

**DANILO F. GATCHALIAN, PETITIONER, VS. COURT OF APPEALS,
JUDGE IBARRA S. VIGILIA (BRANCH 17, RTC OF BULACAN) AND
GREGORIO N. ARUELO, JR., RESPONDENTS.**

G.R. No. 107979. June 19, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari and prohibition to set aside the Decision of the Court of Appeals in CA-G.R. SP No. 28621.

I

Danilo F. Gatchalian and Gregorio N. Aruelo, Jr. were rival candidates for the office of the Vice Mayor of Balagtas, Bulacan in the May 11, 1992 elections.

On May 13, 1992, the Municipal Board of Canvassers proclaimed Gatchalian as the duly elected Vice Mayor of Balagtas, Bulacan by a margin of four votes.

On May 22, 1992, Aruelo filed with the Commission on Elections (COMELEC) a verified petition docketed as SPC No. 92-130 seeking to annul the proclamation of Gatchalian.

On June 2, 1992, Aruelo filed with the Regional Trial Court, Branch 17, Malolos, Bulacan, an election protest docketed as Civil Case No. 343-M-92. In said election protest, Aruelo alleged that the protest was filed *ex abundante cautela*, there being a pending pre-proclamation case before the COMELEC. It likewise contained a claim for damages in the amount of P100,000.00 by way of attorney's fees. On the same date, Aruelo paid the amount of P610.00 as filing fees.

On June 10, 1992, Gatchalian received an amended summons from the clerk of court of the trial court, giving him five days within which to answer.

Instead of filing an answer, Gatchalian filed a motion to dismiss on June 15, 1992 on the following grounds: (a) the petition was filed out of time; (b) there was a pending pre-proclamation case before the COMELEC, and hence the protest was premature; and (c) Aruelo failed to pay the prescribed filing fees and cash deposit upon filing of the petition. Aruelo filed an opposition to the motion to dismiss, to which Gatchalian filed a reply.

Meanwhile, on June 17, 1992, the COMELEC denied Aruelo's pre-proclamation case.

In its Order dated July 10, 1992, the trial court denied Gatchalian's motion to dismiss and ordered him to file his answer within five days from notice thereof. Gatchalian's motion for reconsideration was denied on August 3, 1992.

On July 23, 1992, Gatchalian, instead of filing his answer, filed a motion for a Bill of Particulars. This motion was denied by the trial court in its Order dated August 5, 1992.

On August 6, 1992, Gatchalian filed before the Court of Appeals, a petition for certiorari (CA-G.R. SP No. 28621) alleging grave abuse of discretion on the part of the trial court in denying petitioner's motion to dismiss as well as his motion for reconsideration.

On November 24, 1992, the Court of Appeals rendered its decision concluding that there was no grave abuse of discretion on the part of the trial court in denying Gatchalian's motion to dismiss. It further ruled that the election protest was timely filed and that Gatchalian's averment that the election protest should be dismissed on the ground of non-payment of filing fee was devoid of merit.

Hence, this petition.

II

Gatchalian claims that the election protest was filed only on June 2, 1992 or nineteen days after his proclamation on May 13, 1992 as Vice Mayor of Balagtas, Bulacan in violation of Section 3, Rule 35 of the COMELEC Rules of Procedure.

Petitioner's contention is without merit.

Said Section 3, Rule 35 provides as follows:

"Period to file petition. — The petition shall be filed within ten (10) days following the date of proclamation of the results of the election."

Under the above-cited section, Aruelo had ten days from May 13, 1992 to file an election protest. Instead of filing an election protest, Aruelo filed with the COMELEC a pre-proclamation case against Gatchalian on May 22, 1992, or nine days after May 13, 1992. The filing of the pre-proclamation case suspended the running of the period within which to file an election protest or quo warranto proceedings (B.P. Blg. 881, Sec. 248). Aruelo received the COMELEC resolution denying his pre-proclamation petition on June 22, 1992. Hence, Aruelo had only one day left after June 22, 1992 within which to file an election protest. However, it will be noted that Aruelo filed on June 2, 1992 with the trial court an election protest *ex abundante cautela*.

Gatchalian further contends that the Court of Appeals should have dismissed the election protest for failure of Aruelo to pay the filing fee of P300.00 as required by Rule 35, Section 9 of the COMELEC Rules of Procedure.

This contention of petitioner is meritorious.

Section 9, Rule 35 of the COMELEC Rules of Procedure provides:

"Filing fee. — No protest, counter-protest, or protest-in-intervention shall be given due course without the payment of a filing fee in the amount of three hundred pesos (P300.00) for each interest.

Each interest shall further pay the legal research fee as required by law.

If a claim for damages and attorney's fees are set forth in a protest, counter-protest or protest-in-intervention, an additional filing fee shall be paid in accordance with the schedule provided for in the Rules of Court in the Philippines,"

Under said Rule, a protestant has to pay the following: a) filing fee of P300.00; b) legal research fee; and c) additional filing fee if there be a claim for damages or attorney's fees.

Aruelo, upon filing the election protest with the trial court on June 2, 1992, paid the following amounts:

O.R. No. Amount

2084419-R P450.00 - Docket Fee-Judiciary Development Fund

8760129S 150.00 - General Fund

1407317 10.00 - Legal Research

1406063 5.60 - Summons Fee

2084420 46.00 - Summons Fee

From the above itemization, it is clear that Aruelo failed to pay the filing fee of P300.00 for the election protest prescribed by the COMELEC Rules of Procedure.

The amount of P600.00, consisting of P450.00 (Judiciary Development Fund) and P150.00 (General Fund), refers to the docket fee for Aruelo's claim of attorney's fees in the amount of P100,000.00 in accordance with the schedule provided for in Section 7(a), Rule 141 of the Revised Rules of Court (Cf. Rule 35, Section 9, third paragraph, COMELEC Rules of Procedure).

The trial court cannot simply deduct from the P600.00 the filing fee of P300.00 because the former amount is specifically allocated by law (P.D. No. 1949) and by Supreme Court Administrative Circular No. 31-90 dated October 15, 1990 to the Judiciary Development Fund and the General Fund. A separate set of receipts is used for the collection of docket fees.

It is the payment of the filing fee that vests jurisdiction of the court over the election protest, not the payment of the docket fees for the claim of damages and attorney's fees. For failure to pay the filing fee prescribed under Section 9, Rule 35 of the COMELEC Rules of Procedure, the election protest must be dismissed. Under Section 9, Rule 35 of the COMELEC Rules of Procedure, "[n]o protest x x x shall be given due course without the payment of a filing fee in the amount of three hundred pesos (P300.00) for each interest."

In *Pahilan v. Tabalba*, 230 SCRA 205 (1994), we had occasion to rule as follows:

"In the case now before us, and in election cases in general, it is not the amount of damages, if any, that is sought to be recovered which vests in the courts the jurisdiction to try the same. Rather, it is the nature of the action which is determinative of jurisdiction."

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. No. SP No. 28621 is SET ASIDE. Civil Case No. 343-M-92 of the Regional Trial Court, Branch 17, Malolos, Bulacan is DISMISSED.

SO ORDERED.

Padilla, (Chairman), and Bellosillo, JJ., concur.

Davide, Jr., J., in the result.

Kapunan, J., no part.

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