

EN BANC

[G.R. No. 133495, September 03, 1998]

BENJAMIN U. BORJA, JR., PETITIONER VS. COMMISSION ON ELECTIONS AND JOSE T. CAPCO, JR., RESPONDENTS.

DECISION

MENDOZA, J.:

This case presents for determination the scope of the constitutional provision barring elective officials, with the exception of barangay officials, from serving more than three consecutive terms. In particular, the question is whether a vice-mayor who succeeds to the office of mayor by operation of law and serves the remainder of the term is considered to have served a term in that office for the purpose of the three-term limit.

Private respondent Jose T. Capco, Jr. was elected vice-mayor of Pateros on January 18, 1988 for a term ending June 30, 1992. On September 2, 1989, he became mayor, by operation of law, upon the death of the incumbent, Cesar Borja. On May 11, 1992, he ran and was elected mayor for a term of three years which ended on June 30, 1995. On May 8, 1995, he was reelected mayor for another term of three years ending June 30, 1998.^[1]

On March 27, 1998, private respondent Capco filed a certificate of candidacy for mayor of Pateros relative to the May 11, 1998 elections. Petitioner Benjamin U. Borja, Jr., who was also a candidate for mayor, sought Capco's disqualification on the theory that the latter would have already served as mayor for three consecutive terms by June 30, 1998 and would therefore be ineligible to serve for another term after that.

On April 30, 1998, the Second Division of the Commission on Elections ruled in favor of petitioner and declared private respondent Capco disqualified from running for reelection as mayor of Pateros.^[2] However, on motion of private respondent, the COMELEC en banc, voting 5-2, reversed the decision and declared Capco eligible to run for mayor in the May 11, 1998 elections.^[3] The majority stated in its decision:

In both the Constitution and the Local Government Code, the three-term limitation refers to the term of office for which the local official was elected. It made no reference to succession to an office to which he was not elected. In the case before the Commission, respondent Capco was not elected to the position of mayor in the January 18, 1988 local elections. He succeeded to such office by operation of law and served for the unexpired term of his predecessor. Consequently, such succession into office is not counted as one (1) term for purposes of the computation of the three-term limitation under the Constitution and the Local Government Code.

Accordingly, private respondent was voted for in the elections. He received 16,558 votes against petitioner's 7,773 votes and was proclaimed elected by the Municipal Board of Canvassers.

This is a petition for certiorari brought to set aside the resolution, dated May 7, 1998, of the COMELEC and to issue a declaration that private respondent is disqualified to serve another term as Mayor of Pateros, Metro Manila.

Petitioner contends that private respondent Capco's service as mayor from September 2, 1989 to June 30, 1992 should be considered as service for full one term, and since he thereafter served from 1992 to 1998 two more terms as mayor, he should be considered to have served three consecutive terms within the contemplation of Art. X, §8 of the Constitution and §43(b) of the Local Government Code. Petitioner stresses the fact that, upon the death of Mayor Cesar Borja on September 2, 1989, private respondent became the mayor and thereafter served the remainder of the term. Petitioner argues that it is irrelevant that private respondent became mayor by succession because the purpose of the constitutional provision in limiting the number of terms elective local officials may serve is to prevent a monopolization of political power.

This contention will not bear analysis. Article X, §8 of the Constitution 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.

This provision is restated in §43(b) of the Local Government Code (R.A. No. 7160):

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

(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".

First, to prevent the establishment of political dynasties is not the only policy embodied in the constitutional provision in question. The other policy is that of enhancing the freedom of choice of the people. To consider, therefore, only stay in office regardless of how the official concerned came to that office - whether by election or by succession by operation of law - would be to disregard one of the purposes of the constitutional provision in question.

Thus, a consideration of the historical background of Art. X, §8 of the Constitution 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. Indeed, they rejected a proposal put forth by Commissioner Edmundo F. Garcia that after serving three consecutive terms or nine years there should be no further reelection for local and legislative officials. Instead, they 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.^[4] Monsod warned against "prescreening candidates [from] whom the people will choose" as a result of the proposed absolute disqualification, considering that the draft constitution provision "recognizing people's power."^[5]

Commissioner Blas F. Ople, who supported the Monsod proposal, said:

The principle involved is really whether this Commission shall impose a temporary or a perpetual disqualification on those who have served their terms in accordance with the limits on consecutive service as decided by the Constitutional Commission. I would be very wary about this Commission exercising a sort of omnipotent power in order to disqualify those who will already have served their terms from perpetuating themselves in office. I think the Commission achieves its purpose in establishing safeguards against the excessive accumulation of power as a result of consecutive terms. We do put a cap on consecutive service - in the case of the President, six years; in the case of the Vice-President, unlimited; and in the case of the Senators, one reelection. In the case of the Members of Congress, both from the legislative districts and from the party list and sectoral representation, this is now under discussion and later on the policy concerning local officials will be taken up by the Committee on Local Governments. The principle remains the same. I think we want to prevent future situations where, as a result of continuous service and frequent reelections, officials from the President down to the municipal mayor tend to develop a proprietary interest in their position and to accumulate those powers and perquisites that permit them to stay on indefinitely or to transfer these posts to members of their families in a subsequent election. I think that is taken care of because we put a gap on the continuity or the unbroken service of all of these officials. But where we now decide to put these prospective servants of the people or politicians, if we want to use the coarser term, under a perpetual disqualification, I have a feeling that we are taking away too much from the people, whereas we should be giving as much to the people as we can in terms of their own freedom of choice".^[6]

Other commissioners went on record against "perpetually disqualifying" elective officials who have served a certain number of terms as this would deny the right of the people to choose. As Commissioner Yusup R. Abubakar asked, "why should we arrogate unto ourselves the right to decide what the people want?"^[7]

Commissioner Felicitas S. Aquino spoke in the same vein when she called on her colleagues to "allow the people to exercise their own sense of proportion and [rely] on their own strength to curtail power when it overreaches itself."^[8]

Commissioner Teodoro C. Bacani stressed: - Why should we not leave [perpetual disqualification after serving a number of terms] to the premise accepted by practically everybody here that our people are politically mature? Should we use this assumption only when it is convenient for us, and not when it may also lead to a freedom of choice for the people and for politicians who may aspire to serve them longer?"^[9]

Two ideas thus emerge from a consideration of the proceedings of the Constitutional Commission. The first is the notion of service of term, derived from the concern about the accumulation of power as a result of a prolonged stay in office. The second is the idea of election, derived from the concern that the right of the people to choose those whom they wish to govern them be preserved.

It is likewise noteworthy that, in discussing term limits, the drafters of the Constitution did so on the assumption that the officials concerned were serving by reason of reelection. This is clear from the following exchange in the Constitutional Commission concerning term limits, now embodied in Art. VI §§4 and 7 of the Constitution, for members of Congress:

MR. GASCON. I would like to ask a question with regard to the issue after the second term. We will allow the Senator to rest for a period of time before he can run again?

MR. DAVIDE. That is correct.

MR. GASCON. And the question that we left behind before - if the Gentlemen will remember- was: How long will that period of rest be? Will it be one election which is three years or one term which is six years?

MR. DAVIDE. If the Gentlemen will remember, Commissioner Rodrigo expressed the view that during the election following the expiration of the first 12 years, whether such election will be on the third year or on the sixth year thereafter, this particular member of the Senate can run. So it is not really a period of hibernation for six years. That was the Committee's stand.^[10]

Indeed, a fundamental tenet of representative democracy is that the people should be allowed to choose whom they please to govern them.^[11] To bar the election of a local official because he has already served three terms, although the first as a result of succession by operation of law rather than election, would therefore be to violate this principle.

Second, not only historical examination but textual analysis as well supports the ruling of the COMELEC that Art. X, §8 contemplates service by local officials for three consecutive terms as a result of election. The first sentence speaks of "the term of office of elective local officials" and bars "such official[s]" from serving for more than three consecutive terms. The second sentence, in explaining when an elective local official may be deemed to have served his full term of office, states that "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." The term served must therefore be one "for which [the official concerned] was elected." The purpose of this provision is to prevent a circumvention of the limitation on the number of terms an elective official may serve. Conversely, if he is not serving a term for which he was elected because he is simply continuing the service of the official he succeeds, such official cannot be considered to have fully served the term now withstanding his voluntary renunciation of office prior to its expiration.