

**VICTOR R. MIRANDA, AND JOSE M. FRANCISCO, PETITIONERS, VS.
JESSIE B. CASTILLO, LORENZO S. GAWARAN, THE COMMISSION ON
ELECTIONS, HON. JUDGE LUCENITO TAGLE, EXECUTIVE JUDGE,
RTC, ...**

G.R. No. 126361. June 19, 1997

Ponente: PUNO, J.

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PUNO, J.:

In this petition for certiorari and prohibition, petitioners VICTOR MIRANDA and JOSE M. FRANCISCO seek to annul the September 5, 1996 Resolution of public respondent COMELEC reversing the Order of respondent RTC Judge Lucenito Tagle which dismissed the election protests filed by private respondents.

The facts. In the May 8, 1995 elections, petitioners VICTOR MIRANDA and JOSE FRANCISCO were proclaimed as the duly-elected mayor and vice-mayor, respectively, of Bacoor, Cavite.

On May 24, 1995 private respondents JESSIE B. CASTILLO and LORENZO S. GAWARAN, who also ran for the position of mayor and vice-mayor, respectively, filed election protests contesting petitioners' election with the RTC of Imus, Cavite. These protests were consolidated.

On October 27, 1995, petitioners moved to dismiss the protests on the ground of lack of jurisdiction of the trial court for failure of protestants to pay the P300.00 filing fee. Private respondents, however, claim that the amount of P414.00 they paid were for the filing fees.

On January 24, 1996, the trial court granted the motion and dismissed the protests.[1] It found that no payment was made by private respondents. The amount of P414.00, although denominated as filing fee, corresponded to the docket fee collected pursuant to Section 7(b), Supreme Court Administrative Circular No. 31-90, dated October 15, 1990, for actions where the value of the subject matter cannot be estimated. The trial court cited the case of *Gatchalian v. Court of Appeals*,[2] to the effect that it is the payment of the filing fee that vests jurisdiction on the court over the election protest, not the payment of docket fees for the claim of damages and attorney's fees.[3]

Their motion for reconsideration having been denied, private respondents filed a petition for certiorari with the COMELEC.

In its September 5, 1996 Resolution,[4] the COMELEC reversed the RTC's order of dismissal and directed the latter to continue the proceedings. It ruled that private respondents paid only what was demanded by the RTC Clerk of Court who was duty-bound to assess the correct fees. They were thus in good faith when they relied on and paid the assessment made by the RTC Clerk of Court. The COMELEC cited the case of *Pahilan v. Tabalba*[5] where it was held that incomplete payment of filing fee upon an incorrect assessment by the Clerk of Court is equivalent to substantial compliance of the rules regarding payment of filing fees.[6] The COMELEC ruled that protestants may thus be ordered to pay the additional amount.

Hence this petition for certiorari and prohibition.

While the case is pending before this Court, private respondents (protestants) filed a motion before the sala of respondent RTC Judge Tagle seeking to inhibit[7] the latter from further hearing election protests B-95-2 and B-95-3 on the ground that considerable delay has been caused by his erroneous dismissal of their cases. Petitioners opposed the motion. In the spirit of delicadeza and to avoid any tinge or suspicion of partiality, respondent Judge Tagle, in his October 28, 1996 Order,[8] granted the motion and voluntarily inhibited himself from further hearing the election cases.

In this petition for certiorari and prohibition, petitioners contend that the COMELEC erred: (1) in finding that the filing fees have been duly paid; and, (2) in taking cognizance of private respondent's petition for certiorari questioning the RTC's dismissal of the protest cases since the period to appeal said dismissal has already lapsed.

Anent the first issue, petitioners maintain that there was absolutely no payment of filing fees since a breakdown of the fees paid shows that the amount of P414.00 was for the Judiciary Development Fund (JDF). Private respondents, however, claim that upon filing of their protests, the RTC Clerk of Court assessed them the amount of P414.00 as filing fee, which even exceeds the P300.00 fee required under COMELEC rules.

We find no merit in the petition.

In filing the election protests, private respondents were each assessed the following fees:

FILING FEE (GF) - OR# 4740749 P 32.00

SUMMONS (GF) - OR# 4740875 P 4.00

JDF - OR# 4740369 P414.00

LEGAL RESEARCH FUND FEE - OR# 5031047 P 10.00

VICTIM COMPENSATION FEE - OR# 5031434 P 5.00

P465.00[9]

It would seem from the foregoing that it was the amount of P32.00 which was incorrectly considered by the RTC Clerk of Court as full payment of filing fee for the protest cases. The amount of P414.00 was clearly not intended for the filing fee but for the Judiciary Development Fund, payment of which is mandated under SC Administrative Circular 31-90. Thus, there was an incomplete payment of the filing fees by private respondents in the amount of P32.00. We note that a number of cases involving payment of the incorrect filing fees have been brought before this Court. In fact, the case at bar is similar to the recent case of *Loyola v. COMELEC*[10] where the Clerk of Court likewise assessed the incorrect filing fee of P32.00 and the trial court remedied the situation by requiring the parties to pay the balance of P268.00. In said case, we traced the confusion as to the assessment of the correct fees, thus:

"The key issue is whether the RTC acquired jurisdiction over private respondent's election protest despite the payment, upon the filing thereof, of only a part of the filing fee fixed in Section 9 of Rule 35 of the COMELEC Rules of Procedure which fixes the filing fee at P300. Yet, the Clerk of Court assessed and collected only the sum of P32. Evidently, the Clerk of Court had in mind the former Section 5(a)(11), Rule 141 of the Rules of Court on filing fees. The error of the Clerk of Court could be due to ignorance of Section 9 of Rule 35 of the COMELEC Rules of Procedure and this Court's 4 September 1990 resolution amending Rule 141 of the Rules

of Court on filing fees. Or it could be due to sheer confusion as to which rule would apply in assessing the filing fee considering that the election protest falls within the exclusive original jurisdiction of the Regional Trial Court, in which case the Rules of Court may govern, and that the COMELEC Rules of Procedure was primarily intended to govern election cases before the COMELEC. This ignorance or confusion, however, was not fatal to private respondent's cause. The application by the Clerk of Court of Section 5 of Rule 141 of the Rules of Court substantially vested the RTC with jurisdiction over the election protest. Although this Court had given its imprimatur to said Section 9 of Rule 35 of the COMELEC Rules of Procedure, the failure of the Clerk of Court to take said section into account is a technicality which cannot be allowed to defeat the viability of the election protest." (Emphasis supplied.)

Thus, in the case at bar, it was the amount of P32.00 which was incorrectly assessed by the clerk of court as filing fee. This constitutes an incomplete payment of the P300.00 filing fee required under the COMELEC Rules and correctible by payment of the deficiency in the amount of P268.00.[11] The case of *Gatchalian v. COMELEC*[12] finds no application to the case at bar for in said case there was absolutely no payment of the required fee. The P414.00 paid by private respondents for the Judiciary Development Fund (JDF) could not have been part of the filing fee required under the COMELEC Rules, but was paid pursuant to this Court's Administrative Circular 31-90, dated October 15, 1990, for actions not involving property.

Nonetheless, we reiterate the caveat in *Loyola v. COMELEC*[13] that in view of said case and those of *Pahilan* and *Gatchalian*, the Court would no longer tolerate any mistake in the payment of the full amount of filing fees for election cases filed after the promulgation of the *Loyola* decision on March 25, 1997.

As to the second issue, petitioners contend that under Section 3, Rule 22 of the COMELEC Rules, when the RTC dismissed the protest cases, private respondents' remedy was to file a notice of appeal with the RTC within five (5) days after promulgation of the decision. Instead of appealing the order, respondents filed a petition for certiorari with COMELEC after their period to appeal has already lapsed. Thus, after private respondents lost their right to appeal, COMELEC had no jurisdiction to entertain their petition for certiorari.

Although it is established that certiorari would not lie as a substitute for a lost appeal, yet, time and again, this Court has not allowed a rigid application of this rule where primordial interests of justice would be best served.[14] The hearing of election cases is aimed at ascertaining the true choice of the electorate. In the case at bar, the dismissal of the election protests was improper in the light of current jurisprudence. Procedural technicality should be disregarded for an immediate and final resolution of these cases.

As to the motion of private respondents to inhibit respondent RTC Executive Judge Tagle, we find that the erroneous dismissal of their election protests was a mere error of judgment and, by itself, is not enough to cast suspicion of foul play or intentional delay on the part of respondent judge. Moreover, for an orderly administration of justice, it is best that the revision of ballots, already started by respondent judge, is continued to its finality by the same judge, there being no concrete proof of bias or partiality on his part.

IN VIEW WHEREOF, the petition is DISMISSED. The temporary restraining order issued on November 8, 1996 is LIFTED. The October 28, 1996 Order of public respondent Executive Judge Lucenito N. Tagle, of the Regional Trial Court of Imus, Cavite, Branch XX, voluntarily inhibiting himself from hearing the election cases is SET ASIDE. Executive Judge Tagle is directed to: (1) issue an Order directing private respondents Gawaran and Castillo to pay the deficiency of filing fees for Election Case Nos. B-95-2 and B-95-3, respectively, and; (2) proceed with the resolution of said cases. No costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] See January 24, 1996 Order; Rollo, pp. 42-44.

[2] 245 SCRA 208 [1995].

[3] See Orders dated January 24 and February 26, 1996; Rollo, pp. 42-44 and 56-57.

[4] Rollo, pp. 124-132.

[5] 230 SCRA 205 [1994].

[6] See September 5, 1996 Resolution; Rollo, pp. 124-132.

[7] Rollo, pp. 167-169.

[8] Id., p. 173.

[9] Figures appearing on petitioners' motion to dismiss; Rollo, at p. 40.

[10] G.R. No. 124137, March 25, 1997.

[11] *Pahilan v. Tabalba*, 230 SCRA 205 [1994].

[12] 245 SCRA 208 [1995].

[13] *Supra*.

[14] *Luna v. Court of Appeals*, 216 SCRA 107, 111 [1992]; *Goldloop Properties, Inc. v. Court of Appeals*, 212 SCRA 498, 504 [1992]; *Legarda v. Court of Appeals*, 195 SCRA 418, 426 [1991].

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