

EN BANC

[G. R. No. 183366, August 19, 2009]

**RICARDO C. DUCO, PETITIONER, VS. COMMISSION ON
ELECTIONS, FIRST DIVISION; AND NARCISO B. AVELINO,
RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

By its April 30, 2008 order issued in EAC (BRGY.) No. 107-2008, the Commission on Elections (COMELEC), through its First Division,^[1] dismissed the petitioner's appeal from the decision dated January 7, 2008 of the Municipal Circuit Trial Court of Loay-Albuquerque-Baclayon (MCTC), Branch 13, stationed in Loay, Bohol,^[2] due to his failure to perfect his appeal and due to the non-payment of the correct amount of appeal fee as prescribed by the COMELEC Rules of Procedure. Likewise, the COMELEC, First Division, denied his motion for reconsideration on May 22, 2008^[3] because he did not pay the motion fees prescribed on his motion for reconsideration.

He now assails the dismissal of the appeal and the denial of the motion for reconsideration, averring that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction by strictly applying its Rules of Procedure.

ANTECEDENTS

On October 29, 2007, simultaneous *barangay* and *sangguniang kabataan* (SK) elections were held all over the country. In Barangay Ibabao, Loay, Bohol, the petitioner was proclaimed as the elected *Punong Barangay*. His opponent, respondent Narciso Avelino, initiated an election protest in the Municipal Circuit Trial Court (MCTC), seeking a recount of the ballots in four precincts upon his allegation that the election results for the position of *Punong Barangay* were spurious and fraudulent and did not reflect the true will of the electorate.

The MCTC ultimately ruled in favor of respondent Avelino,^[4] to wit:

WHEREFORE, the Court grants this petition finding petitioner NARCISO B. AVELINO to be the duly elected Punong Barangay of Barangay Poblacion, Ibabao, Loay, Bohol with a total of 325 votes against protestee RICARDO C. DUCO with a total of 321 votes, or a winning margin of four (4) votes.

Protestee is therefore restrained from assuming the post of Punong Barangay of Barangay Ibabao, Loay, Bohol and from performing the functions of such office.

The counterclaim of protestee RICARDO C. DUCO is hereby ordered DISMISSED in view of the foregoing findings.

SO ORDERED.

Duco filed his *notice of appeal* on January 25, 2008^[5] and paid as appeal fees the amounts of P820.00 under Official Receipt (OR) No. 3879928; P530.00 under OR No. 8054003; and P50.00 under OR No. 0207223.^[6]

On April 30, 2008, however, the COMELEC dismissed Duco's appeal,^[7] holding:

Pursuant to Section 3, Rule 40 of the COMELEC Rules of Procedure which mandates the payment of appeal fee in the amount of P/3,000.00 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 case for Protestee-Appellant's failure to perfect his appeal within five (5) days from receipt of the assailed decision sought to be appealed due to non-payment of the appeal fee as prescribed under the Comelec Rules of Procedure.

SO ORDERED.

Duco moved for reconsideration, but the COMELEC denied his motion on May 22, 2008,^[8] stating:

Protestee-Appellant's "Verified Motion for Reconsideration" filed thru mail on 12 May 2008 seeking reconsideration of the Commission's (First Division) Order dated 30 April 2008 is hereby DENIED for failure of the movant to pay the necessary motion fees under Sec. 7 (f), Rule 40 of the Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130 and for failure to specify that the evidence is insufficient to justify the assailed Order or that the same is contrary to law.

ACCORDINGLY, this Commission (First Division) RESOLVES to DIRECT the Judicial Records Division-ECAD, this Commission, to return to the protestee-appellant the two (2) Postal Money Orders representing belated appeal fees attached to his verified motion for reconsideration in the amounts of Two Thousand Pesos (P2,000.00) and One Thousand Pesos (P1,000.00), respectively.

SO ORDERED.

ISSUES

Undaunted, the petitioner comes to us on *certiorari*, contending that:

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN STRICTLY APPLYING THE COMELEC RULES OF PROCEDURE, AS AMENDED;

PUBLIC RESPONDENT AGAIN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION TO STRICTLY APPLY COMELEC RESOLUTION NO, 02-0130 DATED 18 SEPTEMBER 2002 WHEN THERE IS NO SHOWING ON THE PART OF THE PUBLIC RESPONDENT THAT ITEM # 3 OF THE SAME WAS COMPLIED WITH.

We have to determine whether or not the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing Duco's appeal and in denying his motion for reconsideration.

RULING OF THE COURT

I

Before delving on the contentions of the petition, we cannot but point out that the assailed resolution dated May 22, 2008 was issued by the First Division when the resolution should have instead been made by the COMELEC *en banc* due to the matter thereby resolved being the petitioner's motion for reconsideration. The action of the First Division was patently contrary to Sec. 3, Article IX-C of the Constitution, which provides:

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*.**

In this connection, Sections 5 and 6, Rule 19 of the COMELEC Rules of Procedure, outline the correct steps to be taken in the event motions for reconsideration are filed, to wit:

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.**

The outlined steps were obviously not followed. There is no showing that the clerk of court of the First Division notified the Presiding Commissioner of the motion for reconsideration within 24 hours from its filing; or that the Presiding Commissioner certified the case to the COMELEC *en banc*; or that the clerk of court of the COMELEC *en banc* calendared the motion for reconsideration within 10 days from its certification.

Lest it be supposed that the Court overlooks the violation of the Constitution, we set aside the second assailed resolution (dated May 22, 2008) for being contrary to the Constitution and in disregard of the COMELEC Rules of Procedure. For sure, the First Division could not issue the resolution because the Constitution has lodged the authority to do so in the COMELEC *en banc*.

II

Nonetheless, we do not remand the motion for reconsideration to the COMELEC *en banc* for its proper resolution. As we have done in *Aguilar v. COMELEC*,^[9] we are going to resolve herein the propriety of the dismissal of the appeal "considering the urgent need for the resolution of election cases, and considering that the issue has, after all, been raised in this petition."

Under the COMELEC Rules of Procedure, the *notice of appeal* must be filed within five days after the promulgation of the decision.^[10] In filing the appeal, the appellant is required to pay the appeal fees imposed by Sec. 3, Rule 40,^[11] as amended by COMELEC Resolution No. 02-0130,^[12] namely: (1) the amount of P3,000.00 as appeal fee; (2) the amount of P50.00 as legal research fee; and (3) the amount of P150.00 as bailiff's fee. Pursuant to Sec. 4, Rule 40, of the COMELEC Rules of Procedure, the fees "shall be paid to, and deposited with, the Cash Division of the Commission within the period to file the notice of appeal."

The petitioner timely filed his *notice of appeal* on January 25, 2008, that is, within five days after the promulgation of the MCTC decision on January 22, 2008. On the same day, he paid P1,400.00 as appeal fee to the Clerk of Court of the MCTC. His payment was, however, short by P1,800.00, based on Sec. 3, Rule 40 of the COMELEC Rules of Procedure, as amended by Resolution No. 02-0130. Moreover, he paid the appeal fee to the MCTC cashier, contrary to the mandate of Sec. 4, Rule 40 of the COMELEC Rules of Procedure that the payment be made to the Cash Division of the COMELEC.

The petition for *certiorari* lacks merit.

The dismissal of the appeal was in accordance with Sec. 9 (a), Rule 22 of the COMELEC Rules of Procedure, which pertinently states:

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

The payment of the deficiency beyond the five-day reglementary period did not cure the defect, because the date of the payment of the appeal fee is deemed the actual date of the filing of the *notice of appeal*.^[13] Accordingly, his appeal, filed already beyond the five-day reglementary period, rendered the decision of the MCTC final and immutable.

Still, the petitioner contends that the COMELEC should have liberally applied its procedural rules in order not to override substantial justice. He claims that he honestly believed in good faith that his appeal fees were sufficient. He alleges that he paid the appeal fees required under A.M. No. 07-4-15-SC, which took effect May 15, 2007, per the certification dated May 19, 2008 of the Clerk of Court II of the MCTC. He submits that the COMELEC should have accepted the postal money order for P3,000.00 remitted with the motion for reconsideration and given him ample time to come up with any deficiency which he was more than willing to pay.

We cannot heed the petitioner's plea.

In *Loyola v. COMELEC*,^[14] we emphatically announced that we would bar "any claim of good faith, excusable negligence or mistake in any failure to pay the full amount of filing fees in election cases which may be filed after the promulgation of this decision."^[15]

Loyola has been reiterated in *Miranda v. Castillo*,^[16] *Soller v. Commission on Elections*,^[17] and *Villota v. Commission on Elections*,^[18] with the Court repeating the warning that any error or deficit in the payment of filing fees in election cases was no longer excusable.

In *Zamoras v. Court of Appeals*,^[19] the petitioner therein timely filed his *notice of appeal* on December 2, 2004 but paid only P600.00 as appeal fee. On January 17, 2003, the COMELEC's Judicial Records Division directed him to remit the deficiency amount of P2,600.00, which he paid by postal money order on January 28, 2003, allegedly the date on which he received the notice dated January 17, 2003. Nonetheless, the COMELEC issued an order on March 10, 2003 dismissing his appeal for failure to perfect it within the 5-day reglementary period (under Sec. 3 and Sec. 9 (d), Rule 22 of the COMELEC Rules of Procedure) after it was determined that he had received the decision of the trial court on November 29, 2002 but had appealed only on December 9, 2002, or 10 days from his receipt of the decision. He filed a motion for reconsideration by registered mail on March 21, 2003, but did not pay the necessary motion fees required under Sec. 7 (f), Rule 40 of the COMELEC Rules of Procedure. He later on filed another motion for reconsideration on May 16, 2003, also by registered mail, remitting the required fees by postal money order, but the COMELEC still rejected the motion for reconsideration due to the finality of the orders earlier issued. When the COMELEC's actions were challenged, the Court held: