CONSTANCIO F. MENDOZA, PETITIONER, VS. SENEN C. FAMILARA AND COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. No. 191017. November 15, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

This petition raises a far from novel issue, i.e., the constitutionality of Section 2[1] of Republic Act No. 9164 (entitled "An Act Providing for Synchronized Barangay and Sangguniang Kabataan Elections, amending RA No. 7160, as amended, otherwise known as the Local Government Code of 1991"). As other barangay officials had done in previous cases,[2] petitioner Constancio F. Mendoza (Mendoza) likewise questions the retroactive application of the three-consecutive term limit imposed on barangay elective officials beginning from the 1994 barangay elections.

We here have a special civil action, designated by Mendoza as a “petition for review on certiorari under Rule 64 in relation to Rule 65 of the Rules of Court,” seeking to annul and set aside the Resolution[3] of the Commission on Elections (COMELEC) En Banc.

Mendoza was a candidate for Barangay Captain of Barangay Balatasan, Oriental Mindoro in the 29 October 2007 Barangay Elections. As required by law, Mendoza filed a certificate of candidacy. Prior thereto, Mendoza had been elected as Barangay Captain of Barangay Balatasan for three (3) consecutive terms, on 9 May 1994, 12 May 1997 and 15 July 2002.

On 26 October 2007, respondent Senen C. Familara (Familara) filed a Petition to Disqualify Mendoza averring that Mendoza, under Section 2 of RA No. 9164, is ineligible to run again for Barangay Captain of Barangay Balatasan, having been elected and having served, in the same position for three (3) consecutive terms immediately prior to the 2007 Barangay Elections.

Posthaste, Mendoza filed his Answer[4] refuting Familara’s allegations and asseverating the following:

> 1. That he has the qualifications and none of the disqualification to vote and be voted for in the October 29, 2007 Barangay Elections for Barangay Balatasan, Bulalacao, Oriental Mindoro;
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> 2. [He] further AFFIRMS that he has duly-filed his Certificate of Candidacy for Punong Barangay of Barangay Balatasan, Bulalacao, Oriental Mindoro;
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> 3. [He] RAISES THE QUESTION of the legal personality of [respondent Senen] Familara because:
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> a. He is not a party in interest in the Barangay Elections for Punong Barangay at Barangay Balatasan;
> b. He is not a resident nor registered voter of Barangay Balatasan;
> c. He is not a candidate to any elective position for Barangay Balatasan in the scheduled October 29, 2007 Barangay Elections;
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> 4. That while the proper party in interest to file a petition for disqualification is any registered voter of Barangay Balatasan, the instant petition is intended to benefit the only other candidate for Punong Barangay

> for Balatasan in the forthcoming elections, TOMAS PAJANEL, but said person is a permanent resident not only of a Barangay different from Barangay Balatasan but worse, said person is a permanent resident of Bulalacao's adjoining town, Mansalay;
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> 6. The petition suffers from legal infirmities;
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> The present petition is premature. It should be filed within ten (10) days from proclamation of election results.
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> Further, [Senen] Familara is not a proper party to file the petition. It must be filed by a candidate who has duly filed a certificate of candidacy and has been voted for the same office.
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> Finally, the petition was filed before the wrong forum. It must be filed before the Municipal Trial Court. The COMELEC has the exclusive appellate jurisdiction over all contests x x x involving elective barangay officials decided by trial courts of limited jurisdiction.

On 13 November 2007, the Commission on Elections (COMELEC) Assistant Regional Election Director of Region IV, Atty. Jocelyn V. Postrado, issued a Resolution[5] recommending that necessary action be filed against Mendoza for misrepresenting himself as a qualified candidate for the position of Barangay Captain of Balatasan:

> RESOLUTION/RECOMMENDATION
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> Pursuant to the delegated authority vested to the undersigned by the Omnibus Election Law and other election laws and after issuing the necessary summons to MR. CONSTANCIO F. MENDOZA on the above Petition for Disqualification filed by Mr. Senen C, Familara, which to no avail this office until now has not yet received the required affidavits from Mr. Mendoza, and wherein by said act and under our COMELEC Rules of Procedure, he is deemed to have expressly waived his right to present evidence in his defense. xxx
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> Ruling on the submitted petition and supporting evidence, we find Mr. Mendoza to have completed the three (3) term-limit and yet, still ran for office knowing that he was prohibited. Please find a copy of the Certification issued by the Office of the Election Officer, Bulalacao, Oriental Mindoro verifying that Mr. Mendoza filed a Certificate of Candidacy for the position of Punong Barangay. His act of misrepresenting himself as qualified to run for the said position of Punong Barangay at Balatasan, Municipality of Bulalacao, Province of Oriental Mindoro in the 29 October 2007 Barangay Elections, is in violation of Section 2 of Republic Act No. 9164, the Omnibus election Law and other election laws.
>
> WHEREFORE, premises considered, the undersigned hereby recommends that necessary action be filed against MR. CONSTANCIO F. MENDOZA.

Undaunted, Mendoza filed a flurry of motions: (1) an Ex-Parte Motion to Recall;[6] (2) Ex-Parte Motion to Dismiss;[7] and (3) Ex-Parte Motion to Resolve,[8] all aiming to forestall the implementation of the 13 November 2007 Resolution of the COMELEC Assistant Regional Election Director of Region IV, Atty. Postrado, and the continuation of the Petition for Disqualification filed by Familara against Mendoza.

In another turn of events, Mendoza won in the elections; he was proclaimed Barangay Captain of Balatasan.

Consequently, Mendoza's rival, Thomas Pajanel, filed a petition for quo warranto and mandamus against Mendoza before the Municipal Circuit Trial Court (MCTC) of Mansalay-Bulalacao docketed as Election Case No. 407-B. Pajanel contended that Mendoza is ineligible to occupy the position of Barangay Captain of Balatasan, having been elected and having already served as such for three (3) consecutive terms.

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In yet another setback, the MCTC promulgated its Decision and disqualified Mendoza in accordance with the three-consecutive term rule provided in Section 2 of RA No. 9164. Not unexpectedly, Mendoza appealed the MCTC Decision before the COMELEC. The appeal is docketed as EAC (BRGY) No. 101-2008 and is pending before the COMELEC Second Division.

On the other litigation front concerning the Petition for Disqualification filed by Familara against Mendoza, the COMELEC First Division issued a Resolution[9] agreeing with the recommendation of the COMELEC Assistant Regional Election Director of Region IV that Mendoza is disqualified from running as Barangay Captain of Balatasan under the three-consecutive term limit rule. The COMELEC shot down Mendoza's technical objections to the Petition for Disqualification, to wit:

> [Mendoza's] contentions that the petition [for disqualification] should be dismissed as [Familara] lacks the personality to file the said petition since the latter is neither a candidate nor a registered voter of Barangay Balatasan, Municipality of Bulalacao, that it was prematurely filed and was filed before a wrong forum are untenable.
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> It is undisputed that the instant case is a Petition for Disqualification involving barangay officials, hence, Section 11 in relation to Section 10 of COMELEC Resolution No. 8297 issued on September 6, 2007 is the applicable rule with respect to the qualifications of [Mendoza], period of filing and the tribunal to file the same.
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> Section 11 in relation to Section 10 of COMELEC Resolution No. 8297 provides that:
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> Sec. 10. Petition to deny due course to or cancellation of a certificate of candidacy. – A verified petition to deny due course to or cancel a certificate of candidacy pursuant to Sec. 69 (nuisance candidate) or Sec. 78 (material misrepresentation in the certificate of candidacy) of the Omnibus Election Code shall be filed directly with the office of Provincial Election Supervisor concerned by any registered candidate for the same office personally or through a duly-authorized representative within five (5) days from the last day for filing of certificate of candidacy. In the National Capital Region, the same be filed directly with the Office of the Regional Election Director.
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> In the Provinces where the designated Provincial Election Supervisor is not a lawyer the petition shall be filed with the Regional Election Director concerned.
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> Filing by mail is not allowed.
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> Within twenty four (24) hours from receipt of the petition, the Provincial Election Supervisor or the Regional Election Director of the National Capital Region, as the case may be, shall issue the corresponding summons requiring the respondent candidate to answer the petition within three (3) days from receipt. Immediately upon receipt of the answer, the petition shall be set for hearing for the reception of evidence of the parties but not later than five (5) days from the service of summons. The Resolution of the Hearing Officer shall be submitted to the Commission through the Clerk of the Commission within fifteen (15) days from receipt of the petition.
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> Sec. 11. Petition for Disqualification. – A verified petition to disqualify a candidate on the ground of ineligibility or under Section 68 of the Omnibus Election Code may be filed at anytime before proclamation of the winning candidate by any registered voter or any candidate for the same office. The procedure prescribed in the preceding section shall be applicable herein.
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All disqualification cases filed on the ground of ineligibility shall continue although the candidate has already been proclaimed.

Applying the above-cited provisions in the case at bar, it only requires the petitioner to be a registered voter for

him to acquire locus standi to file the instant petition. Further, it provides that a petition for disqualification must be filed at any time before the proclamation of the winning candidate. Furthermore, it also requires that the said petition must be filed with the Provincial Election Supervisor or Regional Election Director, as the case may be. It is clear that in the present case these requirements under the above-cited provisions of the law have been complied.

WHEREFORE, in view of the foregoing, the Commission (First Division) GRANTS the Petition. [Petitioner], Constancio Farol Mendoza, having already served as Punong Barangay of Barangay Balatasan, Bulalacao, Oriental Mindoro for three consecutive terms is hereby DISQUALIFIED from being a candidate for the same office in the October 29, 2007 Synchronized Barangay and Sangguniang Kabataan Elections. Considering that [Mendoza] 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.[10]

Mendoza filed a Motion to Recall Resolution, to Dismiss the Case and to Conduct Appropriate Investigation to Determine Criminal and Administrative Liability[11] before the COMELEC En Banc, seeking the reversal of the Resolution of the COMELEC First Division.

In a Resolution[12] dated 23 December 2009, the COMELEC En Banc denied the Motion to Recall for lack of merit. It dismissed Mendoza's arguments, thus:

> It appears from Section 10 of Resolution No. 8297 that the [COMELEC] has indeed jurisdiction to entertain this petition in the first place. The petition was filed on September 23, 2007, or less than five days from the last day of filing the certificates of candidacy for the position of Punong Barangay. The assistant Regional Director proceeded to issue subpoena, and thereafter, submitted her Resolution/Recommendation which was forwarded to the [COMELEC] for appropriate action through the Clerk of the [COMELEC].
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> The records of the case would reveal that this petition has run its normal course. The allegation of Mendoza that he was allegedly deprived of due process is of no avail. It appears from the registry return receipt attached to the records of the case that summons were duly received by Mendoza on October 24, 2007, as such, he is bound to answer the allegations of the petition within three days from receipt. Failing in this respect, Mendoza is said to have waived his right to file his answer within the time given by the Rules.
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> Furthermore, we cannot subscribe to the argument of Mendoza that the pendency of the proceedings before the Second Division docketed as EAC (Brgy) 101-2008 would merit the dismissal of this petition.
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> The Supreme Court held in the case of Sunga vs. COMELEC, and Lonzanida v. COMELEC, that:
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> "This court has held that the clear legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered. The outright dismissal of the petition for disqualification filed before the election but which remained unresolved after the proclamation of the candidate sought to be disqualified will unduly reward the said candidate and may encourage him to employ delaying tactics to impede the resolution of the petition until after he has been proclaimed."

Considering that [the COMELEC] is tasked with the duty to continue with the trial and hearing of the disqualification case of Mendoza to its conclusion despite the pendency of EAC (Brgy) No. 101-2008, then there is no cogent reason to disturb the Resolution of the First Division dated September 18, 2008.[13]

Unperturbed, Mendoza filed the instant petition alleging grave abuse of discretion in the 23 December 2009 Resolution of the COMELEC En Banc. Mendoza insists that the disqualification case should have been dismissed, or, at the least, consolidated with the quo warranto case on appeal before the COMELEC Second

Division because the latter case stems from a judicial proceeding which "followed strictly the requirements of law and the rules." Mendoza then blithely puts in issue the constitutionality of the retroactive application to the 1994 Barangay Elections of the three-consecutive term limit rule. For good measure, Mendoza asserts denial of due process as would invalidate the disqualification proceedings against him and his resulting disqualification from the race for Barangay Captain of Balatasan.

The jettisoning of the petition is inevitable: the holding of the October 2010 Barangay Elections makes the issues posed by petitioner moot and academic.

Before anything else, we note the apparent mix-up in Mendoza's designation of the present petition. He alleged grave abuse of discretion, but incorrectly specified in the prefatory statement of the petition that it is a "petition for review on certiorari."

For clarity and to obviate confusion, we treat the instant petition as one filed under Rule 64 in relation to Rule 65 of the Rules of Court since the totality of the allegations contained therein seek to annul and set aside the Resolution of the COMELEC en banc because it is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. As we have also noted in Mendoza v. Mayor Villas,[14] another case filed by Mendoza before us where Mendoza did not specify under which Rule (45 or 65) his petition was being filed, this Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court.

Even without going into Mendoza's penchant for filing confused petitions, the supervening event that is the conduct of the 2010 Barangay Elections renders this case moot and academic. The term of office for Barangay Captain of Balatasan for the 2007 Barangay Elections had long expired in 2010 following the last elections held on October 25 of the same year.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[15]

Certainly, the rule is not set in stone and permits exceptions. Thus, we may choose to decide cases otherwise moot and academic if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest involved; third, the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or fourth, the case is capable of repetition yet evasive of review.[16] None of the foregoing exceptions calling for this Court to exercise jurisdiction obtains in this instance.

The justiciability of the present petition is further decimated by our recent ruling in Mendoza v. Mayor Villas:[17]

> With the conduct of the 2010 barangay elections, a supervening event has transpired that has rendered this case moot and academic and subject to dismissal. This is because, as stated in Fernandez v. Commission on Elections, "whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced." Mendoza's term of office has expired with the conduct of last year's local elections. As such, Special Civil Action No. 08-10, where the assailed Orders were issued, can no longer prosper. Mendoza no longer has any legal standing to further pursue the case, rendering the instant petition moot and academic. (emphasis supplied)

In any event, upon a perusal of the merits or lack thereof, the petition is clearly dismissible.

Our decision in COMELEC v. Cruz[18] settles, once and for all, the constitutionality of the three-consecutive term limit rule reckoned from the 1994 Barangay Elections. We unequivocally declared, thus:

> The Retroactive Application Issue

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Our first point of disagreement with the respondents and with the RTC is on their position that a retroactive application of the term limitation was made under RA No. 9164. Our own reading shows that no retroactive application was made because the three-term limit has been there all along as early as the second barangay law (RA No. 6679) after the 1987 Constitution took effect; it was continued under the [Local Government Code] and can still be found in the current law. We find this obvious from a reading of the historical development of the law.

The first law that provided a term limitation for barangay officials was RA No. 6653 (1988); it imposed a two-consecutive term limit. After only six months, Congress, under RA No. 6679 (1988), changed the two-term limit by providing for a three-consecutive term limit. This consistent imposition of the term limit gives no hint of any equivocation in the congressional intent to provide a term limitation. Thereafter, RA No. 7160 - the LGC - followed, bringing with it the issue of whether it provided, as originally worded, for a three-term limit for barangay officials. We differ with the RTC analysis of this issue.

Section 43 is a provision under Title II of the LGC on Elective Officials. Title II is divided into several chapters dealing with a wide range of subject matters, all relating to local elective officials, as follows: a. Qualifications and Election (Chapter I); b. Vacancies and Succession (Chapter II); c. Disciplinary Actions (Chapter IV) and d. Recall (Chapter V). Title II likewise contains a chapter on Local Legislation (Chapter III).

These Title II provisions are intended to apply to all local elective officials, unless the contrary is clearly provided. A contrary application is provided with respect to the length of the term of office under Section 43(a); while it applies to all local elective officials, it does not apply to barangay officials whose length of term is specifically provided by Section 43(c). In contrast to this clear case of an exception to a general rule, the three-term limit under Section 43(b) does not contain any exception; it applies to all local elective officials who must perforce include barangay officials.

An alternative perspective is to view [Section] 43(a), (b) and (c) separately from one another as independently standing and self-contained provisions, except to the extent that they expressly relate to one another. Thus, [Section] 43(a) relates to the term of local elective officials, except barangay officials whose term of office is separately provided under Sec. 43(c). [Section] 43(b), by its express terms, relates to all local elective officials without any exception. Thus, the term limitation applies to all local elective officials without any exclusion or qualification.

Either perspective, both of which speak of the same resulting interpretation, is the correct legal import of Section 43 in the context in which it is found in Title II of the LGC.

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All these inevitably lead to the conclusion that the challenged proviso has been there all along and does not simply retroact the application of the three-term limit to the barangay elections of 1994. Congress merely integrated the past statutory changes into a seamless whole by coming up with the challenged proviso.

With this conclusion, the respondents' constitutional challenge to the proviso—based on retroactivity—must fail.[19]

WHEREFORE, premises considered, the petition is hereby DISMISSED. The COMELEC Resolutions dated 18 September 2008 and 23 December 2009 in SPA (Brgy.) 07-243 are AFFIRMED.

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SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Leonardo-De Castro, J., on official leave.

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[1] Sec. 2. Term of Office. –The term of office of all barangay and sangguniang kabataan officials after the effectivity of this Act shall be three (3) years.

No barangay elective official shall serve for more than three (3) consecutive terms in the same position: Provided, however, That the term of office shall be reckoned from the 1994 barangay elections. 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 the elective official was elected. (Emphasis supplied)

[2] See COMELEC v. Cruz, G.R. No. 186616, 20 November 2009, 605 SCRA 167; Monreal v. COMELEC, G.R. No. 184935, 21 December 2009, 608 SCRA 717.

[3] Dated 23 December 2009, rollo pp. 34-39.

[4] Id. at 40-44.

[5] Id. at 46.

[6] Id. at 47-49.

[7] Id. at 50-51.

[8] Id. at 52-56.

[9] Dated 18 September 2008, rollo, pp. 28-33.

[10] Id. at 31-33.

[11] Id. at 57-63.

[12] Id. at 34-39.

[13] Id. at 36-38.

[14] G.R. No. 187256, 23 February 2011.

[15] Gunsi v. COMELEC, G.R. No. 168792, 23 February 2009, 580 SCRA 70, 76.

[16] David v. Macapagal-Arroyo, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, 3 May 2006, 489 SCRA 160, 214-215.

[17] Supra note 14.

[18] G.R. No. 186616, 20 November 2009, 605 SCRA 167.

[19] Id. at 183-185, 189.

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