



Republic of the Philippines
Supreme Court
Manila

EN BANC

**BIENVENIDO WILLIAM
D. LLOREN,**

Petitioner,

G.R. No. 196355

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, JJ.:

-VERSUS-

**THE COMMISSION ON
ELECTIONS and
ROGELIO PUA, JR.,**

Respondents.

Promulgated:

SEPTEMBER 18, 2012

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DECISION

BERSAMIN, J.:

This special civil action for *certiorari* seeks to set aside the dismissal by the First Division of the Commission on Elections (COMELEC) of petitioner's appeal taken in his election protest on the ground that he did not pay the appeal fee on time, and the denial of his motion for reconsideration

by the COMELEC *En Banc* on the ground that he did not pay the motion fee on time as required by the rules of the COMELEC.

The dismissal of petitioner's appeal was through the order issued on January 31, 2011 by the First Division of the COMELEC,¹ while the denial of the motion for reconsideration was through the order dated March 16, 2011 of the COMELEC *En Banc*.²

Antecedents

Petitioner and respondent Rogelio Pua, Jr. (Pua) were the candidates for Vice-Mayor of the Municipality of Inopacan, Leyte in the May 10, 2010 Automated National and Local Elections. The Municipal Board of Canvassers proclaimed Pua as the winning candidate with a plurality of 752 votes for garnering 5,682 votes as against petitioner's 4,930 votes.

Alleging massive vote-buying, intimidation, defective PCOS machines in all the clustered precincts, election fraud, and other election-related manipulations, petitioner commenced Election Protest Case (EPC) No. H-026 in the Regional Trial Court (RTC) in Hilongos, Leyte.

In his answer with special and affirmative defenses and counterclaim, Pua alleged that the election protest stated no cause of action, was insufficient in form and content, and should be dismissed for failure of petitioner to pay the required cash deposit.

On November 12, 2012, the RTC dismissed the election protest for insufficiency in form and substance and for failure to pay the required cash deposit,³ *viz*:

¹ *Rollo*, p. 23.

² *Id.* at 25-27.

³ *Id.* at 74-83.

ALL THE FOREGOING CONSIDERED, for insufficiency in form and content as required under Rule 2, Sec. 10 (c) (ii) and (iv) and for failing to make the required cash deposit within the given period, the instant election protest is hereby DISMISSED.

With costs against the protestant.

SO ORDERED.⁴

On November 17, 2010, petitioner filed a notice of appeal in the RTC,⁵ and paid the appeal fee of ₱1,000.00 to the same court. The RTC granted due course to the appeal on November 24, 2010.

On December 2, 2010, the fifteenth day from the filing of the notice of appeal, petitioner remitted the appeal fee of ₱3,200.00 to the COMELEC Electoral Contests Adjudication Department (ECAD) by postal money order.⁶

Through the first assailed order of January 31, 2011, however, the COMELEC First Division dismissed the appeal on the ground of petitioner's failure to pay the appeal fee within the period set under Section 4, Rule 40 of the COMELEC Rules of Procedure,⁷ holding:

The Commission (First division) RESOLVED as it hereby RESOLVES to DISMISS the instant appeal case for protestant-appellant's failure to pay the amount of Three thousand Pesos (Php3,000.00) appeal fee within the reglementary period under the 1993 Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130 dated 18 September 2002.

Section 4, Rule 40 of the Comelec Rules of Procedure mandates the payment of the appeal fee within the period to file the notice of appeal or five (5) days from receipt of the decision sought to be appealed, while Sec. 9, Rule 22 of the same Rules provides that failure to pay the appeal fee is a ground for the dismissal of the appeal. These provisions were reinforced by the ruling of the Supreme Court in the case of *Divinagracia vs. Comelec* (G.R. Nos. 186007 & 186016) promulgated on 27 July 2009. The Ruling declared that for notices of appeal filed after its promulgation,

⁴ Id. at 83.

⁵ Id. at 84-85.

⁶ Id. at 89.

⁷ Id. at 24.

errors in the matters of non-payment or incomplete payment of appeal fees in the court a quo and the Commission on Elections are no longer excusable.

SO ORDERED.

Petitioner moved for the reconsideration of the dismissal on February 14, 2011, and later sent a notice dated March 3, 2011, stating that he paid the motion fee of ₱300.00 by postal money order.

On March 16, 2011, the COMELEC *En Banc* denied petitioner's motion for reconsideration through the second assailed order, *viz:*⁸

xxx the Commission En Banc hereby resolves to DENY the same for protestant-appellant's FAILURE to PAY the required motion fees prescribed under Section 7 (f), Rule 40, Comelec Rules of Procedure, as amended by Comelec Minute Resolution No. 02-0130 dated September 18, 2002, in relation to Section 18, Rule 40, same Comelec Rules.

In the same order of March 16, 2011, the COMELEC *En Banc* directed the Clerk of the Commission, ECAD, to issue an entry of judgment and to record the entry of judgment in the Book of Entries of Judgment.

Aggrieved, petitioner commenced this special civil action for *certiorari* to annul the assailed orders of the COMELEC.

Issue

Petitioner contends that he timely filed his notice of appeal in the RTC and timely paid the appeal fee of ₱1,000.00 on November 17, 2010; and that he also paid the appeal fee of ₱3,200.00 to the COMELEC ECAD on December 2, 2010 within the 15-day reglementary period counted from the filing of the notice of appeal, conformably with Resolution No. 8486 dated July 15, 2008.

⁸ Id. at 28.

In his comment, Pua maintains that petitioner paid the ₱3,200.00 beyond the five-day reglementary period under Section 4, Rule 40 of the COMELEC Rules of Procedure; and that petitioner did not pay the motion fee of ₱300.00 prescribed under Section 7(f), Rule 40 of the same rules. Hence, Pua submits that the dismissal of petitioner's appeal and denial of his motion for reconsideration did not constitute grave abuse of discretion.

The issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders is approached through two questions: *firstly*, the procedural, which concerns the determination of whether or not petitioner timely paid the appeal fee and motion fee under the COMELEC Rules of Procedure; and, *secondly*, the substantive, which delves on whether or not the appeal may still proceed.

Ruling

The petition is meritorious as to the procedural question, but not as to the substantive question.

1.

***Procedural Question:* Petitioner timely perfected his appeal**

The rules on the timely perfection of an appeal in an election case requires two different appeal fees, one to be paid in the trial court together with the filing of the notice of appeal within five days from notice of the decision, and the other to be paid in the COMELEC Cash Division within the 15-day period from the filing of the notice of appeal.

In A.M. No. 07-4-15-SC, the Court promulgated the *Rules of Procedure In Election Contests Before The Courts Involving Elective Municipal and Barangay Officials* (hereafter, the Rules in A.M. No. 07-4-

15-SC), effective on May 15, 2007, to set down the procedure for election contests and *quo warranto* cases involving municipal and *barangay* officials that are commenced in the trial courts. The Rules in A.M. No. 07-4-15-SC superseded Rule 35 (“*Election Contests Before Courts of General Jurisdiction*”) and Rule 36 (“*Quo Warranto Case Before Courts of General Jurisdiction*”) of the 1993 COMELEC Rules of Procedure.

Under Section 8,⁹ of Rule 14 of the Rules in A.M. No. 07-4-15-SC, an aggrieved party may appeal the decision of the trial court to the COMELEC within five days after promulgation by filing a notice of appeal in the trial court that rendered the decision, serving a copy of the notice of appeal on the adverse counsel or on the adverse party if the party is not represented by counsel. Section 9,¹⁰ of Rule 14 of the Rules in A.M. No. 07-4-15-SC prescribes for that purpose an appeal fee of ₱1,000.00 to be paid to the trial court rendering the decision simultaneously with the filing of the notice of appeal.

It should be stressed, however, that the Rules in A.M. No. 07-4-15-SC did not supersede the appeal fee prescribed by the COMELEC under its own rules of procedure. As a result, “the requirement of two appeal fees by two different jurisdictions caused a confusion in the implementation by the COMELEC of its procedural rules on the payment of appeal fees necessary for the perfection of appeals.”¹¹ To remove the confusion, the COMELEC issued Resolution No. 8486,¹² effective on July 24, 2008,¹³ whereby the COMELEC clarified the rules on the payment of the two appeal fees by

⁹ 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.

¹⁰ 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 (₱1,000.00), simultaneously with the filing of the notice of appeal.

¹¹ *Divinagracia, Jr. v. Commission on Elections*, G.R. Nos. 186007 & 186016, July 27, 2009, 594 SCRA 147, 158.

¹² Entitled *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*.

¹³ Resolution No. 8486 was to take effect “on the seventh day following its publication” in two newspapers of general circulation; the effectivity started on July 24, 2008 considering that the publication took place on July 17, 2008.

allowing the appellant to pay the COMELEC's appeal fee of ₱3,200.00 at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC *within a period of 15 days from the time of the filing of the notice of appeal in the trial court*, to wit:

XXXX

1. That if the appellant had already paid the amount of ₱1,000.00 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 ₱3,200.00 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; xxx

2. That if the appellant failed to pay the ₱1,000.00-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 aforestated Section 9 (a) of Rule 22 of the Comelec Rules of Procedure.

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Following the clarification made by the COMELEC in Resolution No. 8486, the Court declared an end to the confusion arising from the requirement of two appeal fees effective on July 27, 2009, the date of promulgation of the ruling in *Divinagracia, Jr. v. Commission on Elections*¹⁴ by announcing 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.**”¹⁵

¹⁴ *Supra*, note 11, at 161.

¹⁵ Italics and bold emphasis are part of the original text of the ruling.

In light of the foregoing, the Court finds that petitioner perfected his appeal of the decision rendered on November 12, 2012 by the RTC in EPC No. H-026. He filed his notice of appeal and paid the ₱1,000.00 appeal fee to the RTC on November 17, 2012. Such filing and payment, being done within five days from the promulgation of the decision, complied with Section 8, Rule 14 of the Rules in A.M. No. 07-4-15-SC. Thereafter, he paid the appeal fee of ₱3,200.00 to the COMELEC Cash Division through the ECAD on December 2, 2012. Such payment, being done on the fifteenth day from his filing of the notice of appeal in the RTC, complied with Resolution No. 8486.

Yet, in determining whether petitioner had perfected his appeal, the COMELEC First Division relied on Section 4 of Rule 40 of its 1993 Rules of Procedure, a provision that required an appellant to pay the appeal fee prescribed by the COMELEC *within the period to file the notice of appeal*.¹⁶

The reliance on Section 4 of Rule 40 of the COMELEC 1993 Rules of Procedure was plainly arbitrary and capricious. The COMELEC First Division thereby totally disregarded Resolution No. 8486, whereby the COMELEC *revised* Section 4 of Rule 40 of the 1993 Rules of Procedure by expressly allowing the appellant “to pay the Comelec appeal fee of ₱3,200.00 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.” In effect, the period of perfecting the appeal in the COMELEC was extended from the original period of five days counted from promulgation of the decision by the trial court to a longer period of 15 days reckoned from the filing of the notice of appeal in the trial court.

¹⁶ Section 4. *Where and When to Pay*. - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission **within a period to file the notice of appeal**.

Accordingly, the order issued on January 31, 2011 by the COMELEC First Division was null and void for being contrary to Resolution No. 8486.

As to the order issued on March 16, 2011 by the COMELEC *En Banc*, the Court finds that the COMELEC *En Banc* was capricious and arbitrary in thereby denying petitioner's motion for reconsideration on the ground that he did not simultaneously pay the motion fee of ₱300.00 prescribed by Section 7(f), Rule 40 of the 1993 Rules of Procedure.

The non-payment of the motion fee of ₱300.00 at the time of the filing of the motion for reconsideration did not warrant the outright denial of the motion for reconsideration, but *might* only justify the COMELEC to refuse to take action on the motion for reconsideration until the fees were paid, or to dismiss the action or proceeding when no full payment of the fees is ultimately made. The authority to dismiss is discretionary and permissive, not mandatory and exclusive, as expressly provided in Section 18, Rule 40 of the 1993 Rules of Procedure itself, to wit:

Section 18. *Non-payment of Prescribed Fees.* - If the fees above prescribed are not paid, the Commission **may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.** (emphasis supplied)

The evident intent of rendering Section 18, Rule 40 of the 1993 Rules of Procedure discretionary and permissive is to accord the movant an opportunity to pay the motion fee in full. The dire outcome of denial of the motion for reconsideration should befall the movant only upon his deliberate or unreasonable failure to pay the fee in full. It appears, however, that petitioner's failure to pay the motion fee simultaneously with his filing of the motion for reconsideration was neither deliberate nor unreasonable. He actually paid the fee by postal money order on March 3, 2011.¹⁷

¹⁷ *Rollo*, p. 95 (it is noted that the official receipt bears the date of March 16, 2011 as date of receipt).

In light of his having complied with the requirements for a timely perfection of the appeal in both the RTC and the COMELEC, and considering that he actually paid the motion fee, the COMELEC *En Banc*'s strict and rigid application of the discretionary and permissive rule amounted to giving undue primacy to technicality over substance. That outcome would not be just to petitioner, for the COMELEC *En Banc* would close its eyes to the patent error committed by the First Division in entirely ignoring Resolution No. 8486. Accordingly, the assailed order of March 16, 2011 is another nullity to be struck down.

2.

Substantive Question:
Petitioner's election protest lacks merit

Nonetheless, we affirm the dismissal by the RTC of EPC No. H-026 for being in accord with the Rules in A.M. No. 10-4-1-SC.

Section 10(c), Rule 2 of the Rules in A.M. No. 10-4-1-SC pertinently provides as follows:

Section 10. *Contents of the protest or petition.*—

xxxx

c. An election protest shall also state:

(i) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office;

(ii) the total number of precincts in the municipality;

(iii) the protested precincts and votes of the parties in the protested precincts per the Statement of Votes by Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and

(iv) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts. (Emphasis supplied)

As the findings of the RTC show, petitioner did not indicate the total number of precincts in the municipality in his election protest. The omission rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC, to wit:

Section 12. *Summary dismissal of election contests.*—The court shall summarily dismiss, *motu proprio*, an election protest, counter-protest or petition for *quo warranto* on any of the following grounds:

- (a) The court has no jurisdiction over the subject matter;
- (b) **The petition is insufficient in form and content as required under Section 10;**
- (c) The petition is filed beyond the period prescribed in these Rules;
- (d) The filing fee is not paid within the period for filing the election protest or petition for *quo warranto*; and
- (e) **In a protest case where cash deposit is required, the deposit is not paid within five (5) days from the filing of the protest.** (Emphasis supplied)

Likewise, the RTC found that the cash deposit made by petitioner was insufficient. Considering that the Court cannot disturb the findings on the insufficiency of petitioner's cash deposit made by the trial court, that finding was another basis for the summary dismissal of the election protest under Section 12.

We note that the summary dismissal of the election protest upon any of the grounds mentioned in Section 12 is mandatory.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for *certiorari*; **ANNULS AND SETS ASIDE** the assailed orders of the COMELEC First Division and the COMELEC *En Banc* respectively dated January 31, 2011 and March 16, 2011; **AFFIRMS** the Decision rendered on November 12, 2010 by the Regional Trial Court dismissing Election Protest Case No. H-026 for insufficiency in form and content of the election protest

as well as for insufficiency of protestant's cash deposit; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

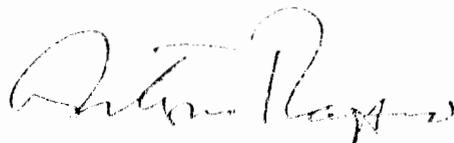


LUCAS F. BERSAMIN
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



DIOSDADO M. FERALTA
Associate Justice

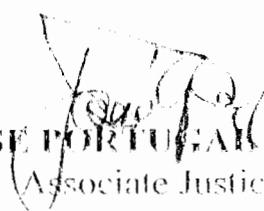


MARIANO C. DEL CASTILLO
Associate Justice

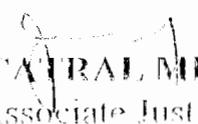


ROBERTO A. ABAD
Associate Justice

(On official leave)
MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.


MARIA LOURDES P. A. SERENO
Chief Justice