending before the regional trial court or to file a motion for the execution of the regional trial court's decision declaring the position of mayor vacant and ordering the vice-mayor to assume office while the appeal was pending with the COMELEC. Such delay which is not here shown to have been intentionally sought by the petitioner to prolong his stay in office cannot serve as basis to bar his right to be elected and to serve his chosen local government post in the succeeding mayoral election. [11]

WHEREFORE, we DISMISS the petition. We AFFIRM the Resolution of the Commission on Elections En Banc dated 14 February 2008 as well as the Resolution of the Commission on Elections' Second Division dated 27 July 2007.

SO ORDERED.

Quisumbing, (Acting Chief Justice), Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.

Puno, C.J., Ynares-Santiago, Azcuna, and Velasco, Jr., JJ., on official leave.

[1] Rollo, pp. 38-39.

[2] Id. at 43.

[3] Id. at 53-54.

[4] Id. at 17.

[5] *Rivera III v. Commission on Elections*, G.R. No. 167591, 9 May 2007, 523 SCRA 41, 59.

[6] See *Borja, Jr. v. COMELEC*, 356 Phil. 467 (1998).

[7] See *Lonzanida v. COMELEC*, 370 Phil. 625 (1999).

[8] Id. at 638.

[9] Rollo, pp. 4-5.

[10] Id. at 21.

[11] *Supra* note 7 at 638-639.

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