

## EN BANC

[ G.R. No. 154829, December 10, 2003 ]

### ARSENIO A. LATASA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ROMEO SUNGA, RESPONDENTS.

#### DECISION

**AZCUNA, J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court which seeks to challenge the resolution issued by the First Division of the Commission on Elections (COMELEC) dated April 27, 2001 in SPA Case No. 01-059 entitled, *Romeo M. Sunga, petitioner, versus Arsenio A. Latasa, respondent*, and the Resolution of the COMELEC *en banc* denying herein petitioner's Motion for Reconsideration. The assailed Resolution denied due course to the certificate of candidacy of petitioner Arsenio A. Latasa, declaring him disqualified to run for mayor of Digos City, Davao del Sur Province in the May 14, 2001 elections, ordering that all votes cast in his favor shall not be counted, and if he has been proclaimed winner, declaring said proclamation null and void.

The facts are fairly simple.

Petitioner Arsenio A. Latasa, was elected mayor of the Municipality of Digos, Davao del Sur in the elections of 1992, 1995, and 1998. During petitioner's third term, the Municipality of Digos was declared a component city, to be known as the City of Digos. A plebiscite conducted on September 8, 2000 ratified Republic Act No. 8798 entitled, "*An Act Converting the Municipality of Digos, Davao del Sur Province into a Component City to be known as the City of Digos*" or the Charter of the City of Digos. This event also marked the end of petitioner's tenure as mayor of the Municipality of Digos. However, under Section 53, Article IX of the Charter, petitioner was mandated to serve in a hold-over capacity as mayor of the new City of Digos. Hence, he took his oath as the city mayor.

On February 28, 2001, petitioner filed his certificate of candidacy for city mayor for the May 14, 2001 elections. He stated therein that he is eligible therefor, and likewise disclosed that he had already served for three consecutive terms as mayor of the Municipality of Digos and is now running for the first time for the position of city mayor.

On March 1, 2001, private respondent Romeo M. Sunga, also a candidate for city mayor in the said elections, filed before the COMELEC a Petition to Deny Due Course, Cancel Certificate of Candidacy and/ or For Disqualification<sup>[1]</sup> against petitioner Latasa. Respondent Sunga alleged therein that petitioner falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City since petitioner had already been elected and served for three consecutive terms as mayor from 1992 to 2001.

On March 5, 2001, petitioner Latasa filed his Answer,<sup>[2]</sup> arguing that he did not make any false representation in his certificate of candidacy since he fully disclosed therein that he had served as mayor of the Municipality of Digos for three consecutive terms. Moreover, he argued that this fact does not bar him from filing a certificate of candidacy for the May 14, 2001 elections since this will be the first time that he will be running for the post of city mayor.

Both parties submitted their position papers on March 19, 2001.<sup>[3]</sup>

On April 27, 2001, respondent COMELEC's First Division issued a Resolution, the dispositive portion of which reads, as follows:

**Wherefore**, premises considered, the respondent's certificate of candidacy should be cancelled for being a violation of the three (3)-term rule proscribed by the 1987 Constitution and the Local Government Code of 1991.<sup>[4]</sup>

Petitioner filed his Motion for Reconsideration dated May 4, 2001,<sup>[5]</sup> which remained unacted upon until the day of the elections, May 14, 2001. On May 16, 2001, private respondent Sunga filed an Ex Parte Motion for Issuance of Temporary Restraining Order Enjoining the City Board of Canvassers From Canvassing or Tabulating Respondent's Votes, and From Proclaiming Him as the Duly Elected Mayor if He Wins the Elections.<sup>[6]</sup> Despite this, however, petitioner Latasa was still proclaimed winner on May 17, 2001, having garnered the most number of votes. Consequently, private respondent Sunga filed, on May 27, 2001, a Supplemental Motion<sup>[7]</sup> which essentially sought the annulment of petitioner's proclamation and the suspension of its effects.

On July 1, 2001, petitioner was sworn into and assumed his office as the newly elected mayor of Digos City. It was only on August 27, 2002 that the COMELEC *en banc* issued a Resolution denying petitioner's Motion for Reconsideration.

Hence, this petition.

It cannot be denied that the Court has previously held in *Mamba-Perez v. COMELEC*<sup>[8]</sup> that after an elective official has been proclaimed as winner of the elections, the COMELEC has no jurisdiction to pass upon his qualifications. An opposing party's remedies after proclamation would be to file a petition for *quo warranto* within ten days after the proclamation.

On the other hand, certain peculiarities in the present case reveal the fact that its very heart is something which this Court considers of paramount interest. This Court notes from the very beginning that petitioner himself was already entertaining some doubt as to whether or not he is indeed eligible to run for city mayor in the May 14, 2001 elections. In his certificate of candidacy, after the phrase "I am eligible", petitioner inserted a footnote and indicated:

\*Having served three (3) term[s] as municipal mayor and now running for the first time as city mayor.<sup>[9]</sup>

Time and again, this Court has held that rules of procedure are only tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation. We will not hesitate to set aside technicalities in favor of what is fair and just.<sup>[10]</sup>

The spirit embodied in a Constitutional provision must not be attenuated by a rigid application of procedural rules.

The present case raises a novel issue with respect to an explicit Constitutional mandate: whether or not petitioner Latasa is eligible to run as candidate for the position of mayor of the newly-created City of Digos immediately after he served for three consecutive terms as mayor of the Municipality of Digos.

As a rule, in a representative democracy, the people should be allowed freely to choose those who will govern them. Article X, Section 8 of the Constitution is an exception to this rule, in that it limits the range of choice of the people.

**Section 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.

An examination of the historical background of the subject Constitutional provision reveals that the members of the Constitutional Commission were as much concerned with preserving the freedom of choice of the people as they were with preventing the monopolization of political power. In fact, they rejected a proposal set forth by Commissioner Edmundo Garcia that after serving three consecutive terms or nine years, there should be no further re-election for local and legislative officials.<sup>[11]</sup> The members, instead, adopted the alternative proposal of Commissioner Christian Monsod that such officials be simply barred from running for the same position in the succeeding election following the expiration of the third consecutive term:

**MR. MONSOD:** Madam President, I was reflecting on this issue earlier and I asked to speak because in this draft Constitution, we are recognizing people's power. We have said that now there is a new awareness, a new kind of voter, a new kind of Filipino. And yet at the same time, we are prescreening candidates among whom they will choose. We are saying that this 48-member Constitutional Commission has decreed that those who have served for a period of nine years are barred from running for the same position.

The argument is that there may be other positions. But there are some people who are very skilled and good at legislation, and yet are not of a national stature to be Senators. They may be perfectly honest, perfectly competent and with integrity. They get voted into office at the age of 25, which is the age we provide for Congressmen. And at 34 years old we put them into pasture.

Second, we say that we want to broaden the choices of the people. We are talking here only of congressional or senatorial seats. We want to broaden the people's choice but we are making prejudgment today because we exclude a certain number of people. We are, in effect, putting an additional qualification for office - that the officials must have not have served a total of more than a number of years in their lifetime.

Third, we are saying that by putting people to pasture, we are creating a reserve of statesmen, but the future participation of these statesmen is limited. Their skills may be only in some areas, but we are saying that they are going to be barred from running for the same position.

Madam President, the ability and capacity of a statesman depend as well on the day-to-day honing of his skills and competence, in intellectual combat, in concern and contact with the people, and here we are saying that he is going to be barred from the same kind of public service.

I do not think it is in our place today to make such a very important and momentous decision with respect to many of our countrymen in the future who may have a lot more years ahead of them in the service of their country.

If we agree that we will make sure that these people do not set up structures that will perpetuate them, then let us give them this rest period of three years or whatever it is. Maybe during that time, we would even agree that their fathers or mothers or relatives of the second degree should not run. But let us not bar them for life after serving the public for number of years.<sup>[12]</sup>

The framers of the Constitution, by including this exception, wanted to establish some safeguards against the excessive accumulation of power as a result of consecutive terms. As Commissioner Blas Ople stated during the deliberations:

x x x I think we want to prevent future situations where, as a result of continuous service and frequent re-elections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their positions and to accumulate these powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. x x x <sup>[13]</sup>

An elective local official, therefore, is not barred from running again in for same local government post, unless two conditions concur: 1.) that the official concerned has been elected for three consecutive terms to the same local government post, and 2.) that he has fully served three consecutive terms.<sup>[14]</sup>

In the present case, petitioner states that a city and a municipality have separate and distinct personalities. Thus they cannot be treated as a single entity and must be accorded different treatment consistent with specific provisions of the Local Government Code. He does not deny the fact that he has already served for three consecutive terms as municipal mayor. However, he asserts that when Digos was converted from a municipality to a city, it attained a different juridical personality. Therefore, when he filed his certificate of candidacy for city mayor, he cannot be

construed as vying for the same local government post.

For a municipality to be converted into a city, the Local Government Code provides:

**SECTION 450. *Requisites for Creation.*** - (a) A municipality or a cluster of barangays may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million pesos (20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisites:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or,

(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

*Provided, That,* the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income.<sup>[15]</sup>

Substantial differences do exist between a municipality and a city. For one, there is a material change in the political and economic rights of the local government unit when it is converted from a municipality to a city and undoubtedly, these changes affect the people as well.<sup>[16]</sup> It is precisely for this reason why Section 10, Article X of the Constitution mandates that no province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, without the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

As may be gleaned from the Local Government Code, the creation or conversion of a local government unit is done mainly to help assure its economic viability. Such creation or conversion is based on verified indicators:

**Section 7. *Creation and Conversion.*** --- As a general rule, the creation of a local government unit or its conversion from one level to another shall be based on verifiable indicators or viability and projected capacity to provide services, to wit:

(a) Income. --- It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size