

## EN BANC

[ G.R. No. 182088, January 30, 2009 ]

**ROBERTO L. DIZON, PETITIONER, VS. COMMISSION ON ELECTIONS AND MARINO P. MORALES, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for certiorari and prohibition, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction under Rule 65 of the 1997 Rules of Civil Procedure. The present petition seeks the reversal of the Resolution dated 27 July 2007 of the Commission on Elections' (COMELEC) Second Division which dismissed the petition to disqualify and/or to cancel Marino P. Morales' (Morales) certificate of candidacy, as well as the Resolution dated 14 February 2008 of the COMELEC *En Banc* which denied Roberto L. Dizon's (Dizon) motion for reconsideration.

#### The Facts

The COMELEC Second Division stated the facts as follows:

Roberto L. Dizon, hereinafter referred to as petitioner, is a resident and taxpayer of the Municipality of Mabalacat, Pampanga. Marino P. Morales, hereinafter referred to as respondent, is the incumbent Mayor of the Municipality of Mabalacat, Pampanga.

Petitioner alleges respondent was proclaimed as the municipal mayor of Mabalacat, Pampanga during the 1995, 1998, 2001 and 2004 elections and has fully served the same. Respondent filed his Certificate of Candidacy on March 28, 2007 again for the same position and same municipality.

Petitioner argues that respondent is no longer eligible and qualified to run for the same position for the May 14, 2007 elections under Section 43 of the Local Government Code of 1991. Under the said provision, no local elective official is allowed to serve for more than three (3) consecutive terms for the same position.

Respondent, on the other hand, asserts that he is still eligible and qualified to run as Mayor of the Municipality of Mabalacat, Pampanga because he was not elected for the said position in the 1998 elections. He avers that the Commission en banc in SPA Case No. A-04-058, entitled Atty. Venancio Q. Rivera III and Normandick P. De Guzman vs. Mayor Marino P. Morales, affirmed the decision of the Regional Trial Court of

Angeles City declaring Anthony D. Dee as the duly elected Mayor of Mabalacat, Pampanga in the 1998 elections.

Respondent alleges that his term should be reckoned from 2001 or when he was proclaimed as Mayor of Mabalacat, Pampanga. Respondent further asserts that his election in 2004 is only for his second term. Hence, the three term rule provided under the Local Government Code is not applicable to him.

Respondent further argues that the grounds stated in the instant petition are not covered under Section 78 of the Omnibus Election Code. Respondent further contend [sic] that even if it is covered under the aforementioned provision, the instant petition failed to allege any material misrepresentation in the respondent's Certificate of Candidacy.

[1]

### **The Ruling of the COMELEC Second Division**

In its Resolution dated 27 July 2007, the COMELEC Second Division took judicial notice of this Court's ruling in the consolidated cases of *Atty. Venancio Q. Rivera III v. COMELEC and Marino "Boking" Morales* in G.R. No. 167591 and *Anthony Dee v. COMELEC and Marino "Boking" Morales* in G.R. No. 170577 (*Rivera* case) promulgated on 9 May 2007. The pertinent portions of the COMELEC Second Division's ruling read as follows:

Respondent was elected as mayor of Mabalacat from July 1, 1995 to June 30, 1998. There was no interruption of his second term from 1998 to 2001. He was able to exercise the powers and enjoy the position of a mayor as "caretaker of the office" or a "de facto officer" until June 30, 2001 notwithstanding the Decision of the RTC in an electoral protest case. He was again elected as mayor from July 1, 2001 to June 30, 2003 [sic].

It is worthy to emphasize that the Supreme Court ruled that respondent has violated the three-term limit under Section 43 of the Local Government Code. Respondent was considered not a candidate in the 2004 Synchronized National and Local Elections. Hence, his failure to qualify for the 2004 elections is a gap and allows him to run again for the same position in the May 14, 2007 National and Local Elections.

WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES to DENY the instant Petition to Cancel the Certificate of Candidacy and/or Petition for the Disqualification of Marino P. Morales for lack of merit.[2]

Dizon filed a motion for reconsideration before the COMELEC *En Banc*.

### **The Ruling of the COMELEC En Banc**

The COMELEC *En Banc* affirmed the resolution of the COMELEC Second Division.

The pertinent portions of the COMELEC *En Banc*'s Resolution read as follows:

Respondent's certificate of candidacy for the May 2004 Synchronized National and Local Elections was cancelled pursuant to the above-mentioned Supreme Court decision which was promulgated on May 9, 2007. As a result, respondent was not only disqualified but was also not considered a candidate in the May 2004 elections.

Another factor which is worth mentioning is the fact that respondent has relinquished the disputed position on May 16, 2007. The vice-mayor elect then took his oath and has assumed office as mayor of Mabalacat on May 17, 2007 until the term ended on June 30, 2007. For failure to serve for the full term, such involuntary interruption in his term of office should be considered a gap which renders the three-term limit inapplicable.

The three-term limit does not apply whenever there is an involuntary break. The Constitution does not require that the interruption or hiatus to be a full term of three years. What the law requires is for an interruption, break or a rest period from a candidate's term of office "for any length of time." The Supreme Court in the case of *Latasa v. Comelec* ruled:

Indeed, the law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.

In sum, the three-term limit is not applicable in the instant case for lack of the two conditions: 1) respondent was not the duly-elected mayor of Mabalacat for the July 1, 2004 to June 30, 2007 term primordially because he was not even considered a candidate thereat; and 2) respondent has failed to serve the entire duration of the term of office because he has already relinquished the disputed office on May 16, 2007 which is more than a month prior to the end of his supposed term.

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WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the instant Motion for Reconsideration for LACK OF MERIT. The Resolution of the Commission Second Division is hereby AFFIRMED.

SO ORDERED.<sup>[3]</sup>

### **The Issues**

Dizon submits that the factual findings made in the *Rivera* case should still be applied in the present case because Morales had, except for one month and 14 days, served the full term of 2004-2007. Morales' assumption of the mayoralty position on 1 July 2007 makes the 2007-2010 term Morales' fifth term in office. Dizon raises the following grounds before this Court:

1. THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION WHEN IT RULED THAT RESPONDENT MORALES DID NOT VIOLATE THE THREE-YEAR TERM LIMIT WHEN HE RAN AND WON AS MAYOR OF MABALACAT,