

## EN BANC

[ G.R. No. 124137, March 25, 1997 ]

**ROY M. LOYOLA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, ROLANDO ROSAS AND THE REGIONAL TRIAL COURT, BRANCH 89, IMUS, CAVITE, RESPONDENT.**

### D E C I S I O N

**DAVIDE, JR., J.:**

Is full payment of the required filing fee of P300 a jurisdictional requirement in election protests? Stated otherwise, does incomplete payment of filing fee suffice, provided the parties concerned pay the deficiency within the period fixed by the court?

These are the questions that confront us in this special civil action for certiorari to set aside the 21 March 1996 Resolution<sup>[1]</sup> of the Commission on Elections (COMELEC) in SPR No. 4-96 entitled Roy M. Loyola vs. Rolando Rosas and Hon. Eduardo Israel Tanguangco.

The factual and procedural antecedents are related in the challenged Resolution as follows:

Gleaned from the records, it appears that on May 9, 1995, petitioner Roy M. Loyola was proclaimed by the Municipal Board of Canvassers as the duly elected Mayor of the municipality of Carmona, Cavite.

On May 19, 1995, an election protest was filed by herein private respondent Rolando Rosas before the Regional Trial Court, Branch 89 of Bacoor, Cavite, presided by Judge Eduardo Israel Tanguangco. The protest was docketed as EPC No. 95-1.

On 4 January 1996, petitioner Loyola (then protestee) filed a Motion to Dismiss Protest on the ground that protestant (now private respondent) failed to pay the filing fee of P300.00 at the time of the filing of the protest. He contended that the failure of protestant to pay the correct amount of filing fee did not vest jurisdiction on the court to take cognizance over the protest. At this juncture, he cited the case of Gatchalian vs. Court of Appeals, et al., G.R. No. 107979, June 19, 1995, to the effect that it is the payment of the filing fee that vests jurisdiction upon the court over the election protest.

In his opposition, private respondent posited the argument that the factual circumstances obtaining in the case of Gatchalian do not fall squarely with the present case as the latter involves non-payment of

filing fee while the present case contemplates a situation where there was only an incomplete payment of filing fee.

In its order of January 17, 1996, the trial court resolved two (2) motions, namely: (1) protestee's "Motion to Dismiss Protest," and (2) protestant's "Motion for Additional Revision Day and/or Time and to Issue Appropriate Guidelines to Expedite the Revision Process." Accordingly, the court denied the Motion to Dismiss the protest for lack of merit holding that there was only an incomplete payment of the correct filing fee and that protestant, pursuant to the court's order, paid the correct amount on October 16, 1995. With respect to the private respondent's motion, the court said: "x x x, the parties are hereby adjured to direct their respective revisors to exert more efforts to finish the revision proceedings as soon as possible."

By virtue of the trial court's order, petitioner resorted to the instant Petition for Certiorari alleging grave abuse of discretion on the part of herein public respondent Judge in denying his "Motion to Dismiss Protest."

On January 25, 1996, the Commission En Banc issued a Temporary Restraining Order against the respondent Judge directing him to cease and desist from further conducting revision of ballots and hearing Election Case No. 95-1 entitled Rosas vs. Loyola until further orders from the Commission.

On February 5, 1996, private respondent filed his answer alleging, among others, that the case is not a case of non-payment of filing fee but a clear case of incomplete payment of filing fee and not a ground for dismissing the election protest. He advanced the argument that both petitioner and private respondent have complied with the order of the respondent Judge to pay the balance of the correct amount of filing fee for petitioner's counter-protest and for private respondent's election protest.

The COMELEC held that the trial court acquired jurisdiction over the protest pursuant to this Court's ruling in *Pahilan v. Tabalba*,<sup>[2]</sup> where there was merely incomplete payment of the filing fee. It disagreed with petitioner's view that the applicable doctrine was that laid down in *Gatchalian v. Court of Appeals*,<sup>[3]</sup> and ratiocinated as follows:

It cannot be gainsaid that private respondent Rolando Rosas paid the amount of P268.00 on October 16, 1995 representing the balance of the correct amount of filing fee. Consequently, there is no reason why the protest, filed within the ten-day period provided by the law, should not be given due course by the trial court. Besides, private respondent should not be faulted in not paying the correct amount of P300.00 as filing fee as he convincingly made it clear that it was the Clerk of Court of the Regional Trial Court who asked him to pay the amount of P32.00 as filing fee for the protest. Moreover, it is highly preposterous to conclude that private respondent, who has paid other fees other than the questioned filing fee the amount of which is even higher than the correct

filing fee, could deliberately and intentionally pay only an amount of P32.00 as filing fee.

Aggrieved thereby, petitioner filed the instant special action for certiorari under Rule 65 of the Rules of Court contending that respondent COMELEC "gravely abused its discretion amounting to lack of jurisdiction in not sustaining [his] contention and submission that said electoral protest deserves outright dismissal on the ground of lack of jurisdiction of the Regional Trial Court to hear and decide the same." At bottom, he insists that the rule laid down in *Pahilan v. Tabalba* has been abandoned in *Gatchalian v. Court of Appeals*. Pursuant to *Gatchalian*, it is the payment of the filing fee that vests jurisdiction on the court over election protest cases in view of Section 9, Rule 35 of the COMELEC Rules of Procedure, which provides as follows:

SEC. 9. Filing fee. -- No protest, counter-protest, or protest-in-intervention shall be given due course without the payment of the filing fee in the amount of three hundred pesos (P300.00) for each interest.

On the other hand, private respondent claims that it was the Clerk of Court of the RTC who assessed a filing fee of P32, instead of P300, and that petitioner himself likewise paid P32 as filing fee for his counter-protest. Both complied with the order of the RTC requiring them to pay P268 each for the "balance of the correct amount of filing fee." Private respondent further asserts that *Gatchalian* is not applicable, as it involved "non-payment of filing fee," while here, there was only "incomplete payment" of the correct filing fee; hence *Pahilan* applies.

On their part, the public respondents, through the Office of the Solicitor General, point out that petitioner himself paid only P32 as filing fee for his counter-protest, and unconditionally paid the deficiency of P268 after he was also ordered by the RTC to do so, thus, the filing of his petition for certiorari with the COMELEC only on 23 January 1996, or three months after the issuance of the order, was a mere afterthought. They likewise contend that petitioner's reliance on *Gatchalian* is misplaced because in that case "there was absolutely no payment at all of the filing fee;" and that his conclusion that *Gatchalian* superseded *Pahilan* is incorrect since the latter involved an "incomplete payment of the filing fee" and was even cited by the former.

After due deliberation, we find nothing to convince us that public respondent COMELEC committed any abuse of discretion, much less grave, in its challenged resolution. Affirmance of its ruling that public respondent RTC committed no grave abuse of discretion in denying petitioner's Motion to Dismiss Protest is inevitable.

Petitioner never disputed the allegations of private respondent that it was the Clerk of Court of the RTC who assessed the amount of P32 as filing fee at the time of the filing of the election protest; that the same amount was assessed for petitioner's counter-protest; and that both complied with the order directing each of them to pay the deficiency of P268. Petitioner's good faith in filing with the COMELEC a petition for certiorari to challenge the denial of his Motion to Dismiss Protest is obviously suspect. That he resorted to such remedy confirmed a scheme to unduly delay the election protest. This circumstance, however, is not decisive in resolving the merits of the case. We must, nevertheless, reiterate the maxim that he who comes to court must come with clean hands.

The key issue is whether the RTC acquired jurisdiction over private respondent's