

RICARDO C. DUCO, PETITIONER, VS. COMMISSION ON ELECTIONS, FIRST DIVISION; AND NARCISO B. AVELINO, RESPONDENTS.

G.R. No. 183366. August 19, 2009

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

By its April 30, 2008 order issued in EAC (BRGY.) No. 107-2008, the Commission on Elections (COMELEC), through its First Division,[1] dismissed the petitioner's appeal from the decision dated January 7, 2008 of the Municipal Circuit Trial Court of Loay-Albuquerque-Baclayon (MCTC), Branch 13, stationed in Loay, Bohol,[2] due to his failure to perfect his appeal and due to the non-payment of the correct amount of appeal fee as prescribed by the COMELEC Rules of Procedure. Likewise, the COMELEC, First Division, denied his motion for reconsideration on May 22, 2008[3] because he did not pay the motion fees prescribed on his motion for reconsideration.

He now assails the dismissal of the appeal and the denial of the motion for reconsideration, averring that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction by strictly applying its Rules of Procedure.

ANTECEDENTS

On October 29, 2007, simultaneous barangay and sangguniang kabataan (SK) elections were held all over the country. In Barangay Ibabao, Loay, Bohol, the petitioner was proclaimed as the elected Punong Barangay. His opponent, respondent Narciso Avelino, initiated an election protest in the Municipal Circuit Trial Court (MCTC), seeking a recount of the ballots in four precincts upon his allegation that the election results for the position of Punong Barangay were spurious and fraudulent and did not reflect the true will of the electorate.

The MCTC ultimately ruled in favor of respondent Avelino,[4] to wit:

WHEREFORE, the Court grants this petition finding petitioner NARCISO B. AVELINO to be the duly elected Punong Barangay of Barangay Poblacion, Ibabao, Loay, Bohol with a total of 325 votes against protestee RICARDO C. DUCO with a total of 321 votes, or a winning margin of four (4) votes.

Protestee is therefore restrained from assuming the post of Punong Barangay of Barangay Ibabao, Loay, Bohol and from performing the functions of such office.

The counterclaim of protestee RICARDO C. DUCO is hereby ordered DISMISSED in view of the foregoing findings.

SO ORDERED.

Duco filed his notice of appeal on January 25, 2008[5] and paid as appeal fees the amounts of P820.00 under Official Receipt (OR) No. 3879928; P530.00 under OR No. 8054003; and P50.00 under OR No. 0207223.[6]

On April 30, 2008, however, the COMELEC dismissed Duco's appeal,[7] holding:

Pursuant to Section 3, Rule 40 of the COMELEC Rules of Procedure which mandates the payment of appeal fee in the amount of P/3,000.00 and Section 9 (a), Rule 22 of the same Rules which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the instant case for Protestee-Appellant's failure to perfect his appeal within five (5) days from receipt of the assailed decision sought to be appealed due to non-payment of the appeal fee as prescribed under the Comelec Rules of Procedure.

SO ORDERED.

Duco moved for reconsideration, but the COMELEC denied his motion on May 22, 2008,[8] stating:

Protestee-Appellant's "Verified Motion for Reconsideration" filed thru mail on 12 May 2008 seeking reconsideration of the Commission's (First Division) Order dated 30 April 2008 is hereby DENIED for failure of the movant to pay the necessary motion fees under Sec. 7 (f), Rule 40 of the Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130 and for failure to specify that the evidence is insufficient to justify the assailed Order or that the same is contrary to law.

ACCORDINGLY, this Commission (First Division) RESOLVES to DIRECT the Judicial Records Division-ECAD, this Commission, to return to the protestee-appellant the two (2) Postal Money Orders representing belated appeal fees attached to his verified motion for reconsideration in the amounts of Two Thousand Pesos (P2,000.00) and One Thousand Pesos (P1,000.00), respectively.

SO ORDERED.

ISSUES

Undaunted, the petitioner comes to us on certiorari, contending that:

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN STRICTLY APPLYING THE COMELEC RULES OF PROCEDURE, AS AMENDED;

PUBLIC RESPONDENT AGAIN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION TO STRICTLY APPLY COMELEC RESOLUTION NO, 02-0130 DATED 18 SEPTEMBER 2002 WHEN THERE IS NO SHOWING ON THE PART OF THE PUBLIC RESPONDENT THAT ITEM # 3 OF THE SAME WAS COMPLIED WITH.

We have to determine whether or not the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing Duco's appeal and in denying his motion for reconsideration.

RULING OF THE COURT

I

Before delving on the contentions of the petition, we cannot but point out that the assailed resolution dated May 22, 2008 was issued by the First Division when the resolution should have instead been made by the COMELEC en banc due to the matter thereby resolved being the petitioner's motion for reconsideration. The action of the First Division was patently contrary to Sec. 3, Article IX-C of the Constitution, which provides:

Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite 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 decisions

shall be decided by the Commission en banc.

In this connection, Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure, outline the correct steps to be taken in the event motions for reconsideration are filed, to wit:

Sec. 5. How Motion for Reconsideration Disposed Of.--Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.--The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification thereof.

The outlined steps were obviously not followed. There is no showing that the clerk of court of the First Division notified the Presiding Commissioner of the motion for reconsideration within 24 hours from its filing; or that the Presiding Commissioner certified the case to the COMELEC en banc; or that the clerk of court of the COMELEC en banc calendared the motion for reconsideration within 10 days from its certification.

Lest it be supposed that the Court overlooks the violation of the Constitution, we set aside the second assailed resolution (dated May 22, 2008) for being contrary to the Constitution and in disregard of the COMELEC Rules of Procedure. For sure, the First Division could not issue the resolution because the Constitution has lodged the authority to do so in the COMELEC en banc.

II

Nonetheless, we do not remand the motion for reconsideration to the COMELEC en banc for its proper resolution. As we have done in *Aguilar v. COMELEC*,^[9] we are going to resolve herein the propriety of the dismissal of the appeal "considering the urgent need for the resolution of election cases, and considering that the issue has, after all, been raised in this petition."

Under the COMELEC Rules of Procedure, the notice of appeal must be filed within five days after the promulgation of the decision.^[10] In filing the appeal, the appellant is required to pay the appeal fees imposed by Sec. 3, Rule 40,^[11] as amended by COMELEC Resolution No. 02-0130,^[12] namely: (1) the amount of P3,000.00 as appeal fee; (2) the amount of P50.00 as legal research fee; and (3) the amount of P150.00 as bailiff's fee. Pursuant to Sec. 4, Rule 40, of the COMELEC Rules of Procedure, the fees "shall be paid to, and deposited with, the Cash Division of the Commission within the period to file the notice of appeal."

The petitioner timely filed his notice of appeal on January 25, 2008, that is, within five days after the promulgation of the MCTC decision on January 22, 2008. On the same day, he paid P1,400.00 as appeal fee to the Clerk of Court of the MCTC. His payment was, however, short by P1,800.00, based on Sec. 3, Rule 40 of the COMELEC Rules of Procedure, as amended by Resolution No. 02-0130. Moreover, he paid the appeal fee to the MCTC cashier, contrary to the mandate of Sec. 4, Rule 40 of the COMELEC Rules of Procedure that the payment be made to the Cash Division of the COMELEC.

The petition for certiorari lacks merit.

The dismissal of the appeal was in accordance with Sec. 9 (a), Rule 22 of the COMELEC Rules of Procedure, which pertinently states:

Sec. 9. Grounds for Dismissal of Appeal.- The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the correct appeal fee;

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The payment of the deficiency beyond the five-day reglementary period did not cure the defect, because the date of the payment of the appeal fee is deemed the actual date of the filing of the notice of appeal.[13] Accordingly, his appeal, filed already beyond the five-day reglementary period, rendered the decision of the MCTC final and immutable.

Still, the petitioner contends that the COMELEC should have liberally applied its procedural rules in order not to override substantial justice. He claims that he honestly believed in good faith that his appeal fees were sufficient. He alleges that he paid the appeal fees required under A.M. No. 07-4-15-SC, which took effect May 15, 2007, per the certification dated May 19, 2008 of the Clerk of Court II of the MCTC. He submits that the COMELEC should have accepted the postal money order for P3,000.00 remitted with the motion for reconsideration and given him ample time to come up with any deficiency which he was more than willing to pay.

We cannot heed the petitioner's plea.

In *Loyola v. COMELEC*,[14] we emphatically announced that we would bar "any claim of good faith, excusable negligence or mistake in any failure to pay the full amount of filing fees in election cases which may be filed after the promulgation of this decision." [15]

Loyola has been reiterated in *Miranda v. Castillo*,[16] *Soller v. Commission on Elections*,[17] and *Villota v. Commission on Elections*,[18] with the Court repeating the warning that any error or deficit in the payment of filing fees in election cases was no longer excusable.

In *Zamoras v. Court of Appeals*,[19] the petitioner therein timely filed his notice of appeal on December 2, 2004 but paid only P600.00 as appeal fee. On January 17, 2003, the COMELEC's Judicial Records Division directed him to remit the deficiency amount of P2,600.00, which he paid by postal money order on January 28, 2003, allegedly the date on which he received the notice dated January 17, 2003. Nonetheless, the COMELEC issued an order on March 10, 2003 dismissing his appeal for failure to perfect it within the 5-day reglementary period (under Sec. 3 and Sec. 9 (d), Rule 22 of the COMELEC Rules of Procedure) after it was determined that he had received the decision of the trial court on November 29, 2002 but had appealed only on December 9, 2002, or 10 days from his receipt of the decision. He filed a motion for reconsideration by registered mail on March 21, 2003, but did not pay the necessary motion fees required under Sec. 7 (f), Rule 40 of the COMELEC Rules of Procedure. He later on filed another motion for reconsideration on May 16, 2003, also by registered mail, remitting the required fees by postal money order, but the COMELEC still rejected the motion for reconsideration due to the finality of the orders earlier issued. When the COMELEC's actions were challenged, the Court held:

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The subsequent payment of the filing fee on 28 January 2003 did not relieve Zamoras of his mistake. A case is not deemed duly registered and docketed until full payment of the filing fee. Otherwise stated, the date of the payment of the filing fee is deemed the actual date of the filing of the notice of appeal. The subsequent full payment of the filing fee on 28 January 2003 did not cure the jurisdictional defect. The date of payment on 28 January 2003 is the actual date of filing the appeal which is almost two (2) months after Zamoras received the MTCC Decision on 29 November 2002, This is way beyond the 5-day reglementary period to file an appeal. [20]

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Zamoras is not only chargeable with the incomplete payment of the appeal fees but he also failed to remit the

required filing fees for his motion for reconsideration. The payment of the filing fee is a jurisdictional requirement and non-compliance is a valid basis for the dismissal of the case. The subsequent full payment of the filing fee after the lapse of the reglementary period does not cure the jurisdictional defect. Such procedural lapse by Zamoras warrants the outright dismissal of his appeal. This left the COMELEC with no choice except to declare the Orders final and executory. [21]

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At any rate, the plea for a liberal application of technical rules of procedure to promote the ends of justice is undeserving of any sympathy from us. Time and again, we have ruled that the payment of the full amount of docket fee within the period to appeal is a sine qua non requirement for the perfection of an appeal.[22] Such payment is not a mere technicality of law or procedure, but an essential requirement, without which the decision or final order appealed from becomes final and executory, as if no appeal was filed. [23] Moreover, as we observed in *Lazaro v. Court of Appeals*: [24]

xxx the bare invocation of "interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. The Court reiterates that rules of procedure especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. xxx

The petitioner ought to be reminded that appeal is not a right but a mere statutory privilege that must be exercised strictly in accordance with the provisions set by law.[25]

Lastly, the petitioner's claim that the MCTC was not furnished a copy of Resolution No. 02-0130 lacks substance. The resolution was not unknown to the MCTC and to his counsel, because it had already been issued on September 18, 2002. His counsel cannot feign ignorance of the resolution for, as a lawyer, he had the duty to keep himself abreast of legal developments and prevailing or pertinent laws, rules and legal principles.

Having determined that the petitioner's appeal was properly dismissed, the COMELEC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction. In a special civil action for certiorari, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order.[26] Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [27] In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.[28] Alas, the petitioner did not discharge his burden.

III

We consider it timely to note, before closing, that on July 15, 2008, after the second assailed resolution was issued on May 22, 2008, the COMELEC promulgated its Resolution No. 8486, [29] effective on July 24, 2008,[30] ostensibly to clarify the requirement of two appeal fees being separately imposed by different jurisdictions, that is, by the Supreme Court, through A.M. No. 07-4-15-SC, [31] and by the COMELEC, through its own Rules of Procedure, as amended by Resolution No. 02-0130. For the first, the appeal fees are paid to the clerk of court of

the trial court; while, for the latter, the appeal fees are paid to the clerk of court of the COMELEC.

Considering the decisive significance of the perfection of an appeal within the brief span of 5 days from notice of the decision of the trial court, the party aggrieved by the trial court's decision should be instructed that he needs to pay both appeal fees within such period under the existing rules of the Supreme Court and the COMELEC, or else his appeal risks dismissal.

Verily, in *Aguilar v. COMELEC*,^[32] the Court has discerned the impact of Resolution No. 8486 on A.M. No. 07-4-15-SC by observing:

[Resolution No. 8486] is consistent with A.M. No. 07-4-15-SC and the COMELEC Rules of Procedure, as amended. The appeal to the COMELEC of the trial court's decision in election contests involving municipal and barangay officials is perfected upon the filing of the notice of appeal and the payment of the P1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. The non-payment or the insufficient payment of the additional appeal fee of P3,200.00 to the COMELEC Cash Division, in accordance with Rule 40, Section 3 of the COMELEC Rules of Procedure, as amended, does not affect the perfection of the appeal and does not result in outright or ipso facto dismissal of the appeal. Following, Rule 22, Section 9(a) of the COMELEC Rules, the appeal may be dismissed. And pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC may refuse to take action thereon until they are paid and may dismiss the action or the proceeding. In such a situation, the COMELEC is merely given the discretion to dismiss the appeal or not.

Thus, recently, in *Divinagracia, Jr. v. COMELEC*, ^[33] the Court has issued the following dictum for the guidance of the Bench and Bar:

In *Aguilar*, the Court recognized the Comelec's discretion to allow or dismiss a "perfected" appeal that lacks payment of the Comelec-prescribed appeal fee. The Court stated that it was more in keeping with fairness and prudence to allow the appeal which was, similar to the present case, perfected months before the issuance of Comelec Resolution No. 8486.

Aguilar has not, however, diluted the force of Comelec Resolution No. 8486 on the matter of compliance with the Comelec-required appeal fees. To reiterate, Resolution No. 8486 merely clarified the rules on Comelec appeal fees which have been existing as early as 1993, the amount of which was last fixed in 2002. The Comelec even went one step backward and extended the period of payment to 15 days from the filing of the notice of appeal.

Considering that a year has elapsed after the issuance on July 15, 2008 of Comelec Resolution No. 8486, and to further affirm the discretion granted to the Comelec which it precisely articulated through the specific guidelines contained in said Resolution, the Court now declares, for the guidance of the Bench and Bar, that for notices of appeal filed after the promulgation of this decision, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are no longer excusable.^[34]

The foregoing dictum forecloses the petitioner's plea for judicial understanding.

ACCORDINGLY, WE dismiss the petition for certiorari for lack of merit.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.

Quisumbing and Ynares-Santiago, JJ., on official leave.

Del Castillo^[**] and Abad^[**], JJ., no part.

[**] Took no part in the deliberation.

[**] Took no part in the deliberation.

[1] Members were Commissioners Romeo A. Brawner and Moslemen T. Macarambon, Sr.; rollo, p. 64.

[2] Rollo, pp. 20-26.

[3] Id., p. 74.

[4] Id., p. 26.

[5] Id., p. 27.

[6] Id., pp. 28-31.

[7] Id., p. 64.

[8] Id., p. 74.

[9] G.R. No. 185140, June 30, 2009.

[10] Sec. 3, Rule 22.

[11] Rule 40, Sec. 3, provides:

Section 3. Appeal Fees- The appellant in election cases shall pay an appeal fee as follows:

(a) xxx xxx xxx

(b) Election cases appealed from courts of limited jurisdiction..... P500.00

In every case, a legal research fee of P20.00 shall be paid by the appellant in accordance with Section 4, Republic Act No. 3870, as amended.

[12] Issued on September 18, 2002.

[13] Zamoras v. Court of Appeals, G. R. No. 158610, November 12, 2004, 442 SCRA 397, 404-405.

[14] 337 Phil 134.

[15] Id., at p. 142.

[16] G. R. No. 126361, June 19, 1997, 274 SCRA 503.

[17] 394 Phil 197.

[18] 415 Phil 87.

[19] Supra.

[20] At pp. 404-405.

[21] At p. 406.

[22] Meatmasters International Corporation v. Lelis Integrated Development Corporation, 452 SCRA 626, 630.

[23] Caspe v. Court of Appeals, G. R. No. 142535, June 15, 2006, 490 SCRA 588, 591.

[24] 386 Phil 412, 417-418.

[25] *Caspe v. Court of Appeals*, id., at p. 590.

[26] *Suliguin v. Commission on Elections*, G. R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

[27] *Reyes-Tabujara v. Court of Appeals*, G. R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

[28] *Malinias v. COMELEC*, 439 Phil 319, 330.

[29] In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment of Filing Fees for Appealed Cases involving Barangay and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts.

[30] The seventh day following the publication in Philippine Star and Manila Standard Today of Resolution No. 8486, pursuant to its effectivity clause.

[31] Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials.

[32] G. R. No. 185140, June 30, 2009.

[33] G. R. Nos. 186007 and 186016, July 27, 2009.

[34] Emphases appear in the original text.

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