

EN BANC

[G.R. No. 196355, September 18, 2012]

**BIENVENIDO WILLIAM D. LLOREN, PETITIONER, VS. THE
COMMISSION ON ELECTIONS AND ROGELIO PUA, JR.,
RESPONDENTS.**

D E C I S I O N

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:

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 P1,000.00 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 P3,200.00 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, 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 P300.00 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 P1,000.00 on November 17, 2010; and that he also paid the appeal fee of P3,200.00 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.

In his comment, Pua maintains that petitioner paid the P3,200.00 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 P300.00 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 P1,000.00 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 allowing the appellant to pay the COMELEC's appeal fee of P3,200.00 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 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; xxx