

EN BANC

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

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

R E S O L U T I O N

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;
2. [He] further AFFIRMS that he has duly-filed his Certificate of Candidacy for Punong *Barangay* of *Barangay* Balatasan, Bulalacao, Oriental Mindoro;

3. [He] RAISES THE QUESTION of the legal personality of [respondent Senen] Familara because:

- 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;

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;

xxx

6. The petition suffers from legal infirmities;

xxx

The present petition is premature. It should be filed within ten (10) days from proclamation of election results.

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.

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

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

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.

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.

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.

Section 11 in relation to Section 10 of COMELEC Resolution No. 8297 provides that:

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.

In the Provinces where the designated Provincial Election Supervisor is not a lawyer the petition shall be filed with the Regional Election Director concerned.

Filing by mail is not allowed.

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.

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.

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].

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