G.R. No. 201716 – MAYOR ABELARDO ABUNDO, SR., Petitioner, versus COMMISSION ON ELECTIONS and ERNESTO R. VEGA, Respondents.

Promulgated:

JANUARY 08, 2013

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SEPARATE OPINION

BRION, *J.*:

I agree with Justice Presbitero J. Velasco, Jr.'s conclusion that the proclamation of Jose Torres, as the "*apparent winner*" in the 2004 elections, effectively interrupted what could have been Abelardo Abundo, Sr.'s full term. I write this Opinion to briefly expound on the Court's ruling in *Aldovino, Jr. v. Commission on Elections*[1] which the Commission on Elections (*COMELEC*) erroneously relied upon in affirming the grant of the *quo warranto* petition against Abundo, and to express my own views on how our present Decision should be read in light of other three-term limit cases that have been decided under a protest case scenario.

The Aldovino ruling

The issue in *Aldovino* was whether the *preventive suspension* of a local elective official amounted to an interruption in the continuity of his term for the purpose of applying the three-term limit rule. The issue arose because an elective local official who is preventively suspended is prevented, under legal compulsion, from exercising the functions of his

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[1] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

office; thus, the question — is there then an interruption of his term of office for purposes of the three-term limit rule of the Constitution?

After analyzing the first clause of the three-term limit rule (Section 8, Article X of the 1987 Constitution) which provides:

> 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.

the Court observed that the limitation specifically refers to the term (or the period of time an official has title to office and can serve), not to the service of a term.

Complementing the term limitation is the second clause of the same provision on voluntary renunciation stating that:

> [V]oluntary 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 Court construed "voluntary renunciation" as "a loss of title to office by conscious choice."[2]

Based on its analysis of the provision and after a survey of jurisprudence on the three-term limit rule, the Court concluded that the interruption of a term that would prevent the operation of the rule involves "no less than the involuntary loss of title to office" or "at least an effective break from holding office[.]"[3]

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2 *Id*. at 252.

3 *Id*. at 259-260.

> An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. x x x.
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> To put it differently although at the risk of repetition, Section 8, Article X – both by structure and substance – fixes an elective official's term of office and limits his stay in office to three consecutive terms as an inflexible rule that is stressed, no less, by citing voluntary renunciation as an example of a circumvention. The provision should be read in the context of *interruption of term*, not in the context of interrupting the *full continuity of the exercise of the powers* of the elective position. The "voluntary renunciation" it speaks of refers only to the elective official's voluntary relinquishment of office and loss of title to this office. It does not speak of the temporary "cessation of the exercise of power or authority" that may occur for various reasons, with preventive suspension being only one of them. To quote *Latasa v. Comelec*:
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> > Indeed, [T]he law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.[4] (italics supplied; citation omitted)

The Court further concluded that while preventive suspension is involuntary in nature, its imposition on an elective local official cannot amount to an interruption of a term "because the suspended official *continues x x x in office* although he is barred from exercising the functions and prerogatives of the office within the suspension period."[5]

Based on these clear rulings, I consider it a grave error for the Comelec to equate the situation of a *preventively suspended elective local official* with the situation of a *non-proclaimed candidate who was later found to have actually won the election*. With its conclusion, the Comelec thereby grossly disregarded the nature and effects of a preventive suspension, and at the same time glossed over the legal and factual realities that obtain in a protested election situation where one candidate is

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4 *Id*. at 260-261.
5 *Id*. at 264.

proclaimed, only to lose out later during the term to the winner in the protest case. To state the obvious, election protests are quite common and it is best for the Court to already provide guidance on how a reversal decision in a protest case affects the three-term limit rule.

The proclamation alone of an *apparent winner* (*i.e.*, the candidate immediately proclaimed but whose election is protested) entitles him to take his oath of office and to perform his duties as a newly-elected local official. That he may be characterized merely as a "presumptive winner"[6] during the pendency of a protest against him does not make him any less of a duly elected local official; for the time being, he possesses all the rights and is burdened with all the duties of his office under the law. In stark contrast with his situation, the non-proclaimed candidate cannot but be considered a private citizen while prosecuting his election protest;[7] he carries no title to office and is denied the exercise of the rights and the performance of the duties and functions of an elected official.

It is from these perspectives that *Aldovino* cannot be used as basis for the conclusion that there had been no interruption in the case of Abundo – the eventual election winner who is so recognized only after winning his protest case. Notably in *Aldovino,* while a preventive suspension is an involuntary imposition, what it affects is merely the authority to discharge the functions of an office that the suspended local official continues to hold. As already mentioned above, the local elective official continuous to possess title to his office while under preventive suspension, so that no interruption of his term ensues.

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6 *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602, 612.
7 *Socrates v. COMELEC*, 440 Phil. 106, 129 (2002).

In the present case, Torres (instead of Abundo) was immediately proclaimed the winner in the 2004 elections and effectively held title to the office until he was unseated. This circumstance necessarily implied that Abundo had no **title to the office of Mayor** in the meanwhile or, at least, **had an effective break in the continuity of his term as mayor**; from his first (2001-2004) term, he did not immediately continue into his second (2004-2007) term and for a time during this term completely ceased to exercise authority in the local government unit. It was not a mere cessation of the *authority to exercise* the rights and prerogatives of the office of Mayor as in the case of *Aldovino*; he was not the Mayor and had no title to this office in the meanwhile. No better proof of his loss of title exists than the need to file an election protest to claim the seat Torres already occupied after his proclamation. From this perspective, the *Aldovino* ruling cannot be used as basis for the conclusion that Abundo enjoyed an uninterrupted 2001-2004 term.

Election to office

In *Borja, Jr. v. Commission on Elections*,[8] reiterated in *Lonzanida v. Commission on Elections*,[9] the Court ruled that a local elective official can seek reelection in the same local government position unless two requisites concur: the official has been ***elected for three consecutive terms*** to the same local government post, *and* that he ***fully served the three consecutive terms***. It is from the prism of these requisites that the three-term limit rule must be viewed; in Abundo's case, the continuity of his first and third terms are not at issue; the issue is confined to his second term.

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8 G.R. No. 133495, September 3, 1998, 295 SCRA 157, 169.

9 *Supra* note 6, at 611.

That Abundo has been elected to the position of Mayor in the 2004 elections is a matter that is now beyond dispute based on the legal reality that he was *eventually* found, in his election protest, to be the true choice of the electorate. This legal reality, however, is complicated by an intervening development – the wrongful proclamation of another candidate (Torres) – so that he (Abundo) could only take his oath of office and discharge the duties of a Mayor very much later into the 2004-2007 mayoralty term. As I have argued above to contradict the use of the *Aldovino* ruling, the factual reality that he had no title to office and did not serve as Mayor while he was a protestant cannot simply be glossed over, and cannot likewise be brushed aside by trying to draw a conclusion from a combined reading of *Ong v. Alegre*[10] and *Lonzanida v. Commission on Elections.*[11] The Court cannot avoid considering the attendant factual and legal realities, based on the requirements that *Borja Jr*. established, and has no choice but to adjust its appreciation of these realities, as may be necessary, as it had done in *Ong*. This, I believe, is the approach and appreciation that should be made, not the drawing of a forced conclusion from a combined reading of *Ong* and *Lonzanida*.

In *Lonzanida* (where Lonzanida was the protestee), the Court considered **both the requisites** for the application of the three-term limit rule **absent** where a local official's (Lonzanida's) proclamation, supposedly for his third consecutive term in office, was later invalidated ***prior*** to the expiration of this third term, *i.e*., from 1995 to 1998. With the invalidation, Lonzanida could not really be considered as having been ***elected*** to the office since he was found not to be the real choice of the electorate – this is the legal reality for Lonzanida. Too, he did not fully serve his (supposedly third) term because of the intervening ruling ordering him to vacate his post.

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[10] G.R. Nos. 163295 and 163354, January 23, 2006, 479 SCRA 473.

[11] *Supra* note 6.

This ruling, no less equivalent to involuntary renunciation, is the factual reality in Lonzanida's case. Thus, an interruption of the three consecutive terms took place.

Ong v. Alegre[12] involved facts close, but not completely similar, to *Lonzanida*. For in *Ong*, the ruling ordering the apparent winner and *protestee* (Francis Ong) to vacate his post came ***after*** the expiration of the contested term, *i.e*., after Ong's second term from 1998 to 2001. In holding that **both requisites were present** (so that there was effectively no interruption), the Court again took the attendant legal and factual realities into account. Its appreciation of these realities, however, came with a twist to allow for the attendant factual situation. The Court ruled that while Joseph Alegre was later adjudged the "winner" in the 1998 elections and, "therefore, was the legally elected mayor," this legal conclusion "was *without practical and legal use* and value[.]"[13]

> [Ong's] contention that he was only a presumptive winner in the 1998 mayoralty derby as his proclamation was under protest did not make him less than a duly elected mayor. His proclamation by the Municipal Board of Canvassers of San Vicente as the duly elected mayor in the 1998 mayoralty election coupled by his assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.[14]

Effectively, while the Court defined the legalities arising from the given factual situation, it recognized that the given facts rendered its legal conclusion moot and academic or, in short, useless and irrelevant; while Ong effectively lost the election, he had served the full term that should belong to the winning candidate. Based on this recognition, the Court ruled that no effective interruption took place for purposes of the three-term limit rule.

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12 *Supra* note 10.
13 *Id*. at 482.
14 *Id.* at 428-483.

From these perspectives, *Ong* did **not** "supersede" or "supplant" *Lonzanida*. Neither *Ong* nor the subsequent case of *Rivera III v. Commission on Elections*[15] says so. The evident factual variance in *Ong* simply called for an adjusted appreciation of the element of "election" under the three-term limit rule. This is what a sensible reading of these two cases yields.

In considering the case of *Abundo* with *Lonzanida* and *Ong*, a noticeable distinction that sets Abundo apart is his situation as *protestant*, as against Lonzanida and Ong who were both *protestees* – the presumptive winners whose election and proclamation were protested. Both protestees lost in the protest and effectively were not "elected," although this was appreciated by the Court with twist in *Ong*, as mentioned above. Abundo, on the other hand, successfully prosecuted his protest and was thus recognized as the candidate whom the people voted for, subject only to the question raised in the present case – whether this recognition or declaration rendered him "elected" from the start of his term.

The differing factual situations of the cited cases and *Abundo* that necessarily gave rise to different perspectives in appreciating the same legal question, immediately suggest that the Court's rulings in the cited cases cannot simply be combined nor wholly be bodily lifted and applied to Abundo. At the simplest, both Lonzanida and Ong were protestees who faced the same legal reality of losing the election, although Ong fully served the elected term; for Abundo, the legal reality is his recognized and declared election victory. In terms of factual reality, Lonzanida and Abundo may be the same since they only partially served their term, but this similarity is fully negated by their differing legal realities with respect to the element of "election." Ong and Abundo, on the other hand, have differing legal and

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[15] G.R. Nos. 167591 and 170577, May 9, 2007, 523 SCRA 41.

factual realities; aside from their differing election results, Ong served the full term, while Abundo only enjoyed an abbreviated term.

If at all, the parallelism that can be drawn from *Ong,* that can fully serve the resolution of Abundo's case, is the practical and purposive approach that the Court used in *Ong* when it implicitly recognized that dwelling on and giving full stress to the "election" element of the three-term limit rule (as established in *Borja, Jr.*) is irrelevant and pointless, given that Ong had served the full contested term.

Under this same approach, Abundo should not be considered to have been elected for the full term for purposes of the three-term limit rule, despite the legal reality that he won the election; as in *Ong*, the factual reality should prevail, and that reality is that he served for less than this full term. Thus, where less than a full term is served by a winning protestant, no continuous and uninterrupted term should be recognized. This is the view that best serves the purposes of the three-term limit rule.

ARTURO D. BRION
Associate Justice