

FELOMINO V. VILLAGRACIA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RENATO V. DE LA PUNTA, RESPONDENTS.*G.R. NO. 168296. January 31, 2007*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168296/>

PUNO, CJ:

At bar is a Petition for Certiorari under Rule 64 of the Rules of Court with Urgent Prayer for Issuance of Temporary Restraining Order. Petitioner was proclaimed as winning candidate for the position of Punong Barangay in Barangay Caawigan, Talisay, Camarines Norte, in the July 15, 2002 barangay elections by a margin of six (6) votes.

Private respondent filed an election protest with the Municipal Trial Court of Talisay, Camarines Norte, under Election Case No. 001-2002. After the revision of ballots, the trial court invalidated thirty-four (34) of the ballots for being marked. All 34 marked ballots were deducted from the votes of petitioner.

On December 3, 2003, the trial court adjudged private respondent as the true winner and nullified the proclamation of petitioner, viz.:

WHEREFORE, the Court finds the Protestant Renato dela Punta as the duly elected Punong Barangay of Caawigan, Talisay, Camarines Norte with the total valid vote[s] of 187 or a winning margin of 26 votes.

The earlier proclamation made by the Barangay Board of Canvassers of Precinct No. 15-A and 15-A-2 and 15-A-1 of Barangay Caawigan, Talisay, Camarines Norte is declared null and void.[1]

Petitioner appealed the decision with the First Division of the Commission on Elections (COMELEC) raising for the first time on appeal the issue that the trial court lacked jurisdiction over the election protest for failure of private respondent to pay the correct filing fees.

The First Division, through its Resolution[2] dated September 9, 2004, set aside the decision of the trial court and dismissed the election protest of private respondent for lack of jurisdiction, viz.:

The payment credited to the general fund which could be considered as filing fee is incomplete considering that Section 6 of Rule 37 of the [COMELEC] Rules on Procedure requires that it should be One Hundred (P100.00) Pesos. Hence, the trial court could not have acquired jurisdiction over the [private respondent's] case.[3]

Private respondent moved for reconsideration. In an Order[4] dated October 7, 2004, the First Division elevated the motion for reconsideration to the COMELEC En Banc.

On June 1, 2005, the COMELEC En Banc promulgated its questioned Resolution granting the motion for reconsideration and reinstating the decision of the trial court. It issued a writ of execution[5] on July 22, 2005 ordering petitioner to vacate his post as Punong Barangay of Barangay Caawigan, Talisay, Camarines Norte, in favor of private respondent.

Hence, this petition raising the following issues:

I

WHETHER THE COMMISSION ON ELECTIONS (COMELEC, FOR SHORT) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE SOLLER DOCTRINE IN THE INSTANT CASE[.]

II

WHETHER THE COMELEC ERRED IN CONCLUDING THAT THE USE OF THE WORDS “JOKER”, “QUEEN”, “ALAS”, AND “KAMATIS”, IN MORE THAN ONE BALLOT WOULD CONSTITUTE MARKED BALLOTS.[6]

Petitioner contends that had public respondent followed the doctrine in *Soller v. COMELEC*,^[7] it would have sustained the ruling of the First Division that the trial court lacked jurisdiction to hear the election protest due to private respondent’s failure to pay the correct filing fees.

We disagree. The *Soller* case is not on all fours with the case at bar. In *Soller*, petitioner therein filed with the trial court a motion to dismiss private respondent’s protest on the ground of, among others, lack of jurisdiction. In the case at bar, petitioner actively participated in the proceedings and voluntarily submitted to the jurisdiction of the trial court. It was only after the trial court issued its decision adverse to petitioner that he raised the issue of jurisdiction for the first time on appeal with the COMELEC’s First Division.^[8]

While it is true that a court acquires jurisdiction over a case upon complete payment of the prescribed filing fee, the rule admits of exceptions, as when a party never raised the issue of jurisdiction in the trial court. As we stated in *Tijam v. Sibonghanoy, et al.*, viz.:^[9]

xxx [I]t is too late for the loser to question the jurisdiction or power of the court. xxx [I]t is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

It was therefore error on the part of the COMELEC’s First Division to indiscriminately apply *Soller* to the case at bar. As correctly pointed out by public respondent in its questioned Resolution, viz.:

xxx. Villagracia never assailed the proceedings of the trial court for lack of jurisdiction during the proceedings therein. Instead, he filed an Answer to the Protest on 2 August 2002 and then actively participated during the hearings and revision of ballots and subsequently filed his Formal Offer of Exhibits. The issue on the filing fees was never raised until the Decision adverse to his interest was promulgated by the trial court and only on [a]ppeal to the COMELEC. Necessarily, we apply the case of *Alday vs. FGU Insurance Corporation* where the Supreme Court instructed that “although the lack of jurisdiction of a court may be raised at any stage of the action, a party may be estopped from raising such questions if he has actively taken part in the very proceedings which he questions, belatedly objecting to the court’s jurisdiction in the event that the judgment or order subsequently rendered is adverse to him.” Villagracia is therefore estopped from questioning the jurisdiction of the trial court only on [a]ppeal.^[10]

As to the second issue, petitioner contends that in order to invalidate a ballot for being marked, it must appear that the voter has placed the mark to identify the ballot.^[11] Petitioner argues that the appearance of the words “Joker,” “Alas,” “Queen” and “Kamatis” in more than one ballot cannot identify the ballot of a voter so as to violate the secrecy of votes. Thus, the votes should be counted in his favor.^[12]

There are 34 marked ballots in the case at bar. Fourteen (14) ballots are marked with the word “Joker”; six (6) ballots with the word “Alas”; seven (7) ballots with the word “Queen”; and, seven (7) ballots with the word “Kamatis.” These ballots were all deducted by the trial court from the votes of petitioner. While each of these

words appears in more than one ballot and may not identify a particular voter, it is not necessary that the marks in a ballot should be able to specifically identify a particular voter.[13] We have ruled that the distinction should always be between marks that were apparently carelessly or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification, which invalidates it. The marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter.[14]

In the case at bar, the marks indicate no other intention than to identify the ballots. The observation of public respondent on the appearance of the marks on the questioned ballots is apropos, viz.:

xxx. We take notice of the fact that these marks were all written in the number 7 slot of the list of Kagawad for Sangguniang Barangay. We further take notice that all these marks appear only in ballots wherein the Punong Barangay voted thereon is Jun Villagrancia, the proclaimed winning candidate and herein [petitioner]. It is therefore indubitable that these ballots are indeed marked ballots.[15]

Finally, the present action is one of certiorari under Rule 64 of the Rules of Court where questions of fact cannot be raised. The familiar rule is that findings of fact of the [COMELEC] supported by substantial evidence shall be final and non-reviewable.[16] There is no reason to depart from this rule.

IN VIEW WHEREOF, the petition is DISMISSED. The prayer for a Temporary Restraining Order is DENIED for being moot. The questioned Resolution of the COMELEC En Banc dated June 1, 2005 in EAC No. 1-2004 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Tinga, Garcia, and Velasco, Jr., JJ., concur.

[1] Resolution, 1-2; Rollo, 14-15.

[2] Id. at 1-5; Id. at 14-18.

[3] Id. at 4; Id. at 17.

[4] Annex C to the Petition; Id. at 28.

[5] Annex 11 to the Comment/Opposition to Petitioner's Petition with Prayer for Temporary Restraining Order; Id. at 110-111.

[6] Petition, 5; Id. at 6.

[7] G.R. No. 139853, September 5, 2000, 339 SCRA 685.

[8] Comment/Opposition to Petitioner's Petition with Prayer for Temporary Restraining Order, 7-8; Rollo, 91-92.

[9] No. L-21450, April 15, 1968, 23 SCRA 29.

[10] Resolution, 10-11; Rollo, 40-41. Citation omitted.

[11] Memorandum, 6, citing Valenzuela v. Carlos, 42 Phil. 428; Id. at 139.

[12] Petition, 8-9; Id. at 9-10.

[13] See Ferrer v. De Alban, 101 Phil. 1018 (1957); Arzaga v. Bobis, Sr., No. L-18953, October 30, 1962, 6

SCRA 386.

[14] De Guzman, Jr. v. Sison, A.M. No. RTJ-01-1629, March 26, 2001, 355 SCRA 69.

[15] Resolution, 14; Rollo, 44. Emphases omitted.

[16] See Rule 64, Section 5 of the 1997 Rules on Civil Procedure.

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