

NICASIO BOLOS, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND REY ANGELES CINCONIEGUE, RESPONDENTS.

G.R. No. 184082. March 17, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for certiorari, under Rule 65 of the Rules of Court, alleging that the Commission on Elections (COMELEC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions promulgated on March 4, 2008 and August 7, 2008 holding that petitioner Nicasio Bolos, Jr. is disqualified as a candidate for the position of Punong Barangay of Barangay Biking, Daus, Bohol in the October 29,

2007 Barangay and Sangguniang Kabataan Elections on the ground that he has served the three-term limit provided in the Constitution and Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991.

The facts are as follows:

For three consecutive terms, petitioner was elected to the position of Punong Barangay of Barangay Biking, Daus, Bohol in the Barangay Elections held in 1994, 1997 and 2002.

In May 2004, while sitting as the incumbent Punong Barangay of Barangay Biking, petitioner ran for Municipal Councilor of Daus, Bohol and won. He assumed office as Municipal Councilor on July 1, 2004, leaving his post as Punong Barangay. He served the full term of the Sangguniang Bayan position, which was until June 30, 2007.

Thereafter, petitioner filed his Certificate of Candidacy for Punong Barangay of Barangay Biking, Daus, Bohol in the October 29, 2007 Barangay and Sangguniang Kabataan Elections.

Respondent Rey Angeles Cinconiegue, the incumbent Punong Barangay and candidate for the same office, filed before the COMELEC a petition for the disqualification of petitioner as candidate on the ground that he had already served the three-term limit. Hence, petitioner is no longer allowed to run for the same position in accordance with Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160.

Cinconiegue contended that petitioner's relinquishment of the position of Punong Barangay in July 2004 was voluntary on his part, as it could be presumed that it was his personal decision to run as municipal councilor in the May 14, 2004 National and Local Elections. He added that petitioner knew that if he won and assumed the position, there would be a voluntary renunciation of his post as Punong Barangay.

In his Answer, petitioner admitted that he was elected as Punong Barangay of Barangay Biking, Daus, Bohol in the last three consecutive elections of 1994, 1997 and 2002. However, he countered that in the May 14, 2004 National and Local Elections, he ran and won as Municipal Councilor of Daus, Bohol. By reason of his assumption of office as Sangguniang Bayan member, his remaining term of office as Punong Barangay, which

would have ended in 2007, was left unserved. He argued that his election and assumption of office as Sangguniang Bayan member was by operation of law; hence, it must be considered as an involuntary interruption in the continuity of his last term of service.

Pursuant to Section 10 of COMELEC Resolution No. 8297 dated September 6, 2007, the petition was heard by the Provincial Election Supervisor of Bohol. Upon completion of the proceedings, the evidence, records of the case, and the Hearing Officer's action on the matter were endorsed to and received by the Commission on November 21, 2007.

The issue before the COMELEC was whether or not petitioner's election, assumption and discharge of the functions of the Office of Sangguniang Bayan member can be considered as voluntary renunciation of his office as Punong Barangay of Barangay Biking, Dauis, Bohol which will render unbroken the continuity of his service as Punong Barangay for the full term of office, that is, from 2004 to 2007. If it is considered a voluntary renunciation, petitioner will be deemed to have served three consecutive terms and shall be disqualified to run for the same position in the October 29, 2007 elections. But if it is considered as an involuntary

renunciation, petitioner's service is deemed to have been interrupted; hence, he is not barred from running for another term.

In a Resolution[1] dated March 4, 2008, the First Division of the COMELEC ruled that petitioner's relinquishment of the office of Punong Barangay of Biking, Dauis, Bohol, as a consequence of his assumption of office as Sangguniang Bayan member of Dauis, Bohol, on July 1, 2004, was a voluntary renunciation of the Office of Punong Barangay. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, the Commission (First Division) GRANTS the petition. Respondent NICASIO BOLOS, JR., having already served as Punong Barangay of Barangay Biking, Dauis, Bohol for three consecutive terms is hereby DISQUALIFIED from being a candidate for the same office in the October 29, 2007 Barangay and SK Elections. Considering that respondent had already been proclaimed, said proclamation is hereby ANNULLED. Succession to said office shall be governed by the provisions of Section 44 of the Local Government Code.[2]

Petitioner's motion for reconsideration was denied by the COMELEC en banc in a Resolution[3] dated August 7, 2008.

Hence, this petition for certiorari raising this lone issue:

WHETHER OR NOT THE HONORABLE COMMISSION ON ELECTIONS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN DISQUALIFYING [PETITIONER] AS A CANDIDATE FOR PUNONG BARANGAY IN THE OCTOBER 29, 2007 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS AND, SUBSEQUENTLY, ANNULING HIS PROCLAMATION.[4]

The main issue is whether or not there was voluntary renunciation of the Office of Punong Barangay by petitioner when he assumed office as Municipal Councilor so that he is deemed to have fully served his third term as Punong Barangay, warranting his disqualification from running for the same position in the October 29, 2007 Barangay and Sangguniang Kabataan Elections.

Petitioner contends that he is qualified to run for the position of Punong Barangay in the October 29, 2007 Barangay and Sangguniang Kabataan Elections since he did not serve continuously three consecutive terms. He admits that in the 1994, 1997 and 2002 Barangay elections, he was elected as Punong Barangay for three consecutive terms. Nonetheless, while serving his third term as Punong Barangay, he ran as Municipal Councilor

of Daus, Bohol, and won. On July 1, 2004, he assumed office and, consequently, left his post as Punong Barangay by operation of law. He averred that he served the full term as member of the Sangguniang Bayan until June 30, 2007. On October 29, 2007, he filed his Certificate of Candidacy for Punong Barangay and won. Hence, the COMELEC gravely abused its discretion in disqualifying him as a candidate for Punong Barangay since he did not complete his third term by operation of law.

The argument does not persuade.

The three-term limit for elective local officials is contained in Section 8, Article X of the Constitution, which provides:

Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years, and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

David v. Commission on Elections[5] elucidates that the Constitution did not expressly prohibit Congress from fixing any term of office for barangay officials, thereby leaving to the lawmakers full discretion to fix such term in accordance with the exigencies of public service. The discussions in the Constitutional Commission showed that the term of office of barangay officials would be "[a]s may be determined by law," and more precisely, "[a]s provided for in the Local Government Code." [6] Section 43(b) of the Local Government Code provides that barangay officials are covered by the three-term limit, while Section 43(c) [7] thereof states that the term of office of barangay officials shall be five (5) years. The cited provisions read, thus:

Sec. 43. Term of Office. - x x x

(b) 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.

(c) The term of barangay officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of barangay officials on the second Monday of May 1997: Provided, That the sangguniang kabataan members who were elected in the May 1996 elections shall serve until the next regular election of barangay officials.

Socrates v. Commission on Elections[8] held that the rule on the three-term limit, embodied in the Constitution and the Local Government Code, has two parts:

x x x The first part provides that an elective local official cannot serve for more than three consecutive terms. The clear intent is that only consecutive terms count in determining the three-term limit rule. The second part states that voluntary renunciation of office for any length of time does not interrupt the continuity of service. The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms.

After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. [9]

In Lonzanida v. Commission on Elections,[10] the Court stated that the second part of the rule on the three-term limit shows 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. The Court held that 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 government post; and (2) that he has fully served three consecutive terms.[11]

In this case, it is undisputed that petitioner was elected as Punong Barangay for three consecutive terms, satisfying the first condition for disqualification.

What is to be determined is whether petitioner is deemed to have voluntarily renounced his position as Punong Barangay during his third term when he ran for and won as Sangguniang Bayan member and assumed said office.

The Court agrees with the COMELEC that there was voluntary renunciation by petitioner of his position as Punong Barangay.

The COMELEC correctly held:

It is our finding that Nicasio Bolos, Jr.'s relinquishment of the office of Punong Barangay of Biking, Dausi, Bohol, as a consequence of his assumption to office as Sangguniang Bayan member of Dausi, Bohol, on July 1, 2004, is a voluntary renunciation.

As conceded even by him, respondent (petitioner herein) had already completed two consecutive terms of office when he ran for a third term in the Barangay Elections of 2002. When he filed his certificate of candidacy for the Office of Sangguniang Bayan of Dausi, Bohol, in the May 10, 2004 [elections], he was not deemed resigned. Nonetheless, all the acts attending his pursuit of his election as municipal councilor point out to an intent and readiness to give up his post as Punong Barangay once elected to the higher elective office, for it was very unlikely that respondent had filed his Certificate of Candidacy for the Sangguniang Bayan post, campaigned and exhorted the municipal electorate to vote for him as such and then after being elected and proclaimed, return to his former position. He knew that his election as municipal councilor would entail abandonment of the position he held, and he intended to forego of it. Abandonment, like resignation, is voluntary.[12]

Indeed, petitioner was serving his third term as Punong Barangay when he ran for Sangguniang Bayan member and, upon winning, assumed the position of Sangguniang Bayan member, thus, voluntarily relinquishing his office as Punong Barangay which the Court deems as a voluntary renunciation of said office.

Petitioner erroneously argues that when he assumed the position of Sangguniang Bayan member, he left his post as Punong Barangay by

operation of law; hence, he did not fully serve his third term as Punong Barangay.

The term "operation of law" is defined by the Philippine Legal Encyclopedia[13] as "a term describing the fact that rights may be acquired or lost by the effect of a legal rule without any act of the person affected." Black's Law Dictionary also defines it as a term that "expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or cooperation of the party himself." [14]

An interruption in the service of a term of office, by operation of law, is exemplified in *Montebon v. Commission on Elections*. [15] The respondent therein, Sesinando F. Potencioso, Jr., was elected and served three consecutive terms as Municipal Councilor of Tuburan, Cebu in 1998-2001, 2001-2004, and 2004-2007. However, during his second term, he succeeded as Vice-Mayor of Tuburan due to the retirement of the Vice-Mayor pursuant to Section 44 of R.A. No. 7160. [16] Potencioso's assumption of office as Vice-Mayor was considered an involuntary severance from his office as Municipal Councilor, resulting in an interruption in his second term of service. [17] The Court held that it could not be deemed to have been by reason of voluntary renunciation because it was by

operation of law.[18] Hence, Potencioso was qualified to run as candidate for municipal councilor of the Municipality of Tuburan, Cebu in the May 14, 2007 Synchronized National and Local Elections.

Further, in *Borja, Jr. v. Commission on Elections*,[19] respondent therein, Jose T. Capco, Jr., was elected as Vice-Mayor of Pateros on January 18, 1988 for a term ending on June 30, 1992. On September 2, 1989, Capco became Mayor, by operation of law, upon the death of the incumbent, Cesar Borja. Thereafter, Capco was elected and served as Mayor for two more terms, from 1992 to 1998. On March 27, 1998, Capco filed a Certificate of Candidacy for Mayor of Pateros in the May 11, 1998 election. Capco's disqualification was sought on the ground that he would have already served as Mayor for three consecutive terms by June 30, 1998; hence, he would be ineligible to serve for another term. The Court declared that the term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve the same elective position.[20] The Court held that Capco was qualified to run again as mayor in the next election because he was not elected to the office of mayor in the first term but simply found himself thrust into it by operation of law.[21] Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor.[22] The vice-mayor's assumption of the mayorship in the event of the vacancy is more a matter of chance than of design.[23] Hence, his service in that office should not be counted in the application of any term limit.[24]

In this case, petitioner did not fill in or succeed to a vacancy by operation of law. He instead relinquished his office as Punong Barangay during his third term when he won and assumed office as Sangguniang Bayan member of Daus, Bohol, which is deemed a voluntary renunciation of the Office of Punong Barangay.

In fine, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated March 4, 2008 and August 7, 2008, disqualifying petitioner from being a candidate for Punong Barangay in the October 29, 2007 Barangay and Sangguniang Kabataan Elections.

WHEREFORE, the petition is DISMISSED. The COMELEC Resolutions dated March 4, 2008 and August 7, 2008 are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Puno, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Velasco, Jr., Nachura, and Leonardo-De Castro, JJ., concur.
Chico-Nazario, and Brion, JJ., on leave.

[1] Rollo, pp. 15-23.

[2] *Id.* at 22.

[3] *Id.* at 24-27.

[4] *Id.* at 8.

[5] G.R. No. 127116, April 8, 1997, 271 SCRA 90, 104.

[6] *Id.* at 104-105.

MR. NOLLEDO.

One clarificatory question, Madam President. What will be the term of the office of barangay officials as provided for?

MR. DAVIDE. As may be determined by law.

MR. NOLLEDO. As provided for in the Local Government Code?

MR. DAVIDE. Yes.

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THE PRESIDENT.

Is there any other comment? Is there any objection to this proposed new section as submitted by Commissioner Davide and accepted by the Committee?

MR. RODRIGO.

Madam President, does this prohibition to serve for more than three consecutive terms apply to barangay officials?

MR. DAVIDE.

Madam President, the voting that we had on the terms of office did not include the barangay officials because it was then the stand of the Chairman of the Committee on Local Governments that the term of barangay officials must be determined by law. So it is now for the law to determine whether the restriction on the number of reelections will be included in the Local Government Code.

MR. RODRIGO. So that is up to Congress to decide.

MR. DAVIDE .Yes.

MR. RODRIGO. I just wanted that clear in the record.

[7] As amended by R.A. No. 8524, which took effect on March 11, 1998.

[8] G.R. No. 154512, November 12, 2002, 391 SCRA 457.

[9] Id. at 467.

[10] G.R. No. 135150, July 28, 1999, 311 SCRA 602, 613.

[11] Id. at 611.

[12] Rollo, pp. 18-19.

[13] Jose Agaton R. Sibal, copyright 1986.

[14] Sixth Edition, copyright 1990.

[15] G.R. No. 180444, April 9, 2008, 551 SCRA 50.

[16] SEC. 44. Permanent Vacancies in the Offices of the 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

[17] Supra note 15.

[18] Id.

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

[20] Id. at 169.

[21] Id. at 170.

[22] Id.

[23] Id. at 168.

[24] Id.

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