

CARMELINDA C. BARRO,PETITIONER, THE COMMISSION ON ELECTIONS (FIRST DIVISION); HON. DELIA P. NOEL-BERTULFO, IN HER CAPACITY AS PRESIDING JUDGE OF THE MUNICIPAL TRIAL COURT, PALOM...

G.R. No. 186201. October 09, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for certiorari[1] alleging that the First Division of the Commission on Elections (COMELEC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated November 25, 2008 and January 9, 2009. The Order[2] dated November 25, 2008 dismissed petitioner's appeal for failure to pay the appeal fee prescribed by the COMELEC Rules of Procedure within the reglementary period. The Order[3] dated January 9, 2009 denied petitioner's motion for reconsideration.

The facts are as follows:

Petitioner Carmelinda C. Barro and private respondent Elpedio P. Continedas, Jr. were candidates for Punong Barangay of Barangay Plaridel, Palompon, Leyte during the October 29, 2007 synchronized Barangay and Sangguniang Kabataan Elections. Petitioner garnered 150 votes, while respondent garnered 149 votes. The Barangay Board of Canvassers proclaimed petitioner as the duly elected Punong Barangay, winning by a margin of only one vote.

On November 5, 2007, private respondent filed an election protest before the Municipal Trial Court of Palompon, Leyte (trial court), impugning the result of the canvass in two precincts of the barangay.

After the revision of ballots, the trial court found that petitioner and respondent both garnered 151 votes.

In its Decision[4] dated May 5, 2008, the trial court held:

In sum, the Protestant is credited with three (3) votes and the Protestee with two (2) votes of the contested votes.

The three (3) credited votes added to the 148 votes of the protestant equals 151 votes. The two (2) credited votes added to the 149 votes of the protestee equals 151 votes. The protestant and the protestee, therefore, received the same number of votes.

It appearing that the Protestant and the Protestee received the same number of votes for the position of Barangay Chairman of Brgy. Plaridel, Palompon, Leyte, there shall be a drawing of lots and the party favored by luck shall be proclaimed as the duly-elected Barangay Chairman of Barangay Plaridel, Palompon, Leyte.[5]

On May 13, 2008, petitioner filed a Notice of Appeal[6] with the trial court and she stated in her petition that she also paid the appeal fee required under Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (A.M. No. 07-4-15-SC).[7] Thereafter, the

records of the case were forwarded to the COMELEC.

On November 25, 2008, the First Division of the COMELEC issued an Order dismissing petitioner's appeal for failure to pay the appeal fee, thus:

Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of P3,000.00 within the period to file the notice of appeal, 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 appeal for Protestee-Appellant's failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five (5)-day reglementary period.[8]

On December 15, 2008, petitioner filed a Motion for Reconsideration[9] of the Order dated November 25, 2008. On the same date, she also posted Postal Money Order Nos. A0820039317; B0810040373 and J1350301774 in the total sum of P3,200.00 payable to the Cash Division of the COMELEC to cover the appeal fee.

Petitioner's motion for reconsideration was denied by the First Division of the COMELEC in its Order dated January 9, 2009, thus:

Protestee-Appellant's "Motion for Reconsideration" filed thru registered mail on 15 December 2008 and received on 23 December 2008, seeking reconsideration of the Commission's (First Division) Order dated 25 November 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. The Judicial Records Division-ECAD, this Commission, is hereby directed to return to the protestee-appellant the Postal Money Order Nos. A0820039317 in the amount of two thousand pesos (P2,000.00); B0810040373 in the amount of one thousand pesos (P1,000.00) and J1350301774 in the amount of two hundred pesos (P200.00) representing his belated payment of appeal fee.[10]

On February 19, 2009, petitioner filed this petition raising the following issues:

- WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE APPEAL.
- WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER.
- WHETHER OR NOT THE [FIRST DIVISION OF THE COMELEC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ACTING ON THE MOTION FOR RECONSIDERATION WITHOUT ELEVATING THE SAME TO THE COMELEC EN BANC.[11]

The first issue is whether or not the First Division of the COMELEC gravely abused its discretion in dismissing petitioner's appeal.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment amounting to lack of jurisdiction or an arbitrary and despotic exercise of power because of passion or personal hostility.[12] The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[13]

The Court notes that in petitioner's Notice of Appeal,[14] she manifested payment of the appeal fees and other lawful fees required for the appeal per Official Receipt Nos. 7719538 and 7719488. However, the receipts were not attached to the record of the case. In her Petition, petitioner stated that when she filed her Notice of Appeal on

May 13, 2008, she also paid the appeal fee required under Section 9, Rule 14 of A.M. No. 07-4-15-SC.[15] In her Reply,[16] petitioner also stated that she relied on the provision of Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC,[17] which took effect on May 15, 2007, and that she believed in good faith that the said new Rules of Procedure repealed the COMELEC Rules.

Based on petitioner's pleadings and the fact that the trial court gave due course to petitioner's appeal, it may be presumed that petitioner paid the appeal fee of P1,000.00 to the trial court simultaneously with the filing of the Notice of Appeal, despite absence of the receipt showing payment of the appeal fee of P1,000.00.

Petitioner contends in her Reply[18] that the recent case of *Jerry B. Aguilar v. Commission on Elections, et al.*,[19] applies to her case. The Court agrees with petitioner.

In *Aguilar*, petitioner Aguilar won as barangay chairman in the October 29, 2007 barangay elections. An election protest was filed against him with the municipal trial court. The municipal trial court found that Aguilar lost by a margin of one vote; hence, his proclamation was annulled. On April 21, 2008, Aguilar filed a Notice of Appeal and paid the appeal fee of P1,000.00 to the municipal trial court in accordance with A.M. No. 07-4-15-SC. The First Division of the COMELEC dismissed his appeal pursuant to Section 9 (a), Rule 22 of the COMELEC Rules of Procedure for non-payment of the appeal fee of P3,000.00 as required in Sections 3 and 4, Rule 40 of the same Rules. His first and second motions for reconsideration were denied by the First Division of the COMELEC. He filed a petition for certiorari with this Court, which held:

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With the promulgation of A.M. No. 07-4-15-SC, the previous rule that the appeal is perfected only upon the full payment of the appeal fee, now pegged at P3,200.00, to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended, no longer applies.

It thus became necessary for the COMELEC to clarify the procedural rules on the payment of appeal fees. For this purpose, the COMELEC issued on July 15, 2008, Resolution No. 8486, which the Court takes judicial notice of.

x x x x

x x x 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.

Accordingly, in the instant case, the COMELEC First Division, may dismiss petitioner's appeal, as it in fact did, for petitioner's failure to pay the P3,200.00 appeal fee.

Be that as it may, the Court still finds that the COMELEC First Division gravely abused its discretion in issuing the order dismissing petitioner's appeal. The Court notes that the notice of appeal and the P1,000.00 appeal fee were, respectively, filed and paid with the MTC of Kapatagan, Lanao del Norte on April 21, 2008. On that date, the petitioner's appeal was deemed perfected. COMELEC issued Resolution No. 8486 clarifying the rule on the payment of appeal fees only on July 15, 2008, or almost three months after the appeal was

perfected. Yet, on July 31, 2008, or barely two weeks after the issuance of Resolution No. 8486, the COMELEC First Division dismissed petitioner's appeal for non-payment to the COMELEC Cash Division of the additional P3,200.00 appeal fee.

Considering that petitioner filed his appeal months before the clarificatory resolution on appeal fees, petitioner's appeal should not be unjustly prejudiced by COMELEC Resolution No. 8486. Fairness and prudence dictate that the COMELEC First Division should have first directed petitioner to pay the additional appeal fee in accordance with the clarificatory resolution, and if the latter should refuse to comply, then, and only then, dismiss the appeal. Instead, the COMELEC First Division hastily dismissed the appeal on the strength of the recently promulgated clarificatory resolution — which had taken effect only a few days earlier. This unseemly haste is an invitation to outrage.

In this case, the appeal to the COMELEC was perfected when petitioner filed her Notice of Appeal and paid the appeal fee of P1,000.00 on May 13, 2008, which was two months before the COMELEC issued Resolution No. 8486,[20] clarifying the rule on the payment of appeal fees. As stated in *Aguilar*, fairness and prudence dictate that the First Division of the COMELEC should have first directed petitioner to pay the additional appeal fee of P3,200.00 in accordance with the clarificatory resolution; and if petitioner refused to comply, only then should the appeal be dismissed. The First Division of the COMELEC should have been more cautious in dismissing petitioner's appeal on the mere technicality of non-payment of the additional appeal fee of P3,200.00 given the public interest involved in election cases.[21]

In view of the foregoing, the Court finds that the First Division of the COMELEC gravely abused its discretion in issuing the Order dated November 25, 2008, dismissing petitioner's appeal. The case is remanded to the First Division of the COMELEC for disposition of the appeal in accordance with this decision, subject to the presentation by petitioner of the receipt evidencing payment of the appeal fee of P1,000.00 as required under Section 9, Rule 14 of A. M. No. 07-4-15-SC.

It must be stated, however, that for notices of appeal filed after the promulgation on July 27, 2009 of *Divinagracia v. Commission on Elections*,[22] errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are no longer excusable.

The second and third issues shall be discussed jointly.

Petitioner contends that the First Division of the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in acting on the motion for reconsideration without elevating the same to the COMELEC en banc, and in denying the motion for reconsideration.

The contention is meritorious.

It is settled that under Section 7, Article IX-A of the Constitution,[23] what may be brought to this Court on certiorari is the decision, order or ruling of the COMELEC en banc. However, this rule should not apply when a division of the COMELEC arrogates unto itself and deprives the en banc of the authority to rule on a motion for reconsideration, like in this case.[24]

Section 3, Article IX-C of the Constitution provides for the procedure for the resolution of election cases by the COMELEC, thus:

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.

The constitutional provision is reflected in Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure as follows:

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.

In this case, the First Division of the COMELEC violated the cited provisions of the Constitution and the COMELEC Rules of Procedure when it resolved petitioner's motion for reconsideration of its final Order dated November 25, 2008, which dismissed petitioner's appeal. By arrogating unto itself a power constitutionally lodged in the Commission en banc, the First Division of the COMELEC exercised judgment in excess of, or without, jurisdiction.[25] Hence, the Order issued by the First Division of the COMELEC dated January 9, 2009, denying petitioner's motion for reconsideration, is null and void.

Petitioner stated in her Reply[26] that on April 1, 2009, the First Division of the COMELEC issued an Order declaring the Order dated November 25, 2008 as final and executory, and ordering the issuance of an Entry of Judgment. On April 1, 2009, an Entry of Judgment was issued by the Electoral Contests Adjudication Department.

WHEREFORE, the petition is GRANTED. The Orders dated November 25, 2008 and January 9, 2009 by the First Division of the COMELEC, and the Entry of Judgment issued on April 1, 2009 by the Electoral Contests Adjudication Department are ANNULLED and SET ASIDE. The case is REMANDED to the First Division of the Commission on Elections for disposition in accordance with this Decision.

No costs.

SO ORDERED.

Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, and Abad, JJ., concur.

Puno, C.J., on official leave.

Quisumbing, and Chico-Nazario, JJ., on leave.

[1] Under Rule 64 in relation to Rules 65 of the Rules of Court.

[2] Rollo, p. 26.

[3] Id. at 27.

[4] Id. at 46-54.

[5] Id. at 53-54.

[6] Id. at 55-58.

[7] Rule 14, Sec. 9. Appeal fee. -- The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.

[8] Rollo, p. 26.

[9] Id. at 28-35.

[10] Id. at 27.

[11] Id. at 16.

[12] Batul v. Bayron, 468 Phil. 131, 148 (2004).

[13] Id.

[14] Supra note 6.

[15] Rule 14, Sec. 9. Appeal fee. -- The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.

[16] Rollo, pp. 97-100.

[17] Rule 14, Sec. 8. Appeal. -- An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

Rule 14, Sec. 9. Appeal fee. -- The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.

[18] Rollo, pp. 103-110.

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

[20] COMELEC RESOLUTION NO. 8486

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

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective barangay officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure for instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

Section 8. Appeal. -- An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

Section 9. Appeal fee. -- The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (P1,000.00), simultaneously with the filing of the notice of appeal.

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at P3,200.00 in COMELEC Minute

Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the required appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to DIRECT as follows:

1. That if the appellant had already paid the amount of P1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of P3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

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; . . .

2. That if the appellant failed to pay the P1,000.00 -- appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforesated Section 9(a) of Rule 22 of the Comelec Rules of Procedure.

The Education and Information Department is directed to cause the publication of this resolution in two (2) newspapers of general circulation. This resolution shall take effect on the seventh day following its publication.

[21] Aguilar v. Commission on Elections, *supra* note 19.

[22] G.R. Nos. 186007 & 186016, July 27, 2009.

[23] Art. IX. Sec. 7. Each Commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

[24] Aguilar v. Commission on Elections, *supra* note 19.

[25] *Id.*

[26] Rollo, pp. 103-109.

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