

## **EN BANC**

**[ G.R. No. 196804, October 09, 2012 ]**

**MAYOR BARBARA RUBY C. TALAGA, PETITIONER, VS.  
COMMISSION ON ELECTIONS AND RODERICK A. ALCALA,  
RESPONDENTS.**

**[G.R. NO. 197015]**

**PHILIP M. CASTILLO, PETITIONER, VS. COMMISSION ON  
ELECTIONS, BARBARA RUBY TALAGA AND RODERICK A. ALCALA,  
RESPONDENTS.**

### **D E C I S I O N**

**BERSAMIN, J.:**

In focus in these consolidated special civil actions are the disqualification of a substitute who was proclaimed the winner of a mayoralty election; and the ascertainment of who should assume the office following the substitute's disqualification.

The consolidated petitions for *certiorari* seek to annul and set aside the *En Banc* Resolution issued on May 20, 2011 in SPC No. 10-024 by the Commission on Elections (COMELEC), the dispositive portion of which states:

**WHEREFORE**, judgment is hereby rendered:

1. REVERSING and SETTING ASIDE the January 11, 2011 Resolution of the Second Division;
2. GRANTING the petition-in-intervention of Roderick A. Alcala;
3. ANNULING the election and proclamation of respondent Barbara C. Talaga as mayor of Lucena City and CANCELLING the Certificate of Canvass and Proclamation issued therefor;
4. Ordering respondent Barbara Ruby Talaga to cease and desist from discharging the functions of the Office of the Mayor;
5. In view of the permanent vacancy in the Office of the Mayor of Lucena City, the proclaimed Vice-Mayor is ORDERED to succeed as Mayor as provided under Section 44 of the Local Government Code;
6. DIRECTING the Clerk of Court of the Commission to furnish copies of this Resolution to the Office of the President of the Philippines, the Department of Interior and Local Government, the Department of

Finance and the Secretary of the Sangguniang Panglunsod of Lucena City.

Let the Department of Interior and Local Government and the Regional Election Director of Region IV of COMELEC implement this resolution.

**SO ORDERED.**<sup>[1]</sup>

### **Antecedents**

On November 26, 2009 and December 1, 2009, Ramon Talaga (Ramon) and Philip M. Castillo (Castillo) respectively filed their certificates of candidacy (CoCs) for the position of Mayor of Lucena City to be contested in the scheduled May 10, 2010 national and local elections.<sup>[2]</sup> Ramon, the official candidate of the Lakas-Kampi-CMD,<sup>[3]</sup> declared in his CoC that he was eligible for the office he was seeking to be elected to.

Four days later, or on December 5, 2009, Castillo filed with the COMELEC a petition denominated as *In the Matter of the Petition to Deny Due Course to or Cancel Certificate of Candidacy of Ramon Y. Talaga, Jr. as Mayor for Having Already Served Three (3) Consecutive Terms as a City Mayor of Lucena*, which was docketed as SPA 09-029 (DC).<sup>[4]</sup> He alleged therein that Ramon, despite knowing that he had been elected and had served three consecutive terms as Mayor of Lucena City, still filed his CoC for Mayor of Lucena City in the May 10, 2010 national and local elections.

The pertinent portions of Castillo's petition follow:

1. Petitioner is of legal age, Filipino, married, and a resident of Barangay Mayao Crossing, Lucena City but may be served with summons and other processes of this Commission at the address of his counsel at 624 Aurora Blvd., Lucena City 4301;
2. Respondent Ramon Y. Talaga, Jr. is likewise of legal age, married, and a resident of Barangay Ibabang Iyam, Lucena City and with postal address at the Office of the City Mayor, City Hall, Lucena City, where he may be served with summons and other processes of this Commission;
3. Petitioner, the incumbent city vice-mayor of Lucena having been elected during the 2007 local elections, is running for city mayor of Lucena under the Liberal party this coming 10 May 2010 local elections and has filed his certificate of candidacy for city mayor of Lucena;
4. Respondent was successively elected mayor of Lucena City in 2001, 2004, and 2007 local elections based on the records of the Commission on Elections of Lucena City and had fully served the aforesaid three (3) terms without any voluntary and involuntary interruption;
5. Except the preventive suspension imposed upon him from 13 October 2005 to 14 November 2005 and from 4 September 2009 to 30 October 2009 pursuant to Sandiganbayan 4th Division Resolution in Criminal Case No. 27738 dated 3 October 2005, the public service as city mayor of the

respondent is continuous and uninterrupted under the existing laws and jurisprudence;

6. There is no law nor jurisprudence to justify the filing of the certificate of candidacy of the respondent, hence, such act is outrightly unconstitutional, illegal, and highly immoral;

7. Respondent, knowing well that he was elected for and had fully served three (3) consecutive terms as a city mayor of Lucena, he still filed his Certificate of Candidacy for City Mayor of Lucena for this coming 10 May 2010 national and local elections;

8. Under the Constitution and existing Election Laws, New Local Government Code of the Philippines, and jurisprudence the respondent is no longer entitled and is already disqualified to be a city mayor for the fourth consecutive term;

9. The filing of the respondent for the position of city mayor is highly improper, unlawful and is potentially injurious and prejudicial to taxpayers of the City of Lucena; and

10. It is most respectfully prayed by the petitioner that the respondent be declared disqualified and no longer entitled to run in public office as city mayor of Lucena City based on the existing law and jurisprudence.<sup>[5]</sup>

The petition prayed for the following reliefs, to wit:

WHEREFORE, premises considered, it is respectfully prayed that **the Certificate of Candidacy filed by the respondent be denied due course to or cancel the same** and that he be **declared as a disqualified candidate** under the existing Election Laws and by the provisions of the New Local Government Code.<sup>[6]</sup> (Emphasis supplied.)

Ramon countered that that the Sandiganbayan had preventively suspended him from office during his second and third terms; and that the three-term limit rule did not then apply to him pursuant to the prevailing jurisprudence<sup>[7]</sup> to the effect that an involuntary separation from office amounted to an interruption of continuity of service for purposes of the application of the three-term limit rule.

In the meantime, on December 23, 2009, the Court promulgated the ruling in *Aldovino, Jr. v. Commission on Elections*,<sup>[8]</sup> holding that preventive suspension, being a mere temporary incapacity, was not a valid ground for avoiding the effect of the three-term limit rule. Thus, on December 30, 2009, Ramon filed in the COMELEC a Manifestation with Motion to Resolve, taking into account the intervening ruling in *Aldovino*. Relevant portions of his Manifestation with Motion to Resolve are quoted herein, viz:

4. When respondent filed his certificate of candidacy for the position of Mayor of Lucena City, the rule that '*where the separation from office is caused by reasons beyond the control of the officer – i.e. involuntary – the service of term is deemed interrupted*' has not yet been overturned by the new ruling of the Supreme Court. As a matter of fact, the prevailing rule then of the Honorable Commission in [sic] respect of the three (3)-term limitation was its decision in the case of *Aldovino, et al. vs. Asilo* where it stated:

“Thus, even if respondent was elected during the 2004 elections, which was supposedly his third and final term as city councilor, **the same cannot be treated as a complete service or full term in office since the same was interrupted when he was suspended by the Sandiganbayan Fourth Division.** And the respondent actually heeded the suspension order since he did not receive his salary during the period October 16-31 and November 1-15 by reason of his actual suspension from office. And this was further bolstered by the fact that the DILG issued a Memorandum directing him, among others, to reassume his position.” (Emphasis supplied.)

5. Clearly, there was no misrepresentation on the part of respondent as would constitute a ground for the denial of due course to and/or the cancellation of respondent's certificate of candidacy at the time he filed the same. Petitioner's ground for the denial of due course to and/or the cancellation of respondent's certificate of candidacy thus has no basis, in fact and in law, as there is no ground to warrant such relief under the Omnibus Election Code and/or its implementing laws.

6. Pursuant, however, to the new ruling of the Supreme Court in respect of the issue on the three (3)-term limitation, respondent acknowledges that he is now DISQUALIFIED to run for the position of Mayor of Lucena City having served three (3) (albeit interrupted) terms as Mayor of Lucena City prior to the filing of his certificate of candidacy for the 2010 elections.

7. In view of the foregoing premises and new jurisprudence on the matter, respondent respectfully submits the present case for decision declaring him as DISQUALIFIED to run for the position of Mayor of Lucena City.<sup>[9]</sup>

Notwithstanding his express recognition of his disqualification to run as Mayor of Lucena City in the May 10, 2010 national and local elections, Ramon did not withdraw his CoC.

Acting on Ramon's Manifestation with Motion to Resolve, the COMELEC First Division issued a Resolution on April 19, 2010,<sup>[10]</sup> disposing as follows:

**WHEREFORE**, premises considered, the instant Petition is hereby **GRANTED**. Accordingly, Ramon Y. Talaga, Jr. is hereby declared **DISQUALIFIED** to run for Mayor of Lucena City for the 10 May 2010 National and Local Elections.

**SO ORDERED.**

Initially, Ramon filed his Verified Motion for Reconsideration against the April 19, 2010 Resolution of the COMELEC First Division.<sup>[11]</sup> Later on, however, he filed at 9:00 a.m. of May 4, 2010 an *Ex-parte* Manifestation of Withdrawal of the Pending Motion for Reconsideration.<sup>[12]</sup> At 4:30 p.m. on the same date, Barbara Ruby filed her own CoC for Mayor of Lucena City in substitution of Ramon, attaching thereto the Certificate of Nomination and Acceptance (CONA) issued by Lakas-Kampi-CMD, the party that had nominated Ramon.<sup>[13]</sup>

On May 5, 2010, the COMELEC *En Banc*, acting on Ramon's *Ex parte* Manifestation of Withdrawal, declared the COMELEC First Division's Resolution dated April 19, 2010 final and executory.<sup>[14]</sup>

On election day on May 10, 2010, the name of Ramon remained printed on the ballots but the votes cast in his favor were counted in favor of Barbara Ruby as his substitute candidate, resulting in Barbara Ruby being ultimately credited with 44,099 votes as against Castillo's 39,615 votes.<sup>[15]</sup>

Castillo promptly filed a petition in the City Board of Canvassers (CBOC) seeking the suspension of Barbara Ruby's proclamation.<sup>[16]</sup>

It was only on May 13, 2010 when the COMELEC *En Banc*, upon the recommendation of its Law Department,<sup>[17]</sup> gave due course to Barbara Ruby's CoC and CONA through Resolution No. 8917, thereby including her in the certified list of candidates.<sup>[18]</sup> Consequently, the CBOC proclaimed Barbara Ruby as the newly-elected Mayor of Lucena City.<sup>[19]</sup>

On May 20, 2010, Castillo filed a Petition for Annulment of Proclamation with the COMELEC,<sup>[20]</sup> docketed as SPC 10-024. He alleged that Barbara Ruby could not substitute Ramon because his CoC had been cancelled and denied due course; and Barbara Ruby could not be considered a candidate because the COMELEC *En Banc* had approved her substitution three days after the elections; hence, the votes cast for Ramon should be considered stray.

In her Comment on the Petition for Annulment of Proclamation,<sup>[21]</sup> Barbara Ruby maintained the validity of her substitution. She countered that the COMELEC *En Banc* did not deny due course to or cancel Ramon's COC, despite a declaration of his disqualification, because there was no finding that he had committed misrepresentation, the ground for the denial of due course to or cancellation of his COC. She prayed that with her valid substitution, Section 12 of Republic Act No. 9006<sup>[22]</sup> applied, based on which the votes cast for Ramon were properly counted in her favor.