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EN BANC

[G.R. NO. 168550, August 10, 2006]

URBANO M. MORENO, PETITIONER, COMMISSION ON ELECTIONS AND NORMA L. MEJES, RESPONDENTS.

D E C I S I O N

TINGA, J.:

In this Petition[1] dated July 6, 2005, Urbano M. Moreno (Moreno) assails the Resolution[2] of the Commission on Elections (Comelec) *en banc* dated June 1, 2005, affirming the Resolution[3] of the Comelec First Division dated November 15, 2002 which, in turn, disqualified him from running for the elective office of Punong Barangay of Barangay Cabugao, Daram, Samar in the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections.

The following are the undisputed facts:

Norma L. Mejes (Mejes) filed a petition to disqualify Moreno from running for Punong Barangay on the ground that the latter was convicted by final judgment of the crime of Arbitrary Detention and was sentenced to suffer imprisonment of Four (4) Months and One (1) Day to Two (2) Years and Four (4) Months by the Regional Trial Court, Branch 28 of Catbalogan, Samar on August 27, 1998.

Moreno filed an answer averring that the petition states no cause of action because he was already granted probation. Allegedly, following the case of *Baclayon v. Mutia*,[4] the imposition of the sentence of imprisonment, as well as the accessory penalties, was thereby suspended. Moreno also argued that under Sec. 16 of the Probation Law of 1976 (Probation Law), the final discharge of the probation shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed. The order of the trial court dated December 18, 2000 allegedly terminated his probation and restored to him all the civil rights he lost as a result of his conviction, including the right to vote and be voted for in the July 15, 2002 elections.

The case was forwarded to the Office of the Provincial Election Supervisor of Samar for preliminary hearing. After due proceedings, the Investigating Officer recommended that Moreno be disqualified from running for Punong Barangay.

The Comelec First Division adopted this recommendation. On motion for reconsideration filed with the Comelec *en banc*, the Resolution of the First Division was affirmed. According to the Comelec *en banc*, Sec. 40(a) of the Local Government Code provides that those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence, are disqualified from

running for any elective local position.[5] Since Moreno was released from probation on December 20, 2000, disqualification shall commence on this date and end two (2) years thence. The grant of probation to Moreno merely suspended the execution of his sentence but did not affect his disqualification from running for an elective local office.

Further, the Comelec *en banc* held that the provisions of the Local Government Code take precedence over the case of Baclayon v. Mutia cited by Moreno and the Probation Law because it is a much later enactment and a special law setting forth the qualifications and disqualifications of elective local officials.

In this petition, Moreno argues that the disqualification under the Local Government Code applies only to those who have served their sentence and not to probationers because the latter do not serve the adjudged sentence. The Probation Law should allegedly be read as an exception to the Local Government Code because it is a special law which applies only to probationers. Further, even assuming that he is disqualified, his subsequent election as Punong Barangay allegedly constitutes an implied pardon of his previous misconduct.

In its Comment[6] dated November 18, 2005 on behalf of the Comelec, the Office of the Solicitor General argues that this Court in *Dela Torre v. Comelec*[7] definitively settled a similar controversy by ruling that conviction for an offense involving moral turpitude stands even if the candidate was granted probation. The disqualification under Sec. 40(a) of the Local Government Code subsists and remains totally unaffected notwithstanding the grant of probation.

Moreno filed a Reply to Comment[8] dated March 27, 2006, reiterating his arguments and pointing out material differences between his case and *Dela Torre v. Comelec* which allegedly warrant a conclusion favorable to him. According to Moreno, *Dela Torre v. Comelec* involves a conviction for violation of the Anti-Fencing Law, an offense involving moral turpitude covered by the first part of Sec. 40(a) of the Local Government Code. Dela Torre, the petitioner in that case, applied for probation nearly four (4) years after his conviction and only after appealing his conviction, such that he could not have been eligible for probation under the law.

In contrast, Moreno alleges that he applied for and was granted probation within the period specified therefor. He never served a day of his sentence as a result. Hence, the disqualification under Sec. 40(a) of the Local Government Code does not apply to him.

The resolution of the present controversy depends on the application of the phrase "within two (2) years after serving sentence" found in Sec. 40(a) of the Local Government Code, which reads:

> Sec. 40. *Disqualifications*. – The following persons are disqualified from running for any elective local position:
>
> (a) Those sentenced by final judgment for an offense involving moral turpitude or **for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;**

[Emphasis supplied.]

. . . .

We should mention at this juncture that there is no need to rule on whether Arbitrary Detention, the crime of which Moreno was convicted by final judgment, involves moral turpitude falling under the first part of the above-quoted provision. The question of whether Arbitrary Detention is a crime involving moral turpitude was never raised in the petition for disqualification because the ground relied upon by Mejes, and which the Comelec used in its assailed resolutions, is his alleged disqualification from running for a local elective office within two (2) years from his discharge from probation after having been convicted by final judgment for an offense punishable by Four (4) Months and One (1) Day to Two (2) Years and Four (4) Months. Besides, a determination that the crime of Arbitrary Detention involves moral turpitude is not decisive of this case, the crucial issue being whether Moreno's sentence was in fact served.

In this sense, *Dela Torre v. Comelec* is not squarely applicable. Our pronouncement therein that the grant of probation does not affect the disqualification under Sec. 40(a) of the Local Government Code was based primarily on the finding that the crime of fencing of which petitioner was convicted involves moral turpitude, a circumstance which does not obtain in this case. At any rate, the phrase "within two (2) years after serving sentence" should have been interpreted and understood to apply both to those who have been sentenced by final judgment for an offense involving moral turpitude and to those who have been sentenced by final judgment for an offense punishable by one (1) year or more of imprisonment. The placing of the comma (,) in the provision means that the phrase modifies both parts of Sec. 40(a) of the Local Government Code.

The Court's declaration on the effect of probation on Sec. 40(a) of the Local Government Code, we should add, ought to be considered an *obiter* in view of the fact that Dela Torre was not even entitled to probation because he appealed his conviction to the Regional Trial Court which, however, affirmed his conviction. It has been held that the perfection of an appeal is a relinquishment of the alternative remedy of availing of the Probation Law, the purpose of which is to prevent speculation or opportunism on the part of an accused who, although already eligible, did not at once apply for probation, but did so only after failing in his appeal.[9]

Sec. 40(a) of the Local Government Code appears innocuous enough at first glance. The phrase "service of sentence," understood in its general and common sense, means the confinement of a convicted person in a penal facility for the period adjudged by the court.[10] This seemingly clear and unambiguous provision, however, has spawned a controversy worthy of this Court's attention because the Comelec, in the assailed resolutions, is alleged to have broadened the coverage of the law to include even those who did not serve a day of their sentence because they were granted probation.

Moreno argues, quite persuasively, that he should not have been disqualified because he did not serve the adjudged sentence having been granted probation and finally discharged by the trial court.

In *Baclayon v. Mutia*, the Court declared that an order placing defendant on probation is not a sentence but is rather, in effect, a suspension of the imposition of