

EN BANC

[G.R. No. 184082, March 17, 2009]

NICASIO BOLOS, JR., PETITIONER, VS. THE COMMISSION ON ELECTIONS AND REY ANGELES CINCONIEGUE, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a petition for *certiorari*, under Rule 65 of the Rules of Court, alleging that the Commission on Elections (COMELEC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions promulgated on March 4, 2008 and August 7, 2008 holding that petitioner Nicasio Bolos, Jr. is disqualified as a candidate for the position of *Punong Barangay* of Barangay Biking, Daus, Bohol in the October 29,

2007 *Barangay* and *Sangguniang Kabataan* Elections on the ground that he has served the three-term limit provided in the Constitution and Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991.

The facts are as follows:

For three consecutive terms, petitioner was elected to the position of *Punong Barangay* of Barangay Biking, Daus, Bohol in the Barangay Elections held in 1994, 1997 and 2002.

In May 2004, while sitting as the incumbent *Punong Barangay* of Barangay Biking, petitioner ran for Municipal Councilor of Daus, Bohol and won. He assumed office as Municipal Councilor on July 1, 2004, leaving his post as *Punong Barangay*. He served the full term of the *Sangguniang Bayan* position, which was until June 30, 2007.

Thereafter, petitioner filed his Certificate of Candidacy for *Punong Barangay* of Barangay Biking, Daus, Bohol in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

Respondent Rey Angeles Cinconiegue, the incumbent *Punong Barangay* and candidate for the same office, filed before the COMELEC a petition for the disqualification of petitioner as candidate on the ground that he had already served the three-term limit. Hence, petitioner is no longer allowed to run for the same position in accordance with Section 8, Article X of the Constitution and Section 43 (b) of R.A. No. 7160.

Cinconiegue contended that petitioner's relinquishment of the position of *Punong Barangay* in July 2004 was voluntary on his part, as it could be presumed that it was his personal decision to run as municipal councilor in the May 14, 2004 National and Local Elections. He added that petitioner knew that if he won and assumed the

position, there would be a voluntary renunciation of his post as *Punong Barangay*.

In his Answer, petitioner admitted that he was elected as *Punong Barangay* of Barangay Biking, Daus, Bohol in the last three consecutive elections of 1994, 1997 and 2002. However, he countered that in the May 14, 2004 National and Local Elections, he ran and won as Municipal Councilor of Daus, Bohol. By reason of his assumption of office as *Sangguniang Bayan* member, his remaining term of office as *Punong Barangay*, which would have ended in 2007, was left unserved. He argued that his election and assumption of office as *Sangguniang Bayan* member was by operation of law; hence, it must be considered as an involuntary interruption in the continuity of his last term of service.

Pursuant to Section 10 of COMELEC Resolution No. 8297 dated September 6, 2007, the petition was heard by the Provincial Election Supervisor of Bohol. Upon completion of the proceedings, the evidence, records of the case, and the Hearing Officer's action on the matter were endorsed to and received by the Commission on November 21, 2007.

The issue before the COMELEC was whether or not petitioner's election, assumption and discharge of the functions of the Office of *Sangguniang Bayan* member can be considered as voluntary renunciation of his office as *Punong Barangay* of Barangay Biking, Daus, Bohol which will render unbroken the continuity of his service as *Punong Barangay* for the full term of office, that is, from 2004 to 2007. If it is considered a voluntary renunciation, petitioner will be deemed to have served three consecutive terms and shall be disqualified to run for the same position in the October 29, 2007 elections. But if it is considered as an involuntary

renunciation, petitioner's service is deemed to have been interrupted; hence, he is not barred from running for another term.

In a Resolution^[1] dated March 4, 2008, the First Division of the COMELEC ruled that petitioner's relinquishment of the office of *Punong Barangay* of Biking, Daus, Bohol, as a consequence of his assumption of office as *Sangguniang Bayan* member of Daus, Bohol, on July 1, 2004, was a voluntary renunciation of the Office of *Punong Barangay*. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, the Commission (First Division) **GRANTS** the petition. Respondent **NICASIO BOLOS, JR.**, having already served as Punong Barangay of Barangay Biking, Daus, Bohol for three consecutive terms is hereby **DISQUALIFIED** from being a candidate for the same office in the October 29, 2007 Barangay and SK Elections. Considering that respondent 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.

^[2]

Petitioner's motion for reconsideration was denied by the COMELEC *en banc* in a Resolution^[3] dated August 7, 2008.

Hence, this petition for *certiorari* raising this lone issue:

WHETHER OR NOT THE HONORABLE COMMISSION ON ELECTIONS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN DISQUALIFYING [PETITIONER] AS A CANDIDATE FOR PUNONG BARANGAY IN THE OCTOBER 29, 2007 BARANGAY AND SANGGUNIAN KABATAAN ELECTIONS AND, SUBSEQUENTLY, ANNULLING HIS PROCLAMATION.^[4]

The main issue is whether or not there was voluntary renunciation of the Office of *Punong Barangay* by petitioner when he assumed office as Municipal Councilor so that he is deemed to have fully served his third term as *Punong Barangay*, warranting his disqualification from running for the same position in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections.

Petitioner contends that he is qualified to run for the position of *Punong Barangay* in the October 29, 2007 *Barangay* and *Sangguniang Kabataan* Elections since he did not serve continuously three consecutive terms. He admits that in the 1994, 1997 and 2002 *Barangay* elections, he was elected as *Punong Barangay* for three consecutive terms. Nonetheless, while serving his third term as *Punong Barangay*, he ran as Municipal Councilor of Dauis, Bohol, and won. On July 1, 2004, he assumed office and, consequently, left his post as *Punong Barangay* by operation of law. He averred that he served the full term as member of the *Sangguniang Bayan* until June 30, 2007. On October 29, 2007, he filed his Certificate of Candidacy for *Punong Barangay* and won. Hence, the COMELEC gravely abused its discretion in disqualifying him as a candidate for *Punong Barangay* since he did not complete his third term by operation of law.

The argument does not persuade.

The three-term limit for elective local officials is contained in Section 8, Article X of the Constitution, which provides:

Sec. 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.

David v. Commission on Elections^[5] elucidates that the Constitution did not expressly prohibit Congress from fixing any term of office for *barangay* officials, thereby leaving to the lawmakers full discretion to fix such term in accordance with the exigencies of public service. The discussions in the Constitutional Commission showed that the term of office of *barangay* officials would be "[a]s may be determined by law," and more precisely, "[a]s provided for in the Local Government Code."^[6] Section 43(b) of the Local Government Code provides that *barangay* officials are covered by the three-term limit, while Section 43(c)^[7] thereof states that the term of office of *barangay* officials shall be five (5) years. The cited provisions read, thus:

Sec. 43. *Term of Office.* - x x x

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

(c) The term of barangay officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of barangay officials on the second Monday of May 1997: *Provided*, That the sangguniang kabataan members who were elected in the May 1996 elections shall serve until the next regular election of barangay officials.

Socrates v. Commission on Elections^[8] held that the rule on the three-term limit, embodied in the Constitution and the Local Government Code, has two parts:

x x x **The first part provides that an elective local official cannot serve for more than three consecutive terms.** The clear intent is that only consecutive terms count in determining the three-term limit rule. **The second part states that voluntary renunciation of office for any length of time does not interrupt the continuity of service.** The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together to form a continuous service or consecutive terms.

After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. ^[9]

In *Lonzanida v. Commission on Elections*,^[10] the Court stated that the second part of the rule on the three-term limit shows 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. The Court held that two conditions for the application of the disqualification must concur: (1) that the official concerned has been elected for three consecutive terms in the same government post; and (2) that he has fully served three consecutive terms.^[11]

In this case, it is undisputed that petitioner was elected as *Punong Barangay* for three consecutive terms, satisfying the first condition for disqualification.

What is to be determined is whether petitioner is deemed to have voluntarily renounced his position as *Punong Barangay* during his third term when he ran for and won as *Sangguniang Bayan* member and assumed said office.

The Court agrees with the COMELEC that there was voluntary renunciation by petitioner of his position as *Punong Barangay*.

The COMELEC correctly held: