

EN BANC

[G.R. No. 184268, September 15, 2009]

ERNESTO BATALLA, PETITIONER, VS. COMMISSION ON ELECTIONS AND TEODORO BATALLER, RESPONDENTS.

DECISION

VELASCO JR., J.:

The Case

In a Petition for Certiorari under Rules 65 in Relation to Rule 64 of the Rules of Court, petitioner assails the Order^[1] of the Commission on Elections (Comelec) First Division dated April 3, 2008 dismissing his appeal from the February 12, 2008 Decision^[2] of the Municipal Circuit Trial Court (MCTC), Bacacay, Albay, in Election Case No. B-2007-2, and the Order^[3] of the Comelec *En Banc* dated August 5, 2008 denying his motion for reconsideration.

The Facts

Petitioner Ernesto Batalla (Batalla), who was a former Punong Barangay, and private respondent Teodoro Bataller (Bataller), then incumbent Punong Barangay, were candidates for the position of Punong Barangay or Barangay Chairperson in Barangay Mapulang Daga, Bacacay, Albay during the October 29, 2007 *barangay* elections. During the count, Batalla garnered 113 votes while Bataller garnered 108 votes. Consequently, Batalla was proclaimed the Punong Barangay winner in Barangay Mapulang Daga, Bacacay, Albay.

On November 7, 2007, Bataller filed an election protest,^[4] docketed as Election Case No. B-2007-2, before the MCTC in Bacacay, Albay against Batalla and six members of the Board of Election Tellers in Precincts 107-A and 108-A for Barangay Mapulang Daga. Bataller claimed misappreciation of seven ballots. During the revision on December 7, 2007, Batalla did not protest any ballots.

The Ruling of the MCTC

On February 12, 2008, the trial court rendered its Decision finding that Batalla and Bataller had garnered an equal number of votes. The *fallo* reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring that the protestant [Bataller] and the protestee [Batalla] have received equal number of votes for the position of Punong Barangay of Mapulang Daga, Bacacay, Albay, in the October 29,

2007 barangay election, and the winning candidate between the two shall be proclaimed as elected in accordance with Section 240, Article XIX of the Omnibus Election Code.

SO ORDERED.^[5]

Section 240^[6] of *Batas Pambansa Bilang* 881, as amended, otherwise known as the Omnibus Election Code, provides for the drawing of lots in case of a tie of two or more electoral candidates garnering the same or equal highest number of votes, with the proclamation as winner of the candidate favored by luck.

Of the seven ballots protested, the trial court appreciated five of them in favor of Bataller by applying the neighborhood and intent rules as enunciated in *Ferrer v. Comelec*^[7] and *Velasco v. Commission on Elections*,^[8] and the application of the doctrine of *idem sonans*. Consequently, the MCTC found both Batalla and Bataller garnering an equal number of 113 votes each.

Aggrieved, Batalla timely filed his Notice of Appeal^[9] of the trial court's decision elevating the election protest before the Comelec, docketed as EAC (BRGY.) No. 89-2008.

The Ruling of the Comelec First Division

On April 3, 2008, the Comelec First Division issued the first assailed Order dismissing Batalla's appeal in this wise:

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 [P3,000.00] 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 here RESOLVES to DISMISS the instant case for Protestee-Appellant's [Batalla] failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-(5)-day reglementary period.

SO ORDERED.

Aggrieved further, Batalla elevated before the Comelec *En Banc* the above Order of the Comelec First Division by filing on April 11, 2008 his Motion for Reconsideration^[10] followed by a Supplemental Motion for Reconsideration^[11] on April 30, 2008.

The Ruling of the Comelec *En Banc*

On August 5, 2008, the Comelec *En Banc* issued the second assailed Order affirming

the Comelec First Division's earlier Order dismissing the appeal for Batalla's failure to pay the appeal fee and, moreover, denying his motion for reconsideration for his failure to verify the motion. The second assailed Order, in its entirety, reads:

Acting on the *Motion for Reconsideration* filed via registered mail on April 11, 2008 by protestee-appellant [Batalla], through counsel, seeking reconsideration of the Order issued by the Commission (First Division) on April 3, 2008 dismissing the herein appeal for protestee-appellant's [Batalla] failure to pay the appeal fee as prescribed by the Comelec Rules of Procedure within the five-day reglementary period and the Manifestation filed via registered mail on April 23, 2008 by protestant-appellee [Battaller], through counsel, stating that the Motion for Reconsideration was not verified and therefore inadmissible on record and must be expunged therefrom, and praying that the Order of April 3, 2008 be declared as final, the Commission *En Banc* resolved to:

1. DENY the Motion for Reconsideration for movant's [Batalla] failure to VERIFY the same in accordance with Section 3, Rule 19 of the Comelec Rules of Procedure, which states:

"Rule 19 - Motions for Reconsideration.

Section 3. Form and Contents of Motion for Reconsideration - The motion shall be verified x x x"

2. Declare the Order of April 3, 2008 to have become final and executory as of April 25, 2008, there being no motion for reconsideration to speak of, pursuant to Section 13 (c), Rule 18 of the Comelec Rules of Procedure, to wit:

"Section 13. Finality of Decisions or Resolutions.

x x x x

(c) Unless a motion is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special Actions and Special Cases and after fifteen (15) days in all other actions or proceedings following its promulgation."

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department, is hereby directed to immediately issue an Entry of Judgment and the Chief, Judicial Records Division of the same department, to remand the records of the case to the lower court for its proper disposition.

Let copies of this Order and the Order of April 3, 2008 be furnished to Her Excellency, President Gloria Macapagal-Arroyo, the Secretary, Department of the Interior and Local Government, the Chairman, Commission on Audit and the Secretary, Sangguniang Barangay of Barangay Mapulang Daga, Bacacay, Albay, pursuant to Section 11 (b),

Rule 18 of the Comelec Rules of Procedure.

SO ORDERED.

Consequently, on August 11, 2008, the Comelec Electoral Contests Adjudication Department issued an Entry of Judgment^[12] in EAC No. 89-2008.

The Issues

Thus the instant petition, with Batalla raising the following issues for our consideration:

A. WHETHER OR NOT THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION DISMISSING THE APPEAL ON TWO GROUNDS OF TECHNICALITIES: A) FOR FAILURE ON THE PART OF THE PETITIONER TO PAY THE APPEAL FEE ON TIME; AND B) FAILURE TO VERIFY THE MOTION FOR RECONSIDERATION.

B. WHETHER OR NOT THE FIVE CONTESTED VOTES BE DECLARED VOID AND THE HEREIN PETITIONER BE DECLARED AS THE WINNER IN THE BARANGAY ELECTION LAST OCTOBER 29, 2007.^[13]

The foregoing issues can be summarized into two: *first*, the procedural issue of whether Batalla's appeal ought to be given due course despite the procedural infirmities of belated payment of the appeal fee and the non-verification of his motion for reconsideration; and *second*, the corollary substantive issue—if the appeal is given due course—of whether the appeal is meritorious.

The Court's Ruling

The petition is meritorious.

Procedural Issue: Appeal Already Perfected

Respondent Comelec grievously erred and gravely abused its discretion when it dismissed and denied petitioner's appeal.

The records show that Batalla received the February 12, 2008 MCTC Decision on February 20, 2008. He timely filed his Notice of Appeal on February 22, 2008 with the MCTC and paid the PhP 1,000 appeal fee pursuant to A.M. No. 07-4-15-SC.^[14] He admits paying to the Comelec the additional appeal docket fee of PhP 3,200^[15] only on March 5, 2008 or 11 days after he received a copy of the MCTC Decision on February 20, 2008, way beyond the five-day reglementary period to file the appeal under Secs. 3 and 4, Rule 40 of the Comelec Rules of Procedure. Batalla, however, postulates that the delay in the payment of the appeal fee in the Comelec was

caused by his difficulty in getting to Manila from Barangay Mapulang Daga which is located in an island off the *poblacion* of Bacacay, Albay due to the massive floods that inundated the Bicol area in the months of February and March 2008, aside from the difficulty in getting a bus ride from Bacacay, Albay to Manila.

While Batalla concedes that his motion for reconsideration of the April 3, 2008 Order of the Comelec First Division was not verified, he submits that he cured the omission by attaching to the instant petition his Verification^[16] as compliance for his motion. He begs our indulgence in light of the Court's ruling in *Buenaflor v. Court of Appeals*,^[17] which reiterated the liberal application of the rules in the perfection of an appeal upon substantial justice and equity considerations.

Be it noted that while the Office of the Solicitor General (OSG) on behalf of public respondent Comelec filed its Comment^[18] on the instant petition, respondent Bataller, despite notice,^[19] failed to register his comment. Thereafter, Bataller was sent notice^[20] requiring him to show cause and to comply with the earlier notice to file his comment. To date, Bataller has neither filed his comment nor complied with the show-cause order. Thus, his opportunity to submit his comment is dispensed with.

The OSG argues that the instant petition is bereft of merit, since the Comelec did not gravely abuse its discretion in dismissing Batalla's appeal. The Comelec cannot be faulted for issuing the assailed orders, applying the clear provisions of the Comelec Rules of Procedure, specifically Sec. 9(a) of Rule 22. Moreover, the OSG reasons out that Batalla's late payment of the additional appeal fee to the Comelec is fatal, since his appeal was never perfected. The mere filing of a notice of appeal is not enough, for the timely payment of the full appeal fee is an essential requirement for the perfection of an appeal, based on *Rodillas v. Comelec*.^[21] And finally, the OSG cites *Loyola v. Commission on Election*^[22] and other cases,^[23] which consistently emphasized that non-payment of filing fees in election cases is no longer excusable.

The general rule is that payment of appellate docket fees within the prescribed reglementary period for filing an appeal is mandatory for the perfection of an appeal. Secs. 3^[24] and 4^[25] of Rule 40 of the Comelec Rules of Procedure provide for the payment of an additional appeal fee in the amount of PhP 3,200 within the period to file the notice of appeal, i.e., within five days from receipt of the assailed decision of the trial court.^[26] And an appellant's failure to pay the said appeal fee is a ground for the dismissal of the appeal by the Comelec under the succeeding Sec. 9(a) of Rule 22.^[27]

Payment of the two appeal fees perfects the appeal

In the instant case, however, we find that Batalla already perfected his appeal by filing his Notice of Appeal and by paying the PhP 1,000 appeal fee, pursuant to A.M. No. 07-4-15-SC, within the five-day reglementary period, to the MCTC; and by paying the additional appeal fee of PhP 3,200 to the Comelec Cash Division on March 5, 2008. Consequently, the Comelec First Division committed grave abuse of discretion in dismissing Batalla's appeal and, likewise, so did the Comelec *En Banc* in not correcting this error by denying Batalla's motion for reconsideration.