

## EN BANC

[ G.R. No. 185140, June 30, 2009 ]

### JERRY B. AGUILAR, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND ROMULO R. INSOY, RESPONDENTS.

#### DECISION

##### NACHURA, J.:

This petition for *certiorari* under Rules 64 and 65, which stems from pertinent facts and proceedings narrated below, assails the issuances of the Commission on Elections (COMELEC) in EAC (BRGY) No. 211-2008.

In the October 2007 *barangay* elections, petitioner Aguilar won the chairmanship of Brgy. Bansarvil 1, Kapatagan, Lanao del Norte, over private respondent Insoy by a margin of one vote. Not conceding his defeat, Insoy timely instituted a protest docketed as Election Case No. 516 in the Municipal Trial Court (MTC) of Kapatagan.

[1] On April 17, 2008, the MTC rendered its Decision [2] finding Insoy, who, during the revision garnered 265 votes as against Aguilar's 264 votes, as the duly elected *punong barangay*. The trial court consequently nullified the proclamation of Aguilar and directed him to vacate the office.

Aggrieved, Aguilar filed on April 21, 2008 his notice of appeal [3] and paid to the trial court the appeal fee of P1,000.00 [4] in accordance with Rule 14, Sections 8 and 9 of the recently promulgated A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials. [5]

When the COMELEC received the records elevated by the trial court, its First Division issued on July 31, 2008 the first assailed Order [6] which pertinently reads:

Pursuant to Sections 3 and 4, Rule 40 of the COMELEC Rules of Procedure which provide for the payment of appeal fee in the amount of P/3,000.00 within the period to file the notice of appeal, and Section 9(a), Rule 22 of the same Rules, which provides that failure to pay the correct appeal fee is a ground for the dismissal of the appeal, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the instant appeal for Protestant-Appellant's (sic) failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

SO ORDERED. [7]

Adversely affected, Aguilar moved for reconsideration, arguing that the newly promulgated A.M. No. 07-4-15-SC only requires the payment of P1,000.00 as

appeal fee.<sup>[8]</sup> The COMELEC First Division, however, issued on September 4, 2008 the second assailed Order<sup>[9]</sup> stating—

Acting on the "*Motion for Reconsideration*" filed by protestee-appellant Jerry B. Aguilar, through registered mail on 13 August 2008 and received by this Commission on 21 August 2008, seeking reconsideration of this Commission's (First Division) Order dated 31 July 2008, this Commission (First Division) RESOLVES to DENY the instant motion for movants' (sic) failure to pay the complete P700.00 motion fee.

SO ORDERED.<sup>[10]</sup>

Unperturbed, Aguilar filed another motion for reconsideration, contending, among others, that the order was null and void because it was issued in violation of the rule that motions for reconsideration should be resolved by the COMELEC *en banc*. On October 6, 2008, the COMELEC First Division issued the third assailed Order,<sup>[11]</sup> which reads in part:

Applying suppletorily Section 2, Rule 52 of the Rules of Court, the second motion for reconsideration filed by protestee-appellant Jerry Aguilar on 25 September 2008 is hereby DENIED for being a prohibited pleading. And considering that the *Motion for Reconsideration* filed by protestee-appellant was denied per Order dated 4 September 2008 by the Commission (First Division) for movant's failure to pay the complete motion fee, the *Order* dated 31 July 2008 is now final and executory.

WHEREFORE, let entry of judgment be issued in the instant case. The Judicial Records Division-ECAD, this Commission, is hereby directed to remand within three (3) days from receipt hereof the entire records of this case to the court of origin for its proper disposition and return to the protestee-appellant the Postal Money Order representing her motion fee in the amount of one thousand one hundred pesos (P/1,100.00) pesos.

SO ORDERED.<sup>[12]</sup>

On October 16, 2008, the COMELEC First Division issued the Entry of Judgment.<sup>[13]</sup>

Faced with imminent ouster from office, petitioner instituted the instant petition to assail the aforementioned issuances of the COMELEC First Division.

Readily discernable is that the challenged September 4 and October 6, 2008 Orders<sup>[14]</sup> were issued not by the COMELEC *en banc* but by one of its divisions, the First Division. Settled is the rule that it is the decision, order or ruling of the COMELEC *en banc* which, in accordance with Article IX-A, Section 7<sup>[15]</sup> of the Constitution, may be brought to this Court on *certiorari*.<sup>[16]</sup> But this rule should not apply when a division of the COMELEC arrogates unto itself, and deprives the *en banc* of the authority to rule on a motion for reconsideration, as in this case. Further, the rule is not ironclad; it admits of exceptions as when the decision or resolution sought to be set aside, even if it were merely a Division action, is an absolute nullity.<sup>[17]</sup>

The invalidity of the September 4 and October 6, 2008 Orders arises from the very fact that they were issued by a division of the COMELEC. The Constitution explicitly establishes, in Article IX-C, Section 3, the procedure for the resolution of election cases by the COMELEC, thus:

Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.<sup>[18]</sup>

The COMELEC Rules of Procedure,<sup>[19]</sup> complementing the constitutional provision, also details the course of action to be undertaken in the event motions for reconsideration are filed; thus, Rule 19, Sections 5 and 6 provide that—

Sec. 5. **How Motion for Reconsideration Disposed Of.**— Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.

Sec. 6. **Duty of Clerk of Court of Commission to Calendar Motion for Reconsideration.**— The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission *en banc* within ten (10) days from the certification thereof.<sup>[20]</sup>

In this case, petitioner's motion for reconsideration of the order dismissing his appeal was not resolved by the COMELEC *en banc*, but by the COMELEC First Division, in obvious violation of the provisions of the Constitution and the COMELEC Rules of Procedure. Stated differently, the division, after dismissing petitioner's appeal, arrogated unto itself the *en banc*'s function of resolving petitioner's motion for reconsideration. In *Soriano, Jr. v. Commission on Elections*,<sup>[21]</sup> we emphasized the rule that a motion to reconsider a decision, resolution, order or ruling of a COMELEC division, except with regard to interlocutory orders, shall be elevated to the COMELEC *en banc*. Here, there is no doubt that the order dismissing the appeal is not merely an interlocutory, but a final order.<sup>[22]</sup> It was, therefore, incumbent upon the Presiding Commissioner of the COMELEC First Division to certify the case to the COMELEC *en banc* within two days from notification of the filing of the motion.

This rule should apply whether the motion fee has been paid or not, as what happened in *Olanolan v. Commission on Elections*.<sup>[23]</sup> Indeed, Rule 40, Section 18<sup>[24]</sup> of the COMELEC Rules of Procedure gives discretion to the COMELEC, in this case, to the *en banc* and not to the division, either to refuse to take action until the motion fee is paid, or to dismiss the action or proceeding.<sup>[25]</sup>

The COMELEC First Division's unceremonious departure from this constitutionally mandated procedure in the disposition of election cases must have brought confusion to the parties, so much so, that petitioner filed a second motion for

reconsideration raising this issue. Yet, the COMELEC First Division, in the further assailed October 6, 2008 Order, committed another obvious error when it again usurped the *en banc*'s authority to resolve motions for reconsideration.

Being a violation of the Constitution and the COMELEC Rules of Procedure, the assailed September 4 and October 6, 2008 Orders are null and void. They were issued by the COMELEC First Division with grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. The abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[26]</sup> Clearly, by arrogating unto itself a power constitutionally lodged in the Commission *en banc*, the COMELEC First Division, in this case, exercised judgment in excess of, or without, jurisdiction.

However, instead of remanding this case to the COMELEC *en banc* for appropriate action on petitioner's motion for reconsideration, we will resolve the propriety of the appeal's dismissal, considering the urgent need for the resolution of election cases, and considering that the issue has, after all, been raised in this petition.

Sections 8 and 9, Rule 14 of A.M. No. 07-4-15-SC<sup>[27]</sup> provide for the following procedure in the appeal to the COMELEC of trial court decisions in election protests involving elective municipal and *barangay* officials:

SEC. 8. *Appeal*. — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

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 (P1,000.00), simultaneously with the filing of the notice of appeal.

Section 8 was derived from Article IX-C, Section 2(2)<sup>[28]</sup> of the Constitution and Rule 40, Section 3, par. 1<sup>[29]</sup> and Rule 41, Section 2(a)<sup>[30]</sup> of the Rules of Court.<sup>[31]</sup> Section 9 was taken from Rule 141,<sup>[32]</sup> Sections 7(l)<sup>[33]</sup> and 8(f)<sup>[34]</sup> of the Rules of Court.<sup>[35]</sup>

It should be noted from the afore-quoted sections of the Rule that the appeal fee of P1,000.00 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 P1,000.00 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 Electoral Contests Adjudication Department of the COMELEC within 15 days. The trial court may only exercise its residual jurisdiction to resolve pending incidents if the records have not yet been transmitted and before the expiration of the period to appeal.<sup>[36]</sup>

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, now pegged at P3,200.00,

to the COMELEC Cash Division within the period to appeal, as stated in the COMELEC Rules of Procedure, as amended,<sup>[37]</sup> no longer applies.

It thus became necessary for the COMELEC to clarify the procedural rules on the payment of appeal fees. For this purpose, the COMELEC issued on July 15, 2008, Resolution No. 8486,<sup>[38]</sup> which the Court takes judicial notice of. The resolution pertinently reads:

WHEREAS, the Commission on Elections is vested with appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, and those involving elective barangay officials, decided by trial courts of limited jurisdiction;

WHEREAS, Supreme Court Administrative Order No. 07-4-15 (Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials) promulgated on May 15, 2007 provides in Sections 8 and 9, Rule 14 thereof the procedure for instituting the appeal and the required appeal fees to be paid for the appeal to be given due course, to wit:

*Section 8. Appeal. - An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.*

*Section 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 (P1,000.00), simultaneously with the filing of the notice of appeal.*

WHEREAS, payment of appeal fees in appealed election protest cases is also required in Section 3, Rule 40 of the COMELEC Rules of Procedure the amended amount of which was set at P3,200.00 in COMELEC Minute Resolution No. 02-0130 made effective on September 18, 2002.

WHEREAS, the requirement of these two appeal fees by two different jurisdictions had caused confusion in the implementation by the Commission on Elections of its procedural rules on payment of appeal fees for the perfection of appeals of cases brought before it from the Courts of General and Limited Jurisdictions.

WHEREAS, there is a need to clarify the rules on compliance with the required appeal fees for the proper and judicious exercise of the Commission's appellate jurisdiction over election protest cases.

WHEREFORE, in view of the foregoing, the Commission hereby RESOLVES to DIRECT as follows:

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