

FERDINAND THOMAS M. SOLLER, PETITIONER, VS. COMMISSION ON ELECTIONS, REGIONAL TRIAL COURT OF PINAMALAYAN, ORIENTAL MINDORO (BRANCH 42) AND ANGEL M. SAULONG, RESPONDENTS.*G.R. No. 139853. September 05, 2000*

Ponente: QUISUMBING, J.

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This special civil action for certiorari seeks to annul the resolution promulgated on August 31, 1999, in COMELEC special relief case SPR No. 10-99. The resolution dismissed petitioner's petition to set aside the orders of the Regional Trial Court of Pinamalayan, Oriental Mindoro, dated October 1, 1998 and February 1, 1999, which denied petitioner's motion to dismiss the election protest filed by private respondent against petitioner and the motion for reconsideration, respectively.

Petitioner and private respondent were both candidates for mayor of the municipality of Bansud, Oriental Mindoro in the May 11, 1998 elections. On May 14, 1998, the municipal board of canvassers proclaimed petitioner Ferdinand Thomas Soller duly elected mayor.

On May 19, 1998, private respondent Angel Saulong filed with the COMELEC a "petition for annulment of the proclamation/exclusion of election return".[1] On May 25, 1998, private respondent filed with the Regional Trial Court of Pinamalayan, Oriental Mindoro, an election protest against petitioner docketed as EC-31-98.

On June 15, 1998, petitioner filed his answer with counter-protest. Petitioner also moved to dismiss private respondent's protest on the ground of lack of jurisdiction, forum-shopping, and failure to state cause of action.[2]

On July 3, 1998, COMELEC dismissed the pre-proclamation case filed by private respondent.

On October 1, 1998, the trial court denied petitioner's motion to dismiss. Petitioner moved for reconsideration but said motion was denied. Petitioner then filed with the COMELEC a petition for certiorari contending that respondent RTC acted without or in excess of jurisdiction or with grave abuse of discretion in not dismissing private respondent's election protest.

On August 31, 1999, the COMELEC en banc dismissed petitioner's suit. The election tribunal held that private respondent paid the required filing fee. It also declared that the defect in the verification is a mere technical defect which should not bar the determination of the merits of the case. The election tribunal stated that there was no forum shopping to speak of.

Under the COMELEC Rules of Procedure, a motion for reconsideration of its en banc ruling is prohibited except in a case involving an election offense.[3] Since the present controversy involves no election offense, reconsideration is not possible and petitioner has no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Accordingly, petitioner properly filed the instant petition for certiorari with this Court.

On September 21, 1999, we required the parties to maintain the status quo ante prevailing as of September 17, 1999, the date of filing of this petition.

Before us, petitioner asserts that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction:

[I]

... IN AFFIRMING RESPONDENT RTC'S REFUSAL TO DISMISS PRIVATE RESPONDENT'S ELECTION PROTEST DESPITE HIS (sic) LACK OF JURISDICTION OVER THE SAME BY REASON OF THE FAILURE OF THE PRIVATE RESPONDENT TO PAY ALL THE REQUISITE FILING FEES.

[II]

... IN AFFIRMING RESPONDENT'S RTC'S REFUSAL TO DISMISS PRIVATE RESPONDENT'S ELECTION PROTEST DESPITE THE INSUFFICIENCY OF HIS PETITION IN FORM AND SUBSTANCE AND ITS FAILURE TO STATE A CAUSE OF ACTION.

[III]

...IN AFFIRMING RESPONDENT RTC'S REFUSAL TO DISMISS THE ELECTION PROTEST BELOW ON THE GROUNDS OF FORUM-SHOPPING AND FAILURE TO COMPLY WITH THE SUPREME COURT CIRCULAR REQUIRING A TRUTHFUL CERTIFICATION OF NON-FORUM SHOPPING DESPITE INCONTROVERTIBLE EVIDENCE THEREOF.[4]

In our view, notwithstanding petitioner's formulation of issues, the principal question presented for our resolution is whether or not public respondent COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in not ordering the dismissal of private respondent's election protest.

At the outset, even if not squarely raised as an issue, this Court needs to resolve the question concerning COMELEC's jurisdiction. Unless properly resolved, we cannot proceed further in this case.

Section 3, Subdivision C of Article IX of the Constitution reads:

"The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite the disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decision shall be decided by the Commission en banc."

Thus, in *Sarmiento vs. COMELEC*[5] and in subsequent cases,[6] we ruled that the COMELEC, sitting en banc, does not have the requisite authority to hear and decide election cases including pre-proclamation controversies in the first instance. This power pertains to the divisions of the Commission. Any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void.

As can be gleaned from the proceedings aforestated, petitioner's petition with the COMELEC was not referred to a division of that Commission but was, instead, submitted directly to the Commission en banc. The petition for certiorari assails the trial court's order denying the motion to dismiss private respondent's election protest. The questioned order of the trial court is interlocutory because it does not end the trial court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other.[7] In our view, the authority to resolve petition for certiorari involving incidental issues of election protest, like the questioned order of the trial court, falls within the division of the COMELEC and not on the COMELEC en banc. Note that the order denying the motion to dismiss is but an incident of the election protest. If the principal case, once decided on the merits, is cognizable on appeal by a division of the COMELEC, then, there is no reason why petitions for certiorari relating

to incidents of election protest should not be referred first to a division of the COMELEC for resolution. Clearly, the COMELEC en banc acted without jurisdiction in taking cognizance of petitioner's petition in the first instance.

Since public respondent COMELEC had acted without jurisdiction in this case, the petition herein is without doubt meritorious and has to be granted. But in order to write finis to the controversy at bar, we are constrained to also resolve the issues raised by petitioner, *seriatim*.

Petitioner contends that private respondent's protest should have been dismissed outright as the latter failed to pay the amount of P300.00 filing fee required under the COMELEC rules.[8] Petitioner's contention is supported by Section 9, Rule 35 of the COMELEC Rules of Procedure[9] and corresponding receipts[10] itemized as follows:

P368.00 - Filing fee in EC 31-98, O.R. 7023752;
P 32.00 - Filing fee in EC 31-98, O.R. 7022478;
P 46.00 - Summons fee in EC 31-98, O.R. 7023752;
P 4.00 - Summons fee in EC 31-98, O.R. 4167602;
P 10.00 -- Legal Research Fund fee, O.R. 2595144, and;
P 5.00 -- Victim Compensation Fund, O.R. 4167979

P465.00

Close scrutiny of the receipts will show that private respondent failed to pay the filing fee of P300.00 for his protest as prescribed by the COMELEC rules. The amount of P368.00 for which OR 7023752 was issued for the Judiciary Development Fund as shown by the entries in the cash book of the clerk of court.[11] Thus, only P32.00 with OR 7022478 credited to the general fund could be considered as filing fee paid by private respondent for his protest. A court acquires jurisdiction over any case only upon the payment of the prescribed docket fee.[12] Patently, the trial court did not acquire jurisdiction over private respondent's election protest. Therefore, COMELEC gravely erred in not ordering the dismissal of private respondent's protest case.

We have in a string of cases[13] had the occasion to rule on this matter. In *Loyola vs. COMELEC*, the clerk of court assessed private respondent therein the incorrect filing fee of P32.00 at the time of filing of the election protest. Upon filing his counter-protest, petitioner was assessed to pay the same amount. Subsequently, the trial court remedied the situation by directing the parties to pay the balance of P268.00. On review, we held that the lapse was not at all attributable to private respondent and there was substantial compliance with the filing fee requirement. The error lies in the Clerk's misapplication and confusion regarding application of Section 9 of Rule 35 of the COMELEC Rules of Procedure and this Court's resolution dated September 4, 1990 amending Rule 141 of the Rules of Court. An election protest falls within the exclusive original jurisdiction of the Regional Trial Court, in which case the Rules of Court will apply, and that the COMELEC Rules of Procedure is primarily intended to govern election cases before that tribunal. But the Court declared that this decision must not provide relief to parties in future cases involving inadequate payment of filing fees in election cases. Our decisions in *Pahilan* and *Gatchalian* bar any claim of good faith, excusable negligence or mistake in any failure to pay the full amount of filing fees in election cases.

In *Miranda vs. Castillo*, private respondents each paid per assessment the amount of P465.00 as filing fees. Of this amount, P414.00 was allocated for the JDF, P 10.00 for legal research fund, P5.00 for victim compensation fee, and only the amount of P32.00 was regarded as filing fee. The Court considered the amount as partial payment of the P300.00 filing fee under the COMELEC rules and required payment of the deficiency in the amount of P268.00. But then again, the Court reiterated the caveat that in view of *Pahilan*, *Gatchalian*, and *Loyola* cases we 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 27, 1997.

Clearly then, errors in the payment of filing fees in election cases is no longer excusable. And the dismissal of the present case for that reason is, in our view, called for.

Besides, there is another reason to dismiss private respondent's election protest. We note that the verification of aforesaid protest is defective. In the verification, private respondent merely stated that he caused the preparation of his petition and he has read and understood all the allegations therein.[14] Certainly, this is insufficient as private respondent failed to state that the contents of his election protest are true and correct of his personal knowledge.[15] Since the petition lacks proper verification, it should be treated as an unsigned pleading and must be dismissed.[16]

Further, we find that private respondent did not comply with the required certification against forum shopping. Private respondent successively filed a "petition for annulment of the proclamation/exclusion of election return" and an election protest. Yet, he did not disclose in his election protest that he earlier filed a petition for annulment of proclamation/exclusion of election returns.

It could be argued that private respondent's petition for annulment of proclamation/exclusion of election returns was a pre-proclamation case. The issues raised in that petition pertain to the preparation and appreciation of election returns and the proceedings of the municipal board of canvassers. But note that such petition was filed after the proclamation of petitioner as the winning candidate, thus, the petition was no longer viable, for pre-proclamation controversies may no longer be entertained by the COMELEC after the winning candidates have been proclaimed. It might even be claimed with some reason that private respondent, by resorting to the wrong remedy, abandoned his pre-proclamation case earlier filed.[17]

Nonetheless, private respondent's belief that he no longer had a pending case before the COMELEC because he deemed it abandoned upon filing of his protest is not a valid reason for non-disclosure of the pendency of said pre-proclamation case. Note that the COMELEC dismissed private respondent's pre-proclamation case only on July 3, 1998. Before the dismissal, said case was legally still pending resolution. Similarly, the fact that private respondent's protest was not based on the same cause of action as his pre-proclamation case is not a valid excuse for not complying with the required disclosure in the certification against forum shopping. The requirement to file a certificate of non-forum shopping is mandatory. Failure to comply with this requirement cannot be excused by the fact that a party is not guilty of forum shopping. The rule applies to any complaint, petition, application or other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing any initiatory pleading is required to swear under oath that he has not and will not commit forum shopping. Otherwise we would have an absurd situation, as in this case, where the parties themselves would be the judge of whether their actions constitute a violation of the rule, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of the rule.[18]

Taking into account all the foregoing circumstances in this case, we are persuaded that respondent Regional Trial Court erred and committed grave abuse of discretion in failing to dismiss private respondent's election protest against petitioner. And to reiterate, respondent COMELEC en banc had no jurisdiction to affirm the refusal of respondent trial court to dismiss private respondent's election protest.

WHEREFORE, the instant petition is GRANTED. The assailed RESOLUTION of public respondent COMELEC is hereby ANNULLED AND SET ASIDE. The temporary restraining order issued by this Court on September 21, 1999, is made permanent. The Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 42, is hereby ordered to DISMISS election protest EC No. 31-98. Costs against private respondent.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Pardo, J., no part.

[1] Rollo, pp. 72-81.

[2] Id. at 87-100, 114-117.

[3] Section 1 (d), rule 13, 1993 COMELEC Rules of Procedure, as amended.

[4] Rollo, p. 28.

[5] 212 SCRA 307, 313 (1992).

[6] Abad vs. COMELEC, GR-128877, December 10, 1999; Zarate vs. COMELEC, GR-129096, November 19, 1999.

[7] Atienza vs. Court of Appeals, 232 SCRA 737, 744 (1994).

[8] Id., at 605, 612.

[9] 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 of the Philippines.

[10] Rollo, pp. 112-113, 229, 271, 315, 331, 333, 404, 407.

[11] Id. at 331.

[12] Suson vs. Court of Appeals, 278 SCRA 284, 291 (1997).

[13] Miranda vs. Castillo, 274 SCRA 503 (1997); Loyola vs. COMELEC, 337 Phil 134 (1997); Gatchalian vs. Court of Appeals, 315 Phil 195 (1995); Pahilan vs. Tabalba, 230 SCRA 205 (1994).

[14] Rollo, p. 85.

[15] A.M. No. 00-2-10-SC, effective 1 May 2000 provides that "a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records."

[16] Section 4, Rule 7, 1997 Rules of Civil Procedure.

[17] Laodenio vs. COMELEC, 276 SCRA 705, 713-714 (1997).

[18] Melo vs. Court of Appeals, GR-123686, November 16, 1999, p. 7.

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