

EN BANC

[G.R. No. 201716, January 08, 2013]

**MAYOR ABELARDO ABUNDO, SR., PETITIONER, . VS.
COMMISSION ON ELECTIONS AND ERNESTO R. VEGA,
RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

In this Petition for Certiorari under Rule 65, petitioner Abelardo Abundo, Sr. (Abundo) assails and seeks to nullify (1) the February 8, 2012 Resolution^[1] of the Second Division, Commission on Elections (COMELEC), in EAC (AE) No. A-25-2010 and (2) the May 10, 2012 Resolution^[2] of the COMELEC en banc affirming that division's disposition. The assailed issuances, in turn, affirmed the Decision of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 43, dated August 9, 2010, in Election Case No. 55 declaring Abundo as ineligible, under the three-term limit rule, to run in the 2010 elections for the position of, and necessarily to sit as, Mayor of Viga, Catanduanes.

The antecedent facts are undisputed.

For four (4) successive regular elections, namely, the 2001, 2004, 2007 and 2010 national and local elections, Abundo vied for the position of municipal mayor of Viga, Catanduanes. In both the 2001 and 2007 runs, he emerged and was proclaimed as the winning mayoralty candidate and accordingly served the corresponding terms as mayor. In the 2004 electoral derby, however, the Viga municipal board of canvassers initially proclaimed as winner one Jose Torres (Torres), who, in due time, performed the functions of the office of mayor. Abundo protested Torres' election and proclamation. Abundo was eventually declared the winner of the 2004 mayoralty electoral contest, paving the way for his assumption of office starting May 9, 2006 until the end of the 2004-2007 term on June 30, 2007, or for a period of a little over one year and one month.

Then came the May 10, 2010 elections where Abundo and Torres again opposed each other. When Abundo filed his certificate of candidacy^[3] for the mayoralty seat relative to this electoral contest, Torres lost no time in seeking the former's disqualification to run, the corresponding petition,^[4] docketed as SPA Case No. 10-128 (DC), predicated on the three-consecutive term limit rule. On June 16, 2010, the COMELEC First Division issued a Resolution^[5] finding for Abundo, who in the meantime bested Torres by 219 votes^[6] and was accordingly proclaimed 2010 mayor-elect of Viga, Catanduanes.

Meanwhile, on May 21, 2010, or before the COMELEC could resolve the adverted disqualification case Torres initiated against Abundo, herein private respondent Ernesto R. Vega (Vega) commenced a quo warranto^[7] action before the RTC-Br. 43 in Virac, Catanduanes, docketed as Election Case No. 55, to unseat Abundo on essentially the same grounds Torres raised in his petition to disqualify.

The Ruling of the Regional Trial Court

By Decision^[8] of August 9, 2010 in Election Case No. 55, the RTC declared Abundo ineligible to serve as municipal mayor, disposing as follows:

WHEREFORE, Decision is, hereby, rendered GRANTING the petition and declaring Abelardo Abundo, Sr. ineligible to serve as municipal mayor of Vega, Catanduanes.

SO ORDERED.^[9]

In so ruling, the trial court, citing *Aldovino, Jr. v. COMELEC*,^[10] found Abundo to have already served three consecutive mayoralty terms, to wit, 2001-2004, 2004-2007 and 2007-2010, and, hence, disqualified for another, i.e., fourth, consecutive term. Abundo, the RTC noted, had been declared winner in the aforesaid 2004 elections consequent to his protest and occupied the position of and actually served as Vega mayor for over a year of the remaining term, i.e., from May 9, 2006 to June 30, 2007, to be exact. To the RTC, the year and a month service constitutes a complete and full service of Abundo's second term as mayor.

Therefrom, Abundo appealed to the COMELEC, his recourse docketed as EAC (AE) No. A-25-2010.

The Ruling of the COMELEC

On February 8, 2012, in EAC (AE) No. A-25-2010, the COMELEC's Second Division rendered the first assailed Resolution, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court Branch 73, Virac, Catanduanes is AFFIRMED and the appeal is DISMISSED for lack of merit.

SO ORDERED.^[11]

Just like the RTC, the COMELEC's Second Division ruled against Abundo on the strength of *Aldovino, Jr.* and held that service of the unexpired portion of a term by a protestant who is declared winner in an election protest is considered as service for one full term within the contemplation of the three-term limit rule.

In time, Abundo sought but was denied reconsideration by the COMELEC *en banc* per its equally assailed Resolution of May 10, 2012. The fallo of the COMELEC *en*

banc's Resolution reads as follows:

WHEREFORE, premises considered, the motion for reconsideration is DENIED for lack of merit. The Resolution of the Commission (Second Division) is hereby AFFIRMED.

SO ORDERED.^[12]

In affirming the Resolution of its Second Division, the COMELEC en banc held in essence the following: *first*, there was no involuntary interruption of Abundo's 2004-2007 term service which would be an exception to the three-term limit rule as he is considered never to have lost title to the disputed office after he won in his election protest; and second, what the Constitution prohibits is for an elective official to be in office for the same position for more than three consecutive terms and not to the service of the term.

Hence, the instant petition with prayer for the issuance of a temporary restraining order (TRO) and/or preliminary injunction.

Intervening Events

In the meantime, following the issuance by the COMELEC of its May 10, 2012 Resolution denying Abundo's motion for reconsideration, the following events transpired:

1. On June 20, 2012, the COMELEC issued an Order^[13] declaring its May 10, 2012 Resolution final and executory. The following day, June 21, 2012, the COMELEC issued an Entry of Judgment.^[14]

2. On June 25, 2012, Vega filed a Motion for Execution^[15] with the RTC-Br. 43 in Virac, Catanduanes.

3. On June 27, 2012, the COMELEC, acting on Vega's counsel's motion^[16] filed a day earlier, issued an Order^[17] directing the bailiff of ECAD (COMELEC) to personally deliver the entire records to said RTC.

On June 29, 2012, the COMELEC ECAD Bailiff personally delivered the entire records of the instant case to, and were duly received by, the clerk of court of RTC-Br. 43.

4. On June 29, 2012, or on the same day of its receipt of the case records, the RTC-Br. 43 in Virac, Catanduanes granted Vega's Motion for Execution through an Order^[18] of even date. And a Writ of Execution^[19] was issued on the same day.

5. On July 2, 2012, Sheriff Q. Tador, Jr. received the Writ of Execution and served the same at the office of Mayor Abundo on the same day via substituted service.

6. On July 3, 2012, the Court issued a TRO^[20] enjoining the enforcement of the assailed COMELEC Resolutions.

7. On July 4, 2012, Vega received the Court's July 3, 2012 Resolution^[21] and a copy of the TRO. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes of Vega, Catanduanes took their oaths of office^[22] as mayor and vice-mayor of Vega, Catanduanes, respectively.

8. On July 5, 2012, Vega received a copy of Abundo's Seventh (7th) Most Extremely Urgent Manifestation and Motion^[23] dated June 28, 2012 praying for the issuance of a TRO and/or *status quo ante* Order. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes—who had taken their oaths of office the day before—assumed the posts of mayor and vice-mayor of Vega, Catanduanes.^[24]

9. On July 6, 2012, Vega interposed a Motion (To Admit Attached Manifestation)^[25] and Manifestation with Leave to Admit^[26] dated July 5, 2012 stating that the TRO thus issued by the Court has become *functus officio* owing to the execution of the RTC's Decision in Election Case No. 55.

10. On July 10, 2012, Vega filed his Comment/Opposition with Leave to the Petitioner's Prayer for the Issuance of a Status Quo Ante Order^[27] reiterating the argument that since Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes already assumed the posts of Mayor and Vice-Mayor of Vega, Catanduanes, then a *Status Quo Ante* Order would serve no purpose.

11. On July 12, 2012, Abundo filed his Most Urgent Manifestation and Motion to Convert the July 3, 2012 TRO into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events).^[28]

It is upon the foregoing backdrop of events that Abundo was dislodged from his post as incumbent mayor of Vega, Catanduanes. To be sure, the speed which characterized Abundo's ouster despite the supervening issuance by the Court of a TRO on July 3, 2012 is not lost on the Court. While it is not clear whether Vice-Mayor Tarin and First Councilor Cervantes knew of or put on notice about the TRO either before they took their oaths of office on July 4, 2012 or before assuming the posts of mayor and vice-mayor on July 5, 2012, the confluence of events following the issuance of the assailed COMELEC *en banc* irresistibly tends to show that the TRO—issued as it were to maintain the status quo, thus averting the premature ouster of Abundo pending this Court's resolution of his appeal—appears to have been trivialized.

On September 11, 2012, Vega filed his Comment on Abundo's petition, followed not long after by public respondent COMELEC's Consolidated Comment.^[29]

The Issues

Abundo raises the following grounds for the allowance of the petition:

- 6.1 The Commission En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared the arguments in Abundo's motion for reconsideration as mere rehash and reiterations of the claims he raised prior to the promulgation of the Resolution.

6.2 The Commission En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Abundo has consecutively served for three terms despite the fact that he only served the remaining one year and one month of the second term as a result of an election protest.
[30]

**First Issue:
Arguments in Motion for
Reconsideration Not Mere Reiteration**

The COMELEC *en banc* denied Abundo's motion for reconsideration on the basis that his arguments in said motion are mere reiterations of what he already brought up in his appeal Brief before the COMELEC Second Division. In this petition, petitioner claims otherwise.

Petitioner's assertion is devoid of merit.

A comparison of Abundo's arguments in the latter's Brief vis-à-vis those in his Motion for Reconsideration (MR) reveals that the arguments in the MR are elucidations and amplifications of the same issues raised in the brief. First, in his Brief, Abundo raised the *sole issue of lack of jurisdiction* of the RTC to consider the *quo warranto* case since the alleged violation of the three-term limit has already been rejected by the COMELEC First Division in SPA Case No. 10-128 (DC), while in his MR, Abundo raised the similar ground of the conclusiveness of the COMELEC's finding on the issue of his qualification to run for the current term. *Second*, in his Brief, Abundo assailed RTC's reliance on *Aldovino, Jr.*, while in his MR, he argued that the Court's pronouncement in *Aldovino, Jr.*, which dealt with preventive suspension, is not applicable to the instant case as it involves only a partial service of the term. Abundo argued in his Brief that his situation cannot be equated with the case of preventive suspension as held in *Aldovino, Jr.*, while in his MR, he argued before that the almost two years which he did not sit as mayor during the 2004-2007 term is an interruption in the continuity of his service for the full term.

Thus, COMELEC did not err in ruling that the issues in the MR are a rehash of those in the Brief.

**Core Issue:
Whether or not Abundo is deemed
to have served three consecutive terms**

The pivotal determinative issue then is whether the service of a term less than the full three years by an elected official arising from his being declared as the duly elected official upon an election protest is considered as full service of the term for purposes of the application of the three consecutive term limit for elective local officials.

On this core issue, We find the petition *meritorious*. The consecutiveness of what otherwise would have been Abundo's three successive, continuous mayorship was effectively broken during the 2004-2007 term when he was initially deprived of title to, and was veritably disallowed to serve and occupy, an office to which he, after