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EN BANC

[G.R. No. 184836, December 23, 2009]

SIMON B. ALDOVINO, JR., DANILO B. FALLER AND FERDINAND N. TALABONG, PETITIONERS, VS. COMMISSION ON ELECTIONS AND WILFREDO F. ASILO, RESPONDENTS.

D E C I S I O N

BRION, J.:

Is the **preventive suspension** of an elected public official an interruption of his term of office for purposes of the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of Republic Act No. 7160 (*RA 7160,* or the Local Government Code)?

The respondent Commission on Elections (*COMELEC*) ruled that preventive suspension is an effective interruption because it renders the suspended public official unable to provide complete service for the full term; thus, such term should not be counted for the purpose of the three-term limit rule.

The present petition[1] seeks to annul and set aside this COMELEC ruling for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE ANTECEDENTS

The respondent Wilfredo F. Asilo (*Asilo*) was elected councilor of Lucena City for three consecutive terms: for the 1998-2001, 2001-2004, and 2004-2007 terms, respectively. In September 2005 or during his 2004-2007 term of office, the Sandiganbayan preventively suspended him for 90 days in relation with a criminal case he then faced. *This Court, however, subsequently lifted the Sandiganbayan's suspension order; hence, he resumed performing the functions of his office and finished his term.*

In the 2007 election, Asilo filed his certificate of candidacy for the same position. The petitioners Simon B. Aldovino, Jr., Danilo B. Faller, and Ferdinand N. Talabong (*the petitioners*) sought to deny due course to Asilo's certificate of candidacy or to cancel it on the ground that he had been elected and had served for three terms; his candidacy for a fourth term therefore violated the three-term limit rule under Section 8, Article X of the Constitution and Section 43(b) of RA 7160.

The COMELEC's Second Division ruled against the petitioners and in Asilo's favour in its Resolution of November 28, 2007. It reasoned out that the three-term limit rule did not apply, as Asilo failed to render complete service for the 2004-2007 term because of the suspension the Sandiganbayan had ordered.

The COMELEC *en banc* refused to reconsider the Second Division's ruling in its October 7, 2008 Resolution; hence, the PRESENT PETITION raising the following ISSUES:

> **1. Whether preventive suspension of an elected local official is an interruption of the three-term limit rule; and**
>
> **2. Whether preventive suspension is considered involuntary renunciation as contemplated in Section 43(b) of RA 7160**

Thus presented, the case raises the direct issue of whether Asilo's preventive suspension constituted an interruption that allowed him to run for a 4th term.

THE COURT'S RULING

We find the petition meritorious.

General Considerations

The present case is not the first before this Court on the three-term limit provision of the Constitution, but is the first on the effect of preventive suspension on the continuity of an elective official's term. To be sure, preventive suspension, as an interruption in the term of an elective public official, has been mentioned as an example in *Borja v. Commission on Elections.*[2] *Doctrinally*, however, *Borja is not a controlling ruling; it did not deal with preventive suspension, but with the application of the three-term rule on the term that an elective official acquired by succession.*

a. The Three-term Limit Rule:
The Constitutional Provision Analyzed

Section 8, Article X of the Constitution states:

> 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.

Section 43 (b) of RA 7160 practically repeats the constitutional provision, and any difference in wording does not assume any significance in this case.

As worded, the constitutional provision fixes the term of a local elective office and *limits an elective official's stay in office to no more than three consecutive terms*. This is the **first branch** of the rule embodied in Section 8, Article X.

Significantly, this provision refers to a "term" *as a period of time - three years* - during which an official has title to office and can serve. *Appari v. Court of Appeals*,

[3] a Resolution promulgated on November 28, 2007, succinctly discusses what a "term" connotes, as follows:

> **The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office.** According to Mechem, the term of office is the period during which an office may be held. Upon expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must *ipso facto* cease. In the law of public officers, the most and natural frequent method by which a public officer ceases to be such is by the expiration of the terms for which he was elected or appointed. [Emphasis supplied].

A later case, *Gaminde v. Commission on Audit*,[4] reiterated that "[T]he term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another."

The "limitation" under this first branch of the provision is expressed in the **negative** - "no such official shall serve for more than three consecutive terms." This formulation - *no more than three consecutive terms* - is a clear command suggesting the existence of an inflexible rule. While it gives no exact indication of what to "serve. . . three consecutive terms" exactly connotes, the meaning is clear - reference is to *the term, not to the service* that a public official may render. In other words, the limitation refers to the term.

The **second branch** relates to the provision's express initiative to prevent any circumvention of the limitation through voluntary severance of ties with the public office; it expressly states that *voluntary renunciation of office* "shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." This declaration complements the *term limitation* mandated by the first branch.

A notable feature of the second branch is that it does not *textually* state that voluntary renunciation is the *only* actual interruption of service that does not affect "continuity of service for a full term" for purposes of the three-term limit rule. It is a pure declaratory statement of what does not serve as an interruption of service for a full term, but the phrase "voluntary renunciation," by itself, is not without significance in determining constitutional intent.

The word "renunciation" carries the dictionary meaning of abandonment. To renounce is to *give up, abandon, decline, or resign*.[5] It is an act that emanates from its author, as contrasted to an act that operates from the outside. Read with the definition of a "term" in mind, renunciation, as mentioned under the second branch of the constitutional provision, cannot but mean *an act that results in cutting short the term, i.e., the loss of title to office.* The descriptive word "voluntary" linked together with "renunciation" signifies an act of surrender based on the surenderee's own freely exercised will; in other words, a loss of title to office by conscious choice. In the context of the three-term limit rule, such loss of title is not considered an interruption because it is presumed to be purposely sought to avoid the application of the term limitation.

The following exchanges in the deliberations of the Constitutional Commission on the term "voluntary renunciation" shed further light on the extent of the term "voluntary renunciation":

> MR. MAAMBONG. Could I address the clarificatory question to the Committee? This term "voluntary renunciation" does not appear in Section 3 [of Article VI]; it also appears in Section 6 [of Article VI].
>
> MR DAVIDE. Yes.
>
> MR. MAAMBONG. It is also a recurring phrase all over the Constitution. Could the Committee please enlighten us exactly what "voluntary renunciation" mean? Is this akin to abandonment?
>
> MR. DAVIDE. Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.
>
> MR. MAAMBONG. Is the Committee saying that the term "voluntary renunciation" is more general than abandonment and resignation?
>
> MR. DAVIDE. It is more general, more embracing.[6]

From this exchange and Commissioner Davide's expansive interpretation of the term "voluntary renunciation," the framers' intent apparently was *to close all gaps that an elective official may seize to defeat the three-term limit rule,* in the way that voluntary renunciation has been rendered unavailable as a mode of defeating the three-term limit rule. Harking back to the text of the constitutional provision, we note further that Commissioner Davide's view is consistent with the negative formulation of the first branch of the provision and the inflexible interpretation that it suggests.

This examination of the wording of the constitutional provision and of the circumstances surrounding its formulation impresses upon us the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth. We view preventive suspension *vis-à-vis* term limitation with this firm mindset.

b. Relevant Jurisprudence on the Three-term Limit Rule

Other than the above-cited materials, jurisprudence best gives us a lead into the concepts within the provision's contemplation, particularly on the "interruption in the continuity of service for the full term" that it speaks of.

Lonzanida v. Commission on Elections[7] presented the question of whether the disqualification on the basis of the three-term limit applies if the election of the public official (to be strictly accurate, the proclamation as winner of the public

official) for his supposedly third term had been declared invalid in a final and executory judgment. We ruled that the two requisites for the application of the disqualification (*viz*., 1. that the official concerned has been elected for three consecutive terms in the same local government post; and 2. that he has fully served three consecutive terms) were not present. In so ruling, we said:

> 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 is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; *conversely,* ***involuntary severance from office*** *for any length of time short of the full term provided by law amounts to an interruption of continuity of service. The petitioner vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. Such involuntary severance from office is an interruption of continuity of service* and thus, the petitioner did not fully serve the 1995-1998 mayoral term. [Emphasis supplied]

Our intended meaning under this ruling is clear: it is severance from office, or to be exact, loss of title, that renders the three-term limit rule inapplicable.

Ong v. Alegre[8] and *Rivera v. COMELEC,*[9] like *Lonzanida*, also involved the issue of whether there had been a completed term for purposes of the three-term limit disqualification. These cases, however, presented an interesting twist, as their final judgments in the electoral contest came after the term of the contested office had expired so that the elective officials in these cases were never effectively unseated.

Despite the ruling that Ong was never entitled to the office (and thus was never validly elected), the Court concluded that there was nevertheless an election and service for a full term in contemplation of the three-term rule based on the following premises: (1) the final decision that the third-termer lost the election was without practical and legal use and value, having been promulgated after the term of the contested office had expired; and (2) the official assumed and continuously exercised the functions of the office from the start to the end of the term. The Court noted in *Ong* the absurdity and the deleterious effect of a contrary view - that the official (referring to the winner in the election protest) would, under the three-term rule, be considered to haveserved a term by virtue of a veritably meaningless electoral protest ruling, when another actually served the term pursuant to a proclamation made in due course after an election. This factual variation led the Court to rule differently from *Lonzanida*.

In the same vein, the Court in *Rivera* rejected the theory that the official who finally lost the election contest was merely a "caretaker of the office" or a mere "de facto officer." The Court obeserved that Section 8, Article X of the Constitution is violated and its purpose defeated when an official fully served in the same position for three consecutive terms. Whether as "caretaker" or "*de facto*" officer, he exercised the powers and enjoyed the perquisites of the office that enabled him "to stay on