

**PEDRO C. CALUCAG, PETITIONER, VS. COMMISSION ON ELECTIONS,
MANILA; THE MUNICIPAL TRIAL COURT, BRANCH 04,
TUGUEGARAO, CAGAYAN AND CESAR CARBONEL, RESPONDENTS.**

G.R. No. 123673. June 19, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court questioning the dismissal of petitioner's appeal before the Commission on Elections (COMELEC) on the ground of prescription of time for filing an appeal.

Petitioner Pedro Calucag and private respondent Cesar Carbonell were both candidates for Barangay Captain in Barangay Caritan Centro, Tuguegarao, Cagayan during the May 9, 1994 elections. Petitioner garnered 478 votes while private respondent obtained 477 votes or a difference of one vote.

Private respondent filed an election protest with the Municipal Trial Court, Branch 4 of Tuguegarao, Cagayan praying for the judicial recount of the ballots cast and the annulment of the proclamation of petitioner. As agreed upon by the parties, a recount/revision of the votes/ballots was made. As a result, private respondent obtained 491 votes as against petitioner's 489 votes. On May 31, 1994, the MTC promulgated a decision in open court declaring the former as the duly elected Barangay Captain of Caritan Centro, Tuguegarao.[1] Petitioner appealed this ruling to the Regional Trial Court of Tuguegarao, Cagayan, Branch 3 which appeal was opposed by private respondent in a Motion to Dismiss on the ground of lack of jurisdiction, the proper forum being the Commission on Elections (COMELEC).[2] On July 18, 1994, the RTC issued an Order dismissing the appeal based on such ground.[3] Petitioner filed a motion for reconsideration of the order of dismissal which was also seasonably denied.[4]

On appeal, the COMELEC likewise dismissed petitioner's case for lack of appellate jurisdiction in its order dated August 12, 1994, which provided, *inter alia*:

"Guided by the pronouncement of the Supreme Court in the case of *Flores vs. COMELEC* (GR No. 89604, April 20, 1990), We have disregarded the detour of the appeal to the Regional Trial Court and considered this appeal direct to the Commission from the Municipal Trial Court of Tuguegarao, Cagayan, however, unlike in *Flores* case, this appeal was not perfected as it is wanting on the required payment of appeal fees on time, hence the appellate jurisdiction of this Commission does not attach.

ACCORDINGLY, the Commission (First Division) hereby DISMISSES the instant appeal for lack of appellate jurisdiction."[5] (Underscoring supplied)

A motion for reconsideration of said order was filed, but this was also denied by the Commission en banc which found the motion to be devoid of merit, not because of non-payment of appeal fees on proper time but because the same was filed out of time.[6]

Hence, this petition.

The main issue which must be addressed herein is whether the COMELEC has exclusive appellate jurisdiction over election contests involving elective barangay officials decided by trial courts of limited jurisdiction.

It is high time that this question be settled definitively to obviate situations similar to the one at bar.

The Court has categorically pronounced in *Flores vs. Commission on Elections* that Section 9 of R.A. No. 6679, insofar as it provides that the decision of the Municipal or Metropolitan Trial Court in a barangay election case should be appealed to the Regional Trial Court, is unconstitutional. Said pronouncement is hereby reiterated here. The section is in direct contravention of Article IX-C, Section 2(2) of the Constitution, providing that the COMELEC shall:

"(e)xercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction."

Petitioner wishes this Court to entertain his case and rule as it did in *Flores*. This, however, cannot be done anymore even if the facts of this case were on all fours with *Flores* because in said case, the petitioner, Roque Flores, was proclaimed Punong Barangay in accordance with Section 5 of R.A. No. 6679[7] after having received the highest number of votes for Kagawad in the March 28, 1989, elections. The private respondent, Nobelito Rapisora, filed an election protest with the MTC of Tayum, Abra which sustained his arguments and installed him in place of Flores as Punong Barangay. The latter appealed to the RTC of Abra, which affirmed in toto the challenged decision. Thereafter, Flores went to the COMELEC which dismissed his appeal on the ground that it has no power to review the decision of the RTC. Said ruling was based on Section 9 of R.A. No. 6679[8] which states that decisions of RTC's in electoral contests brought to it on appeal from the MTC regarding questions of fact shall be final and unappealable. In resolving the petition for certiorari, the Court supported the dismissal of the appeal, not on the basis of said provision but on Constitutional grounds. Section 9 of R.A. No. 6679 was declared unconstitutional even if it was not squarely and properly challenged by Flores. Despite the non-compliance by Flores with the requisites of a judicial inquiry into a constitutional question,[9] the Court felt that it was fruitless to wait for the issue to be raised anew, perhaps in the next barangay elections, before being resolved. Technical obstacles were disregarded so that the defect in R.A. No. 6679 may be brought to the attention of Congress and the same be corrected.

At the time *Flores* was resolved, there was as yet no pronouncement on the constitutionality of said Section 9 of R.A. No. 6679, such that the Court held that Flores had a right to rely on its presumed validity. He merely relied on said law when he appealed the decision of the MTC to the RTC. His subsequent appeal to the COMELEC was, therefore, considered to have been made directly from the MTC, thereby disregarding the detour to the RTC.

It follows that after the promulgation of *Flores*, the same arguments propounded therein by the petitioner may no longer be employed. Article 8 of the Civil Code states that "(j)udicial decisions applying or interpreting the laws or the constitution shall form part of the legal system of the Philippines." Said pronouncement of the Court, having formed part of the law of the land, ignorance thereof can no longer be countenanced. Therefore, the COMELEC is the proper appellate court clothed with jurisdiction to hear the appeal, which appeal must be filed within five days after the promulgation of the MTC's decision.[10] The erroneous filing of the appeal with the RTC did not toll the running of the prescriptive period. Petitioner filed his notice of appeal only on August 12, 1994, or one month and twenty six days from the time he received a copy of the MTC's decision on June 16, 1994. The five-day period, having expired without the aggrieved party filing the appropriate appeal before the COMELEC, the statutory privilege of petitioner to appeal is deemed waived and the appealed decision has become final and executory.

Petitioner's contention that the COMELEC erred in disallowing the case based on sheer technicalities is likewise unmeritorious. The COMELEC dismissed petitioner's appeal for lack of appellate jurisdiction, based on his failure to perfect his appeal on time. That this is NOT A TECHNICALITY is correctly pointed out in the questioned order citing various jurisprudence. Granting that petitioner paid the appeal fees on time, he chose the wrong forum; the payment, therefor, having been done after the lapse of the reglementary period to appeal. In support of his arguments petitioner cites the case of *Roleto Pahilan vs. Rudy Tabalba*,^[11] wherein the Court proceeded to rule on the election protest brought to it which was dismissed in the trial court due to incomplete payment of docket fees. The Court stated that the trial court had "no basis for the dismissal of petitioner's protest for the simple reason that an election contest is not an ordinary civil action. Consequently, the rules governing ordinary civil actions are not necessarily binding on special actions like an election contest wherein public interest will be adversely affected. x x x. The rules which apply to ordinary civil actions may not necessarily serve the purpose of election cases, especially if we consider the fact that election laws are to be accorded utmost liberality in their interpretation and application bearing in mind always that the will of the people must be upheld. Ordinary civil actions would generally involve private interests while all election cases are, at all times, invested with public interest which cannot be defeated by mere procedural and technical infirmities." The Court, however, in *Rodillas vs. COMELEC*^[12] categorically made a pronouncement that "the requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision to be appealed from would become final and executory as if no appeal was filed at all. The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law."

WHEREFORE, in view of the foregoing, the Order of the Commission on Elections en banc dated February 1, 1996, DISMISSING the instant case for lack of appellate jurisdiction, is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., Regalado, Melo, Puno, Vitug, Mendoza, Hermosisima, Jr., and Torres, Jr., JJ., concur. Padilla, Bellosillo, Kapunan and Francisco, JJ., on leave.

Davide, Jr., J., did not take part in the deliberation, was on sick leave.

Panganiban, J., concur and add that petition is now moot as the term of office of barangay chairmen elected on May 9, 1994 expired on May 31, 1997.

[1] Annex "A," Rollo, pp. 33-39.

[2] Annex "F," *ibid.*, pp. 42-43.

[3] Annex "G," *id.*, pp. 44-45.

[4] Annex "H," *id.*, pp. 46-50; Annex "I," *id.*, pp. 51-52.

[5] Annex "O," *id.*, pp. 71-72.

[6] Annex "A," *id.*, pp. 23-27.

[7] "There shall be a sangguniang barangay in every duly constituted barangay which shall be the legislative body and shall be composed of seven (7) kagawads to be elected by the registered voters of the barangay. The candidate who obtains the highest number of votes shall be the punong barangay x x x." (Section 5, R.A. 6679)

[8] "A sworn petition contesting the election of a barangay official may be filed with the proper municipal or

metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for a barangay office within ten (10) days after the proclamation of the result of the election. The trial court shall decide the election protest within thirty (30) days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten (10) days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the issue within thirty (30) days from receipt of the appeal and whose decision on questions of fact be final and non-appealable. For purposes of the barangay elections, no pre-proclamation cases shall be allowed. (Section 9, *ibid.*)

[9] (a) There must be an actual case or controversy; (b) The question of constitutionality must be raised by the proper party; (c) The constitutional question must be raised at the earliest possible opportunity; and (d) the decision of the constitutional question must be necessary to the determination of the case itself.

[10] Section 3, Rule 22, COMELEC Rules of Procedure states that: "Notice of Appeal — Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

[11] 230 SCRA 205 (1994).

[12] 245 SCRA 702 (1995); citing *Dorego v. Perez* 22 SCRA 8 (1968), and *Bello v. Fernandez* 4 SCRA 135 (1962).

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