

EN BANC

[G.R. No. 187428, October 16, 2009]

**EUGENIO T. REVILLA, SR., PETITIONER, VS. THE COMMISSION
ON ELECTIONS AND GERARDO L. LANOY, RESPONDENTS.**

RESOLUTION

NACHURA, J.:

This is a petition for *certiorari* under Rule 64 of the Rules of Court ascribing grave abuse of discretion to the Commission on Elections (COMELEC) Second Division in EAC (BRGY) No. 148-2008 for issuing its Order dated March 9, 2009, denying petitioner's motion for reconsideration as violative of the 1987 Constitution and the COMELEC Rules of Procedure both mandating that a motion for reconsideration can be disposed only by the COMELEC *en banc*.

The factual background is as follows—

Petitioner Eugenio T. Revilla, Sr. (Revilla) and private respondent Gerardo L. Lanoy (Lanoy) were candidates for *Punong Barangay* of *Barangay* Cabligan, Matanao, Davao del Sur during the October 29, 2007 *barangay* elections. When the votes were counted, the results showed that Revilla garnered 309 votes as against the 307 votes garnered by Lanoy. The *Barangay* Board of Canvassers thus proclaimed Revilla as the duly elected *Punong Barangay* of *Barangay* Cabligan.

Lanoy then filed an election protest before the Second Municipal Circuit Trial Court (MCTC) of Hagonoy-Matanao, Davao del Sur against Revilla, on the ground that the Board of Election Tellers failed to credit in his favor at most 13 votes in the three precincts despite the absence and failure of the watchers of the precincts to object orally and cause their objections to be recorded.

After revision, it appeared that Lanoy garnered 312 votes while Revilla got only 311. Consequently, the MCTC decided in favor of Lanoy.

On March 31, 2008, Revilla filed a notice of appeal from the MCTC decision and paid P1,000.00, the assessed appeal fee. The MCTC gave due course to the notice of appeal in its Order dated March 31, 2008 and ordered the transmittal of the records to the COMELEC for appropriate action.

On December 18, 2008, the COMELEC Second Division issued an Order dismissing the appeal for failure to pay the appeal fee of P3,200.00 in accordance with COMELEC Resolution No. 8486.

On January 23, 2009, Revilla paid the appeal fee and filed a motion for reconsideration of the December 18, 2008 Order.

On February 4, 2009, the COMELEC Second Division denied the motion for reconsideration because only P300.00 was paid as motion fee, not the full P500.00 as required by COMELEC Resolution No. 02-0130.

On February 19, 2009, Revilla paid the P200.00 differential amount of the motion fee and filed a second motion for reconsideration. Upon learning about it, Lanoy filed a motion for execution before the MCTC. Revilla opposed the motion.

On March 9, 2009, the COMELEC Second Division issued its Order denying Revilla's motion, being a second motion for reconsideration; hence, this petition.

The petition should be granted.

It is worthy to note that this case has the same factual backdrop as in *Jerry B. Aguilar v. The Commission on Elections and Romulo R. Insoy*.^[1] In that case, petitioner Aguilar won as *barangay* chairperson of *Barangay* Bansarvil 1, Kapatagan, Lanao del Norte over private respondent Insoy by a one-vote margin and was duly proclaimed. Insoy protested before the Municipal Trial Court (MTC) of Kapatagan, which, after revision, decided in his favor. On April 21, 2008, Aguilar filed his notice of appeal and paid the MTC the appeal fee of P1,000.00. When the COMELEC received the records of the case, the First Division ordered the dismissal of the appeal for failure to pay the proper appeal fee. Aguilar moved for reconsideration, but the COMELEC First Division denied his motion for failure to pay the complete motion fee of P700.00. Aguilar filed another motion for reconsideration, arguing that the COMELEC *en banc* should have ruled upon his motion for reconsideration. The same COMELEC division, however, issued an Order denying the motion, being a second motion for reconsideration which is a prohibited pleading.

We find that *Aguilar* is squarely applicable in this case. We, therefore, hold that the COMELEC Second Division acted with grave abuse of discretion in denying petitioner's motions for reconsideration and dismissing his appeal.

Indeed, the February 4 and March 9, 2009 Orders are null and void as they were issued by a division of the COMELEC, instead of the COMELEC *en banc*, pursuant to Article IX-C, Section 3,^[2] of the 1987 Constitution and to Rule 19, Sections 5^[3] and 6,^[4] of the COMELEC Rules of Procedure. This rule should apply whether the motion fee has been paid or not. It is the COMELEC *en banc*, not the division, which has the discretion either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.^[5]

Considering the urgent need to resolve election cases and since the issue was raised in this petition, we likewise rule that the dismissal of Revilla's appeal was improper. His payment of the appeal fee of P1,000.00 before the MCTC on March 31, 2008^[6] already perfected his appeal pursuant to A.M. No. 07-4-15-SC (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials). The non-payment or the insufficient payment of the additional appeal fee of P3,200.00 to the COMELEC Cash Division^[7] does not affect the perfection of the appeal and does not result in the outright or *ipso facto* dismissal of the appeal. Under Rule 22, Section 9(a), of the COMELEC Rules, the appeal *may* be dismissed. And under 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