

## EN BANC

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

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

### DECISION

**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<sup>[1]</sup> dated September 22, 2008 of the Commission on Elections (COMELEC) First Division in EAC BRGY 360-2008 and the Resolution<sup>[2]</sup> 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.<sup>[3]</sup> 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<sup>[4]</sup> 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*,<sup>[5]</sup> among other cases.<sup>[6]</sup> And citing jurisprudence, the COMELEC held that the error in the payment of filing fees in election cases is no longer excusable.<sup>[7]</sup>

### **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*,<sup>[8]</sup> 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.<sup>[9]</sup> Then came *Zamoras*,<sup>[10]</sup> 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:

1. 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.

2. 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*,<sup>[11]</sup> 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,