

EN BANC

[G.R. No. 172986, October 02, 2009]

**ARNULFO A. AGUILAR, PETITIONER, VS. COURT OF APPEALS,
CIVIL SERVICE COMMISSION AND COMMISSION ON ELECTIONS,
RESPONDENTS.**

D E C I S I O N

BRION, J.:

The present petition provides an occasion to revisit the doctrine that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional; failure to perfect the appeal renders the challenged decision final and executory, and deprives the appellate court or tribunal of the jurisdiction to entertain the appeal and to alter the final decision.

THE CASE

Before us is the petition for review on certiorari^[1] filed by petitioner Arnulfo A. Aguilar (petitioner) to reverse and set aside the decision^[2] dated September 23, 2004 and resolution^[3] dated June 1, 2006 of the Special Former Eighth Division of the Court of Appeals (CA) in CA-G.R. SP No. 68853 entitled "Arnulfo A. Aguilar v. Civil Service Commission and Commission on Elections."

FACTUAL BACKGROUND

The facts of the case, as gathered from the records, are briefly summarized below.

During the 1998 National and Local Elections, the petitioner, an Election Officer (EO) IV of the Commission on Elections (COMELEC)-Navotas, was designated as Acting EO and Chairman of the Municipal Board of Canvassers (MBC) of San Pedro, Laguna. His duties included the canvassing of election returns, the preparation of the certificates of canvass of votes, and the proclamation of the winning candidates.

At 6 o'clock in the evening of May 11, 1998, the MBC convened in the Session Hall of the *Sangguniang Bayan*, San Pedro, Laguna, to receive and tabulate the election returns and certificates of canvass. At about 1:30 a.m. of May 15, 1998, the MBC resolved to suspend its proceedings and to continue at 3:30 p.m. that same day. The petitioner failed to report back to his post when the MBC resumed the canvassing. The MBC eventually proclaimed the winners without the petitioner's participation due to his absence.

On June 2, 1998, Geronima F. Abellera (*Abellera*) filed a letter-complaint^[4] against the petitioner. Abellera questioned the validity of the proclamation of the winning

candidates, since the certificates of canvass and proclamation did not bear the signature of the petitioner as MBC Chairman.

On June 11, 1998, then COMELEC Executive Director Resurreccion Z. Borra directed^[5] the petitioner to explain in writing his alleged abandonment of position as Chairman of the MBC.

On June 16, 1998, the petitioner responded to the directive through a memorandum.^[6] He explained that he did not abandon his post, but he was absent due to illness and that he duly requested relief from duty from the COMELEC Regional Director. The COMELEC *en banc* referred the case to its Law Department for appropriate action.^[7]

On February 4, 1999, the petitioner was formally charged with Ignorance of the Law, Grave Misconduct, Neglect of Duty, Abandonment and Conduct Unbecoming a Public Officer Prejudicial to the Interest of Public Service for his failure to report back to his post as Chairman of the MBC.^[8] He was also preventively suspended for sixty (60) days pending investigation of the case.

In his formal answer dated March 12, 1999, the petitioner explained that his failure to return to his post was due to illness, physical exhaustion, and death threat from the militant group "Alex Boncayao Brigade" (ABB). The petitioner also waived his right to a formal investigation.

Despite the petitioner's waiver, the COMELEC conducted a formal investigation.

THE COMELEC RULING

The COMELEC, through Resolution No. 99-1067 dated May 31, 1999, found the petitioner guilty of Abandonment, Neglect of Duty and Conduct Unbecoming a Public Officer, and imposed on him the penalty of suspension from the service for six (6) months.^[9]

The petitioner received a copy of Resolution No. 99-1067 on August 26, 1999.^[10] On August 30, 1999, the petitioner moved, through a Memorandum, for the reconsideration of the COMELEC resolution and the lifting of his suspension,^[11] but the COMELEC denied the motion in Resolution No. 99-1805 dated October 11, 1999.^[12]

Instead of filing an appeal with the Civil Service Commission (CSC), the petitioner sought, on November 26, 1999, the reconsideration of his suspension through another Memorandum, but the COMELEC denied the motion in Resolution No. 00-0215 dated January 27, 2000.^[13] The petitioner then filed an Urgent Motion for Reinvestigation, but the COMELEC likewise denied this motion under Resolution No. 00-0399 dated February 17, 2000.^[14]

On April 28, 2000, the petitioner filed his Notice of Appeal together with his Appeal Memorandum with the CSC. The petitioner alleged that there was no substantial evidence to hold him liable for the offenses charged against him, and that there was

failure to comply with the requirements of due process.

THE CSC RULING

On August 17, 2001, the CSC issued Resolution No. 011396 dismissing the petitioner's appeal.^[15] The CSC found that the petitioner failed to provide evidentiary support for the reasons he gave for his failure to return to his post. The CSC noted that he failed to submit the required medical certificate showing that he was sick at that time, nor did he communicate with other members of the MBC when it resumed the canvassing in the afternoon of May 15, 1998 until the completion of the canvass on May 16, 1998. It also noted that the alleged ABB death threat did not exist, since the ABB letter simply warned the petitioner not to commit any irregularity that would impair the results of the election. The CSC found no merit in the claimed denial of due process, since the right to the assistance of counsel is not an indispensable requirement of due process, except during custodial investigation and during the trial of the accused.

The CSC, however, modified COMELEC Resolution No. 99-1067 by finding the petitioner guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service and imposing on him the penalty of dismissal from the service. The CSC observed that the petitioner's act of leaving his post as Election Officer and Chairman of the MBC was a serious breach that endangered the public welfare, at the same time that it prejudiced the public service; it affected the efficient canvassing of votes and put into question the legality of the winners' proclamation.

The petitioner moved for a reconsideration of CSC Resolution No. 011396, but the CSC denied the motion in Resolution No. 20015^[16] dated January 3, 2002.

The petitioner then elevated his case to the CA through a petition for review under Rule 43 of the Rules of Court. He prayed that all the resolutions of the CSC and the COMELEC be set aside, and the penalty of dismissal imposed upon him be lifted for lack of factual and legal basis.

THE CA RULING

On September 23, 2004, the CA rendered a decision dismissing the petition on the ground that CSC Resolution No. 011396 had become final and executory without any timely motion for reconsideration having been filed, and could therefore no longer be modified, altered or reversed. The appellate court found that the petitioner's motion for reconsideration with the CSC was filed only on October 1, 2001, more than 15 days from September 7, 2001, when the petitioner received a copy of CSC Resolution No. 011396.

The petitioner moved but failed to secure reconsideration of the CA decision; hence, he came to us through the present petition.

THE PETITION and THE PARTIES' POSITIONS

The petitioner prays for judicial leniency because at stake is not only his employment with the COMELEC but also his means of livelihood. He contends that he filed his motion for reconsideration on September 25, 2001 as indicated by the date stamped on the motion, not October 1, 2001 as declared by the CA. He further argues that when he filed his motion for reconsideration on September 25, 2001 it was only one day late since the fifteen-day period from September 7, 2001, the day he received CSC Resolution No. 011396, fell on September 22, 2001, a Saturday, and he had until September 24, 2001, a Monday, to file his motion.

The petitioner maintains that he is not guilty of abandonment or neglect of duty because his inability to report back for the scheduled resumption of canvass was justified by sickness and death threats from the ABB. In addition, he claims that his request for temporary relief from duty was granted by Atty. Milagros Somera, COMELEC Regional Director for Region IV.

The respondents CSC and COMELEC, through the Office of the Solicitor General (OSG), counter-argue that the petition is defective in form and should be dismissed outright, since it improperly impleads the CA as party respondent in violation of Section 4 of Rule 45 of the Rules of Court. The OSG defends the decision of the CA to dismiss the petition by pointing out that the petitioner filed his motion for reconsideration of CSC Resolution No. 011396 beyond the fifteen-day reglementary period.

The OSG further submits that the CSC correctly found the petitioner guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service, and correctly imposed the penalty of dismissal from the service. It insists that the petitioner's failure to perform his assigned duties and legal obligations prejudiced the public service because it hampered the smooth canvassing of votes and impaired the integrity of the results of the canvassing.

OUR RULING

We find the petition meritorious.

We deal first with the issue of form raised by the respondents.

Formal defects in petitions are given liberal treatment to dispose of cases on the merits rather than on a technicality

We agree with the OSG that the petition erroneously impleads the CA. The correct procedure, as required by Section 4, Rule 45 of the 1997 Rules of Court, is not to implead the lower court that rendered the assailed decision.^[17] However, inappropriately impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal; the rule merely *authorizes* the dismissal of the petition, as its violation is a mere formal

defect,^[18] and even as such is not uncommon.^[19] In those cases we merely called the petitioners' attention to the defect and proceeded to resolve the cases on their merits.

We find no reason why we should not afford the same liberal treatment to the present case. While, unquestionably, we have the discretion to dismiss the appeal for being defective, sound judicial policy dictates that cases are better disposed on the merits rather than on technicality, particularly when the latter approach may result in injustice.^[20] This is in accordance with Section 6, Rule 1 of the Rules of Court^[21] which encourages a reading of the procedural requirements in a manner that will help secure and not defeat the ends of justice.^[22]

We now proceed to the main issue, which simply is, ***did the CA err in dismissing the petitioner's petition for review before it for the late filing of the petitioner's motion for reconsideration with the CSC?***

We answer in the affirmative.

Finality of Judgment Due to the Failure to Seasonably File a Motion for Reconsideration

The CA erred in finding that the petitioner's motion for reconsideration with the CSC was filed only on October 1, 2001, or nine (9) days beyond September 22, 2001 deadline. Our own examination of the records shows that the date of filing with the CSC was September 25, 2001, as indicated by date stamped on the motion.^[23] Since September 22, 2001 fell on a Saturday, the petitioner actually had until September 24, 2001, a Monday, to file the motion for reconsideration, pursuant to Section 1, Rule 22 of the Rules of Court.^[24] Thus, the petitioner was one day late when he filed his motion for reconsideration on September 25, 2001.

On this point, the CA conclusion is correct although it erroneously recognized October 1, 2001 as the date of filing of the motion. Whether with our count or with the CA's, the same result is achieved; the motion was not filed on time, resulting in the finality of the judgment sought to be reconsidered.

Other Reasons for Finality; the Doctrine of Finality of Judgments

Even if we liberally treat the petitioner's one-day tardiness in the filing of his motion for reconsideration, the COMELEC decision nevertheless lapsed into finality for reasons subsequent to the motion for reconsideration. Although the parties did not put these subsequent developments in issue, we are not prevented from delving into these developments, since they affect the jurisdiction of the CSC to entertain the appeal.^[25]

Jurisprudence teaches us that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional.^[26] This rule is