

EN BANC

[G.R. No. 246679, September 10, 2019]

**GOVERNOR EDGARDO A. TALLADO, PETITIONER, VS.
COMMISSION ON ELECTIONS, NORBERTO B. VILLAMIN, AND
SENANDRO M. JALGALADO, RESPONDENTS.**

DECISION

BERSAMIN, C.J.:

Once the order of the Office of the Ombudsman to dismiss an elective local official is executed, the dismissed official thereby loses title to the office even if he or she has filed a timely appeal assailing the dismissal which would have prevented it from attaining finality. The loss of title to the office constitutes an involuntary interruption of the official's service of his or her full term.

The Case

Before the Court is the petition for *certiorari* initiated under Rule 64 of the Rules of Court by the petitioner assailing the resolution promulgated on March 29, 2019 by the Commission on Elections (COMELEC) First Division in SPA No. 18-041 (DC) and SPA No. 18-137 (DC) granting the private respondents' petitions to deny due course and/or to cancel the petitioner's Certificate of Candidacy (COC),^[1] and the resolution promulgated on May 9, 2019 by the Commission on Elections *En Banc* denying the petitioner's verified motion for reconsideration.^[2]

Antecedents

The petitioner was duly elected as Governor of the Province of Camarines Norte in the 2010, 2013 and 2016 elections. He fully served his 2010-2013 and 2013-2016 terms. It is the turn of events in respect of the petitioner's 2016-2019 term that has spawned the controversy under review.

Relevant are three administrative cases decided by the Office of the Ombudsman (OMB).

It appears that on January 28, 2013, one Edgardo Gonzales filed in the OMB an administrative complaint charging the petitioner with grave misconduct, oppression or grave abuse of authority.^[3] While the case was pending, the petitioner won as Governor in the 2013 elections. On October 2, 2015, while he was serving his 2013-2016 term, the OMB found and declared him administratively liable and imposed upon him the penalty of suspension for one year,^[4] which suspension was immediately implemented by the Department of Interior and Local Government (DILG).^[5]

The petitioner timely appealed the suspension to the Court of Appeals (CA) by petition for review,^[6] docketed as C.A.-G.R. SP No. 142737.

Acting on the petitioner's appeal, the CA promulgated its decision reducing the imposed penalty of suspension from one year to six months.^[7] He immediately re-assumed his position after the lapse of six months, and his re-assumption later became the subject of the third OMB case.^[8] Under the resolution issued on December 1, 2016 in C.A.-G.R. SP No. 142737, however, the CA restored the one-year suspension of the petitioner.^[9]

On November 4, 2015, several persons (namely: Milline Marie B. Dela Cruz, Mark Anthony J. Mago, Maria Joanabelle L. Crisostomo, and Shanta V. Baraquel) initiated the second OMB case against the petitioner.^[10]

In the decision dated April 18, 2016 and approved by then Ombudsman Conchita Carpio Morales on September 13, 2016, the OMB held the petitioner guilty of grave misconduct and oppression/abuse of authority and ordered his dismissal from the service.^[11]

Although the petitioner appealed to the CA,^[12] the DILG implemented the OMB decision on November 8, 2016 by ordering the petitioner to vacate his position as Governor.^[13]

On the same date, the DILG issued another memorandum addressed to then Vice Governor Jonah Pedro G. Pimentel (Pimentel) directing him to assume as Governor of Camarines Norte.^[14] The memorandum stated that there was a permanent vacancy in the office of Governor as a consequence of the petitioner's dismissal from the service. In ordering Pimentel to assume as Governor, the DILG cited Section 44 of Republic Act No. 7160, or the *Local Government Code* (LGC).

On November 16, 2016, Pimentel took his oath of office as Governor of Camarines Norte,^[15] and thereupon assumed office and exercised the functions of Governor.^[16]

On December 12, 2016, the CA issued a temporary restraining order enjoining the DILG from implementing or continuously implementing the decision of the OMB.^[17] Thus, the petitioner was able to re-assume his post as Governor.^[18]

The third OMB case, as noted above, concerned the petitioner's re-assumption of the office of Governor after the CA had initially reduced the penalty imposed in the first OMB case to suspension for six months. The complainant thereat initiated another complaint on the basis that the petitioner had violated the first OMB decision by re-assuming office without having fully served his suspension.^[19]

On January 11, 2018, the OMB rendered another decision finding the petitioner guilty of grave misconduct, and ordering his dismissal from the service.^[20]

The petitioner appealed the decision to the CA.^[21]

To implement the decision of the OMB, the DILG issued the Memorandum dated March 14, 2018 ordering Pimentel to assume as Governor,^[22] this time citing Section 46 of LGC as legal basis therefor.

On March 15, 2018, Pimentel again took his oath of office as Governor, and assumed office and exercised the functions of Governor.^[23]

On September 26, 2018, the CA ruled on the petitioner's appeal by modifying the penalty of dismissal to six months suspension.^[24]

On October 29, 2018, the DILG issued its memorandum directing the implementation of the decision of the CA, and the reinstatement of the petitioner as Governor if he had already served the six-month suspension.^[25]

On October 30, 2018, the petitioner took his oath of office as Governor of Camarines Norte.^[26]

In the meanwhile, on October 15, 2018, the petitioner filed his Certificate of Candidacy (COC) for Governor of Camarines Norte for the May 2019 elections.^[27] This prompted respondents Norberto B. Villamin and Senandro M. Jalgado to file their separate petitions (respectively docketed as SPA No. 18-041 (DC) and SPA No. 18-137 (DC)) with the COMELEC praying for the denial of due course to and/or for the cancellation of the petitioner's COC,^[28] which petitions were consolidated and predicated on the application of the three-term limit rule.

In its March 29, 2019 resolution, the COMELEC First Division granted the petitions and ordered the cancellation of the petitioner's COC.^[29] The COMELEC First Division concluded that the petitioner had fully served three consecutive terms considering that his suspension and dismissals from the service were not interruptions of his term because he had not thereby lost title to the office; that the OMB's decisions ordering his dismissals were not yet final; and that there had been no permanent vacancy and no succession in accordance with Section 44 of the LGC.

The COMELEC First Division disposed as follows:

WHEREFORE, premises considered, the Petitions are hereby **GRANTED**.
The Certificate of Candidacy filed by Respondent **EDGARDO A. TALLADO** is **CANCELLED**.

SO ORDERED.

It is notable that the COMELEC First Division was not unanimous. Commissioner Al A. Parreño dissented and voted to deny the petitions, opining that the dismissals from the service had effectively interrupted the petitioner's 2016-2019 term, and that the petitioner had thereby involuntarily lost title to the office.^[30]

In the resolution promulgated on May 9, 2019,^[31] the COMELEC *En Banc*, with Commissioner Parreño maintaining his dissent, denied the petitioner's verified motion for reconsideration and affirmed the ruling of the COMELEC First Division, to wit:

WHEREFORE, premises considered, the Commission (*En Banc*) **AFFIRMS** the *Resolution dated 29 March 2019* of the Commission (*First Division*) and **RESOLVES** to **DENY** the Motion for Reconsideration of Respondent Edgardo A. Tallado.

SO ORDERED.

The COMELEC *En Banc* declared that the petitioner's dismissal from the service had been temporary inasmuch as he had appealed the OMB decisions; that the DILG's implementation of the dismissals, the petitioner's removal from office, and the Vice-Governor's assumption as Governor did not affect the temporariness of the vacancy in the office of the Governor; that the petitioner had later on re-assumed his post as Governor; and that the DILG's implementation of the ruling on the third OMB case, on the basis of Section 46 of the LGC, had corrected its earlier erroneous reliance on Section 44 of the LGC in implementing the ruling in the second OMB case. The COMELEC *En Banc* took the view that it was Section 46 of the LGC that was applicable inasmuch as there was only a temporary vacancy.

Undeterred, the petitioner lodged the petition for *certiorari* with the Court

On May 10, 2019, the Court issued a *status quo ante* order requiring the parties to observe the *status quo* prevailing before the issuance of the COMELEC *En Banc* resolution.^[32] In the resolution of June 4, 2019, the Court *En Banc* confirmed the *status quo ante* order.^[33]

The petitioner eventually garnered the highest number of votes for the position of Governor of Camarines Norte in the May 13, 2019 elections. On May 16, 2019, the petitioner was proclaimed as the duly elected Governor of Camarines Norte.^[34]

Issues

The petitioner contends that his third term as Governor of Camarines Norte was involuntarily interrupted when the Ombudsman's dismissal orders were implemented, thereby preventing the application of the three-term limit rule. According to him, it is immaterial that the CA subsequently modified the Ombudsman's decisions to reduce the penalty because the modification did not change the fact that he had involuntarily ceased to hold his title when the DILG ordered him to vacate his office on November 8, 2016 and again on March 14, 2018 pursuant to the decisions. He thereby lost his title to the office, and the continuity of his service as Governor was involuntarily interrupted.^[35]

The petitioner argues that contrary to the findings of the COMELEC, his removal from office caused a permanent vacancy that necessitated the appointment of Pimentel as his successor, and that even the DILG itself had recognized the existence of the permanent vacancy and consequently ordered Pimentel to succeed him pursuant to Section 44 of the LGC.^[36]

After directing the respondents to file their comment,^[37] the Office of the Solicitor General (OSG) filed a *Manifestation and Motion in Lieu of Comment*,^[38] averring therein that the COMELEC had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding and holding that the petitioner was ineligible

to run for Governor in the May 2019 elections under the three-term limit rule.^[39]

The OSG, as tribune of the people, submits that the implementation of the Ombudsman's decisions on the petitioner's removal from office must be considered as term interruption because he thereby ceased to exercise the functions and prerogatives of the office; and that he must be deemed not to have fully served his third term as Governor considering that he involuntarily lost his title to the office.^[40]

To support its submission, the OSG cites *Lonzanida v. COMELEC (Lonzanida)*^[41] wherein this Court has held that an elective official could not be deemed to have served the full term if he was ordered to vacate his post before the expiration of the term; that the petitioner's third term as Governor was validly interrupted twice when he complied with the DILG's memoranda ordering him to vacate his post; and that the petitioner's loss of title to the office was manifested by the fact that Pimentel took his oath of office as Governor, and discharged all the functions and responsibilities thereof.^[42]

On its part, the COMELEC contends that the three-term limit rule must be strictly construed in order to avoid attempts to circumvent and evade the application of the same;^[43] that under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (OMB's Rules), the petitioner's exoneration from the charge of grave misconduct rendered the "dismissal" nothing more than a mere preventive suspension,^[44] which was not the term interruption that effectively precluded the application of the three-term limit rule;^[45] that the dismissal and its resultant legal effects must not be recognized in view of the reduction of the penalty from dismissal to suspension;^[46] that because the petitioner's position as Governor was never permanently vacant, he was able to re-assume the office and functions of Governor, thus warranting the conclusion that the vacancy was only temporary.^[47]

In his comment,^[48] respondent Villamin claims that because the two OMB decisions suspending and/or removing the petitioner did not become final despite their immediate execution, the petitioner never lost his title even if he could no longer exercise the powers and authority attached to the position;^[49] that while the petitioner's suspension resulted to a vacancy in the office of the Governor, the vacancy was only temporary; that Pimentel only held the office of Governor in an acting capacity, with the full title being still held by the petitioner.^[50] On his part, respondent Jalgalado adopted Villamin's comment.^[51]

The petitioner specifies the following issues for the Court's consideration and resolution, to wit:

I.

WHETHER THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE COMELEC FIRST DIVISION[,] WHICH CANCELLED PETITIONER'S CERTIFICATE OF CANDIDACY[.]

II.