

EN BANC

[G.R. No. 180444, April 09, 2008]

**FEDERICO T. MONTEBON AND ELEANOR M. ONDOY,
PETITIONERS, VS. COMMISSION ON ELECTION AND SESINANDO
F. POTENCIOSO, JR., RESPONDENTS.**

DECISION

YNARES-SATIAGO, J.:

This petition^[1] for *certiorari* assails the June 2, 2007 Resolution^[2] of the First Division of the Commission on Elections (COMELEC) in SPA No. 07-421, denying the petition for disqualification filed by petitioners Federico T. Montebon and Eleanor M. Ondoy against respondent Seginando F. Potencioso, Jr., as well as the September 28, 2007 Resolution^[3] of the COMELEC *En Banc* denying the motion for reconsideration.

Petitioners Montebon and Ondoy and respondent Potencioso, Jr. were candidates for municipal councilor of the Municipality of Tuburan, Cebu for the May 14, 2007 Synchronized National and Local Elections. On April 30, 2007, petitioners and other candidates^[4] for municipal councilor filed a petition for disqualification against respondent with the COMELEC alleging that respondent had been elected and served three consecutive terms as municipal councilor in 1998-2001, 2001-2004, and 2004-2007. Thus, he is proscribed from running for the same position in the 2007 elections as it would be his fourth consecutive term.

In his answer, respondent admitted that he had been elected for three consecutive terms as municipal councilor. However, he claimed that the service of his second term in 2001-2004 was interrupted on January 12, 2004 when he succeeded as vice mayor of Tuburan due to the retirement of Vice Mayor Petronilo L. Mendoza. Consequently, he is not disqualified from vying for the position of municipal councilor in the 2007 elections.

In the hearing of May 10, 2007, the parties were directed to file their respective memoranda.

In petitioners' memorandum, they maintained that respondent's assumption of office as vice-mayor in January 2004 should not be considered an interruption in the service of his second term since it was a voluntary renunciation of his office as municipal councilor. They argued that, according to the law, voluntary renunciation of the office for any length of time shall not be considered an interruption in the continuity of service for the full term for which the official concerned was elected.

On the other hand, respondent alleged that a local elective official is not disqualified from running for the fourth consecutive time to the same office if there was an interruption in one of the previous three terms.

On June 2, 2007, the COMELEC First Division denied the petition for disqualification ruling that respondent's assumption of office as vice-mayor should be considered an interruption in the continuity of his service. His second term having been involuntarily interrupted, respondent should thus not be disqualified to seek reelection as municipal councilor.^[5]

On appeal, the COMELEC *En Banc* upheld the ruling of the First Division, as follows:

Respondent's assumption to the office of the vice-mayor of Tuburan in January 2004 during his second term as councilor is not a voluntary renunciation of the latter office. The same therefore operated as an effective disruption in the full service of his second term as councilor. Thus, in running for councilor again in the May 14, 2007 Elections, respondent is deemed to be running only for a second consecutive term as councilor of Tuburan, the first consecutive term fully served being his 2004-2007 term.

Petitioner Montebon's and Ondoy's June 9, 2007 manifestation and omnibus motion are hereby declared moot and academic with the instant disposition of their motion for reconsideration.

WHEREFORE, premises considered, petitioners' motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.^[6]

Petitioners filed the instant petition for *certiorari* on the ground that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that respondent's assumption of office as vice-mayor in January 2004 interrupted his 2001-2004 term as municipal councilor.

The petition lacks merit.

The 1987 Constitution bars and disqualifies local elective officials from serving more than three consecutive terms in the same post. Section 8, Article X thereof states:

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 officials 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 of the Local Government Code also provides:

Sec. 43. Term of Office.

(b) No local elective official shall serve for more than three 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.