

## EN BANC

[ G.R. NO. 168296, January 31, 2007 ]

**FELOMINO V. VILLAGRACIA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RENATO V. DE LA PUNTA, RESPONDENTS.**

### DECISION

#### **PUNO, CJ:**

At bar is a Petition for Certiorari under Rule 64 of the Rules of Court with Urgent Prayer for Issuance of Temporary Restraining Order. Petitioner was proclaimed as winning candidate for the position of Punong Barangay in Barangay Caawigan, Talisay, Camarines Norte, in the July 15, 2002 barangay elections by a margin of six (6) votes.

Private respondent filed an election protest with the Municipal Trial Court of Talisay, Camarines Norte, under Election Case No. 001-2002. After the revision of ballots, the trial court invalidated thirty-four (34) of the ballots for being marked. All 34 marked ballots were deducted from the votes of petitioner.

On December 3, 2003, the trial court adjudged private respondent as the true winner and nullified the proclamation of petitioner, *viz.* :

WHEREFORE, the Court finds the Protestant Renato dela Punta as the duly elected Punong Barangay of Caawigan, Talisay, Camarines Norte with the total valid vote[s] of 187 or a winning margin of 26 votes.

The earlier proclamation made by the Barangay Board of Canvassers of Precinct No. 15-A and 15-A-2 and 15-A-1 of Barangay Caawigan, Talisay, Camarines Norte is declared null and void.<sup>[1]</sup>

Petitioner appealed the decision with the First Division of the Commission on Elections (COMELEC) raising for the first time on appeal the issue that the trial court lacked jurisdiction over the election protest for failure of private respondent to pay the correct filing fees.

The First Division, through its Resolution<sup>[2]</sup> dated September 9, 2004, set aside the decision of the trial court and dismissed the election protest of private respondent for lack of jurisdiction, *viz.* :

The payment credited to the general fund which could be considered as filing fee is incomplete considering that Section 6 of Rule 37 of the [COMELEC] Rules on Procedure requires that it should be One Hundred (P100.00) Pesos. Hence, the trial court could not have acquired jurisdiction over the [private respondent's] case.<sup>[3]</sup>

Private respondent moved for reconsideration. In an Order<sup>[4]</sup> dated October 7, 2004, the First Division elevated the motion for reconsideration to the COMELEC En Banc.

On June 1, 2005, the COMELEC En Banc promulgated its questioned Resolution granting the motion for reconsideration and reinstating the decision of the trial court. It issued a writ of execution<sup>[5]</sup> on July 22, 2005 ordering petitioner to vacate his post as Punong Barangay of Barangay Caawigan, Talisay, Camarines Norte, in favor of private respondent.

Hence, this petition raising the following issues:

## I

WHETHER THE COMMISSION ON ELECTIONS (COMELEC, FOR SHORT) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE SOLLER DOCTRINE IN THE INSTANT CASE[.]

## II

WHETHER THE COMELEC ERRED IN CONCLUDING THAT THE USE OF THE WORDS "JOKER", "QUEEN", "ALAS", AND "KAMATIS", IN MORE THAN ONE BALLOT WOULD CONSTITUTE MARKED BALLOTS.<sup>[6]</sup>

Petitioner contends that had public respondent followed the doctrine in **Soller v. COMELEC**,<sup>[7]</sup> it would have sustained the ruling of the First Division that the trial court lacked jurisdiction to hear the election protest due to private respondent's failure to pay the correct filing fees.

We disagree. The Soller case is not on all fours with the case at bar. In **Soller**, petitioner therein filed with the trial court a motion to dismiss private respondent's protest on the ground of, among others, lack of jurisdiction. In the case at bar, petitioner actively participated in the proceedings and voluntarily submitted to the jurisdiction of the trial court. It was only after the trial court issued its decision adverse to petitioner that he raised the issue of jurisdiction for the first time on appeal with the COMELEC's First Division.<sup>[8]</sup>

While it is true that a court acquires jurisdiction over a case upon complete payment of the prescribed filing fee, the rule admits of exceptions, as when a party never raised the issue of jurisdiction in the trial court. As we stated in **Tijam v. Sibonghanoy, et al.**, viz.:<sup>[9]</sup>

xxx [I]t is too late for the loser to question the jurisdiction or power of the court. xxx [I]t is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.