

MATEO R. NOLLEN, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND SUSANA M. CABALLES, RESPONDENTS.

G.R. No. 187635. January 11, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

In this petition for certiorari under Rule 64 in relation to Rule 65, Mateo R. Nollen, Jr. assails and seeks to nullify the Order[1] dated September 22, 2008 of the Commission on Elections (COMELEC) First Division in EAC BRGY 360-2008 and the Resolution[2] of April 2, 2009 of the COMELEC En Banc denying his motion for reconsideration.

The Facts

Respondent Susana M. Caballes and petitioner Mateo R. Nollen, Jr. were candidates for punong barangay of Gibanga, Sariaya, Quezon in the October 29, 2007 barangay elections. Having garnered four hundred and fifty-six (456) votes as against the four hundred and forty-eight (448) votes Caballes obtained, Nollen was declared as the punong barangay-elect.

Dissatisfied with the result, Caballes instituted an election protest with the Municipal Trial Court (MTC) in Sariaya, Quezon. On June 3, 2008, the MTC rendered a decision declaring protestant Caballes as punong barangay-elect, having garnered four hundred fifty-six (456) votes, or five (5) votes more than the four hundred fifty-one (451) votes of Nollen.

Unable, as to be expected, to admit defeat, Nollen filed on June 5, 2008 his notice of appeal and paid the MTC the appeal fee of PhP 1,000.

Following the elevation of the MTC's records to the COMELEC, the First Division of the COMELEC, by Order of September 22, 2008 in EAC BRGY 360-2008, dismissed Nollen's appeal for his failure to pay the appeal fee of PhP 3,000 prescribed by Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure within the reglementary period of five (5) days.

From the above order, Nollen moved for reconsideration, praying for the liberal interpretation of the rules, but stating in the same breath that his PhP 1,000 appeal fee payment was sufficient to perfect his appeal.[3] To still require him to pay the additional amount of PhP 3,000 as appeal fee and a bailiff fee of PhP 200 on top of what he already paid the MTC, would amount, so he claimed, to a denial of his right to due process. On October 6, 2008, Nollen, despite his earlier avowal to pay his deficiency only if the COMELEC En Banc would reconsider the dismissal order of the First Division, paid the poll body's Cash Division the amount of PhP 3,200.

Ruling of the COMELEC En Banc

By Resolution[4] dated April 2, 2009, the COMELEC En Banc denied Nollen's motion for reconsideration on the

rationalization that, while he timely filed his notice of appeal and simultaneously paid the Php 1,000 appeal fee with the MTC on June 5, 2008, the appeal would be deemed duly registered and docketed only upon full payment of the filing fee to the COMELEC. By its ruling, the COMELEC En Banc evidently had in mind *Zamoras v. COMELEC*,^[5] among other cases.^[6] And citing jurisprudence, the COMELEC held that the error in the payment of filing fees in election cases is no longer excusable.^[7]

The Issue

Hence, this recourse on the singular issue of whether or not the COMELEC--in first dismissing Nollen's appeal from the MTC and then denying his motion for reconsideration--acted without or in excess of its jurisdiction or with grave abuse of discretion, amounting to lack, or in excess, of jurisdiction.

The Court's Ruling

The petition is meritorious.

Pending resolution of this petition, several relevant incidents transpired bearing on the payment of the appeal fees imposed by different rules in election cases. Payment of appeal fees in appealed election protest cases is now separately required by the Rules of Court and Sec. 3, Rule 40 of the COMELEC Rules of Procedure, as amended by Resolution No. 02-0130, Series of 2002, a situation not obtaining previously. The Court, thus, deems it right to put things in proper perspective.

As may be recalled, the Court, in *Miranda v. Castillo*,^[8] held that in election protest cases, the incomplete payment of the filing fee required by the COMELEC Rules is correctible by the payment of the deficiency. Earlier, the Court did not dismiss an election protest case for incomplete payment of the COMELEC-imposed filing fee arising from incorrect assessment by the clerk of court.^[9] Then came *Zamoras*,^[10] a 2004 case in which the petitioner failed to fully pay the COMELEC-prescribed appeal fee of Php 3,200 exacted under COMELEC Resolution No. 02-0130, Series of 2002. There, the Court held, "The subsequent payment of the filing fee [two months after *Zamoras* received a copy of the MTC's decision] x x x did not relieve *Zamoras* of his mistake. A case is not deemed 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."

On May 15, 2007, the Court issued A.M. No. 07-4-15-SC providing the "Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials." Among other things, it required the payment of a Php 1,000 appeal fee upon the filing of a notice of appeal. Secs. 8 and 9 of A.M. No. 07-4-15-SC provide:

SEC. 8. Appeal.--An aggrieved party may appeal the decision to the [COMELEC] within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision x x x.

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 (Php 1,000), simultaneously with the filing of the notice of appeal.

In a bid to untangle the confusion in the implementation of its procedural rules engendered by the requirement of appeal fees separately assessed under the Rules of Court and its Rules of Procedures, the COMELEC issued on July 15, 2008 Resolution No. 8486, providing as follows:

- That if the appellant had already paid the amount of Php 1,000 before the Regional Trial Court, x x x [MTC] x x x within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure on Election Contests Before the Court Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal is given due course by the Court, said appellant is required to pay the COMELEC appeal fee of P3,200.00 x x x within a period of fifteen (15) days from the time of 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.

SEC. 9 Grounds for Dismissal of Appeal. The appeal may be dismissed x x x (a) for failure to pay the correct appeal fee x x x.

- That if the appellant failed to pay the PhP 1,000-appeal fee with the lower court within the five-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. x x x (Emphasis added.)

On June 30, 2009, the Court, in *Aguilar v. COMELEC*,^[11] pronounced aptly:

It should be noted from the aforequoted sections [8 and 9] of the Rule that the appeal fee of PhP 1,000 is paid not to the COMELEC but to the trial court that rendered the decision. Thus the filing of the notice of appeal and the payment of the PhP 1,000-appeal fee perfect the appeal consonant with Sections 10 and 11 of the same Rule. Upon the perfection of the appeal, the records have to be transmitted to the x x x COMELEC within 15 days. x x x

x x x x

x x x 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 PhP 3,200 to the COMELEC Cash Division within the period to appeal [five (5) days from notice of the trial court's decision], as stated in the COMELEC Rules of Procedure, as amended, no longer applies.

The non-payment or the insufficient payment of the additional appeal fee of PhP 3,200 to the COMELEC Cash Division x x x 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.

The Court takes judicial notice that the COMELEC, in light of, and expressly advertent to, *Aguilar*, promulgated on August 4, 2009 Resolution No. 8654.^[12] With regard to the determination of the sufficiency and timely payment of the appeal fees as requisite for the perfection of appeals, the Resolution provides:

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to consider and adopt the following guidelines on (a) the payment of appeal fees and (b) the disposition of motions for reconsideration; to wit:

1. 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 PhP 1,000-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 PhP 3,200 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.
2. If the appellant filed his appeal before the effectivity of COMELEC Resolution No. 8486, the appellant shall be directed to pay the additional appeal fee of PhP 3,200 within fifteen (15) days from receipt of notice from the Commission, in accordance with Resolution No. 8486. If the latter should refuse to comply, then, and only then shall the appeal be dismissed. (Emphasis supplied.)

As *Aguilar* stated and COMELEC Resolution No. 8654 reiterated, the payment of the PhP 1,000 appeal fee within five days from the promulgation of the Regional Trial Court or MTC decision technically "perfects" the appeal

from the trial court's decision. Such appeal is not dismissible as a matter of course on account alone of the inadequate payment or nonpayment of the filing fee of PhP 3,200. The legal situation, however, changes if the appellant, in the words of Resolution No. 8654, fails, as directed, to pay the amount within 15 days from receipt of notice from the COMELEC. In the instant case, albeit Nollen paid the PhP 3,200 only in October 2008, or long after his receipt of the June 2008 MTC decision, his appeal may validly be viewed as not fatally belated. COMELEC Resolution No. 8654 is applicable to his appeal, as the appeal was on June 5, 2008, or prior to July 24, 2008 when the more stringent Resolution No. 8486 took effect.

For the sake of laying down clearly the rules regarding the payment of the appeal fee, a discussion of the application of the recent *Divinagracia v. COMELEC*[13] to election contests involving elective municipal and barangay officials is necessary. *Divinagracia* explained the purpose of Resolution No. 8486 which, as earlier stated, the COMELEC issued to clarify existing rules and address the resulting confusion caused by the two appeal fees required, for the perfection of appeals, by the two different jurisdictions: the court and COMELEC. *Divinagracia* stressed that if the appellants had already paid the amount of PhP 1,000 to the lower courts within the five-day reglementary period,[14] they are further required to pay the COMELEC, through its Cash Division, the appeal fee of PhP 3,200 within fifteen (15) days from the time of the filing of the notice of appeal with the lower court. If the appellants failed to pay the PhP 3,200 within the prescribed period, then the appeal should be dismissed.[15] The Court went on to state in *Divinagracia* that *Aguilar*[16] did not "dilute the force of COMELEC Resolution No. 8486 on the matter of compliance with the COMELEC-required appeal fees." [17] The resolution, to reiterate, was mainly issued to clarify the confusion caused by the requirement of payment of two appeal fees.

Divinagracia, however, contained the following final caveat: that "for notice 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." [18]

It cannot be overemphasized, however, that the warning given in *Divinagracia* is inapplicable to the case at bar, since the notice of appeal in the instant case was filed on June 5, 2008. In the strict legal viewpoint, *Divinagracia* contextually finds applicability only in cases where notices of appeal were filed at least after the promulgation of the *Divinagracia* decision on July 27, 2009. Since petitioner paid the appeal fee of PhP 1,000 simultaneously with his filing of his notice of appeal on June 5, 2008, the appeal is considered perfected pursuant to COMELEC Resolution No. 8654, taking it beyond the ambit of *Divinagracia*. Again, petitioner's failure to pay the remaining PhP 3,200 within the prescribed period cannot be taken against him, since the COMELEC failed to notify him regarding the additional appeal fee, as provided by Resolution No. 8654. Although Nollen, following superseded jurisprudence, failed to pay the filing fee on time, he nonetheless voluntarily paid the remaining PhP 3,200 appeal fee on October 6, 2008. We, thus, credit him for remitting the amount of PhP 3,200, which, applying extant rules and prevailing jurisprudence, cannot be considered as having been belatedly paid. Hence, his petition should be given due course.

WHEREFORE, the petition for certiorari is hereby GRANTED. The Order of the COMELEC First Division dated September 22, 2008 and the Resolution of the COMELEC En Banc dated April 2, 2009 are REVERSED and SET ASIDE. The case is REMANDED to the COMELEC for its review of the assailed June 3, 2008 MTC decision.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, and Villarama, Jr., JJ., concur.

[1] Rollo, p. 27.

[2] Id. at 21-26.

[3] Id. at 39.

[4] Penned by Commissioner Leonardo L. Leonida and concurred in by Chairperson Jose A.R. Melo and Commissioners Elias R. Yusoph, Armando C. Velasco, Lucenito N. Tagle, Nicodemo T. Ferrer, and Rene V. Sarmiento.

[5] G.R. No. 158610, November 12, 2004, 442 SCRA 397.

[6] *One is Melendres, Jr. v. COMELEC*, 377 Phil. 275 (1999).

[7] *Villota v. COMELEC*, 415 Phil. 87 (2001); *Soller v. COMELEC*, G.R. No. 139853, September 5, 2000, 339 SCRA 685; *Miranda v. Castillo*, G.R. No. 126361, June 19, 1997, 274 SCRA 503; *Loyola v. COMELEC*, G.R. No. 124137, March 25, 1997, 270 SCRA 404.

[8] *Supra* note 7.

[9] *Loyola v. COMELEC*, *supra* note 7.

[10] *Supra* note 5.

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

[12] Took effect on the seventh day following its publication in two newspapers of general circulation, and published in the August 7, 2009 issue of the *Daily Star*.

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

[14] Sec. 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.

[15] Sec. 9(a) of Rule 22 of the COMELEC Rules of Procedure.

[16] *Supra* note 11.

[17] *Divinagracia v. COMELEC*, *supra* note 13.

[18] Id.

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