

## EN BANC

[ G.R. No. 226792, June 06, 2017 ]

### **SOFRONIO B. ALBANIA, PETITIONER, V. COMMISSION ON ELECTIONS AND EDGARDO A. TALLADO, RESPONDENTS.**

#### **DECISION**

##### **PERALTA, J.:**

Challenged in this petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Civil Procedure is the Resolution<sup>[1]</sup> dated August 24, 2016 of the Commission on Elections (COMELEC) *En Banc* which upheld the Resolution<sup>[2]</sup> dated April 22, 2016 of the COMELEC Second Division dismissing the petition to deny due course to or to cancel respondent Edgardo A. Tallado's Certificate of Candidacy (COC) for being filed out of time.

The facts are as follows:

In the May 14, 2007 National and Local Elections, respondent Edgardo A. Tallado and Jesus O. Typoco were both candidates for the position of Governor in Camarines Norte. After the counting and canvassing of votes, Typoco was proclaimed as the winner. Respondent questioned Typoco's proclamation by filing with the COMELEC, a petition for correction of a manifest error. The Petition was decided<sup>[3]</sup> in respondent's favor on March 5, 2010 and the latter assumed the position of Governor of Camarines Norte from March 22, 2010 to June 30, 2010, the end of the 2007-2010 term.

Respondent ran again in the 2010<sup>[4]</sup> and 2013<sup>[5]</sup> National and Local Elections where he won and served as Governor of Camarines Norte respectively.

On October 16, 2015, respondent filed his Certificate of Candidacy<sup>[6]</sup> as Governor of Camarines Norte in the May 9, 2016 National and Local elections.

On November 13, 2015, petitioner, a registered voter of Poblacion Sta. Elena, Camarines Norte, filed a petition<sup>[7]</sup> for respondent's disqualification from running as Governor based on Rule 25 of COMELEC Resolution No. 9523<sup>[8]</sup> on two grounds: (1) he violated the three term limit rule under Section 43 of RA No 7160, otherwise known as the *Local Government Code of 1991* (LGC); and (2) respondent's suspension from office for one year without pay, together with its accessory penalties, after he was found guilty of oppression and grave abuse of authority in the Ombudsman's Order<sup>[9]</sup> dated October 2, 2015.

In his Verified Answer, respondent argued that since the petition was primarily based on his alleged violation of the three-term limit rule, the same should have been filed as a petition to deny due course to or cancel certificate of candidacy under Rule 23 of COMELEC Resolution 9523, in relation to Section 78 of the

Omnibus Election Code, as the ground cited affected a candidate's eligibility; that based on Section 23, the petition should have been filed on November 10, 2015, but the petition was filed only on November 13, 2015, hence, the same had already prescribed and must be dismissed. His suspension from office is also not a ground for a petition for disqualification. On the substantive issues, he denied violating the three-term limit rule as he did not fully serve three consecutive terms since he only served as Governor for the 2007 elections from March 22, 2010 to June 30, 2010.

On April 22, 2016, the COMELEC Second Division dismissed the petition for being filed out of time. It ruled that a violation of the three-term limit rule and suspension from office as a result of an administrative case are not grounds for disqualification of a candidate under the law; that the alleged violation of three-term limit rule is a ground for ineligibility which constituted false material representation under Section 78 of the OEC; and such petition must be filed within 25 days from the time of filing of the COC, which respondent failed to do.

Petitioner filed a motion for reconsideration with the COMELEC *En Banc*, which dismissed the same in a Resolution dated August 24, 2016.

The COMELEC *En Banc* echoed the Division's findings that the grounds relied upon by petitioner are not proper for a petition for disqualification but one for denial of due course to or cancellation of respondent's COC, which was filed out of time. It then continued to rule on the merits finding that respondent did not serve the full 2007-2010 term as Governor of Camarines Norte, thus, cannot be considered as one term for purposes of counting the three-term threshold; and that the ground for a candidate's disqualification referred to by Section 40 (b) of the LGC is the actual removal from office as a result of an administrative case, and not mere suspension as imposed by the Ombudsman.

Dissatisfied, petitioner is now before us in a petition for *certiorari* raising the following grounds, to wit: Whether or not the respondent COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction: (1) in ruling that the grounds relied upon are not proper grounds for a petition for disqualification; (2) in ruling that even if the petition for disqualification is considered one for denial of due course to or cancellation of private respondent Tallado's COC, the same is filed out of time; (3) in failing to rule that private respondent Tallado should be disqualified pursuant to Section 43 of RA No. 7160 or the LGC; and (4) in failing to rule that private respondent Tallado should be disqualified due to the Order dated October 2, 2015 by the Office of the Ombudsman.<sup>[10]</sup>

We find the petition without merit.

In a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, the primordial issue to be resolved is whether the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution.<sup>[11]</sup> The term "grave abuse of discretion" is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.<sup>[12]</sup> Grave abuse of discretion arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.<sup>[13]</sup> And as a matter of policy, this Court will not interfere with the resolutions of the Comelec unless it is

shown that it had committed grave abuse of discretion. Thus, in the absence of grave abuse of discretion, a Rule 64 petition will not prosper.<sup>[14]</sup>

The grounds for disqualification of a candidate are found under Sections 12 and 68 of Batas Pambansa Blg. 881, as amended, otherwise known as the *Omnibus Election Code of the Philippines*, as well as Section 40 of the Local Government Code, which respectively provide:

SEC. 12. *Disqualifications.* Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service or sentence, unless within the same period he again becomes disqualified.

x x x x

SEC. 68. *Disqualifications.* Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any, elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

x x x x

SECTION 40. *Disqualifications* - The following persons are disqualified from running for any elective local position:

- (a) Those sentence by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

- (d) Those with dual citizenship;
- (e) Fugitive from justice in criminal or nonpolitical cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

Petitioner filed the petition for disqualification of respondent on the grounds that he allegedly violated the three-term limit rule provided under the Constitution and the LGC; and that he was suspended from office as a result of an administrative case. Notably, however, a reading of the grounds enumerated under the above-quoted provisions for a candidate's disqualification does not include the two grounds relied upon by petitioner. Thus, the COMELEC Second Division was correct when it found that the petition was not based on any of the grounds for disqualification as enumerated in the foregoing statutory provisions.

Respondent's suspension from office is indeed not a ground for a petition for disqualification as Section 40(b) clearly speaks of removal from office as a result of an administrative offense that would disqualify a candidate from running for any elective local position. In fact, the penalty of suspension cannot be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications for the office as provided under Section 66(b) of R.A. No. 7160, to wit:

SEC. 66. Form and Notice of Decision.- x x x

(b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications for the office.

While the alleged violation of the three-term limit rule is not a ground for a petition for disqualification, however, the COMELEC Second Division found that it is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a Certificate of Candidacy under Section 78 of the OEC, hence considered the petition as such.

The Constitution has vested in the COMELEC broad power involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections, but also the resolution and determination of election controversies.<sup>[15]</sup> It also granted the COMELEC the power and authority to promulgate its rules of procedure, with the primary objective of ensuring the expeditious disposition of election cases.<sup>[16]</sup> Concomitant to such powers is the authority of the COMELEC to determine the true nature of the cases filed before it. Thus, it examines the allegations of every pleading filed, obviously aware that in determining the nature of the complaint or petition, its averments, rather than its title/caption, are the proper gauges.<sup>[17]</sup>

Since the petition filed was a petition to deny due course to or to cancel a certificate of candidacy, such petition must be filed within 25 days from the time of filing of the COC, as provided under Section 78 of the Omnibus Election Code. However, as the COMELEC found, the petition was filed beyond the reglementary period, and

dismissed the petition for being filed out time. The COMELEC *En Banc* affirmed such dismissal.

We agree.

The three-term limit rule is embodied in Section 8 of Article X of the Constitution, to wit:

Section 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.

which is restated in Section 43 of the Local Government Code, thus:

Section 43. *Term of Office.*- (a) 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.

The objective of imposing the three-term limit rule was to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.<sup>[18]</sup> After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible.<sup>[19]</sup>

Section 74 of the OEC provides that the certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office. The word "eligible" in Section 74 means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.<sup>[20]</sup> And We had held<sup>[21]</sup> that a violation of the three-term limit rule is an ineligibility which is a proper ground for a petition to deny due course to or to cancel a COC under Section 78 of the Omnibus Election Code, to wit:

*Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.* - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

As the petition filed is indeed a petition under Section 78 of the OEC, the filing of the same must comply with the period prescribed therein, *i.e.*, the filing of the same must be made not later than twenty-five days from the time of the filing of the certificate of candidacy.<sup>[22]</sup> In this case, respondent filed his COC for Governor of Camarines Norte for the 2016 elections on October 16, 2015, and he had 25 days