

EN BANC

[G.R. No. 139853, September 05, 2000]

**FERDINAND THOMAS M. SOLLER, PETITIONER, VS. COMMISSION
ON ELECTIONS, REGIONAL TRIAL COURT OF PINAMALAYAN,
ORIENTAL MINDORO (BRANCH 42) AND ANGEL M. SAULONG,
RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This special civil action for certiorari seeks to annul the resolution promulgated on August 31, 1999, in COMELEC special relief case SPR No. 10-99. The resolution dismissed petitioner's petition to set aside the orders of the Regional Trial Court of Pinamalayan, Oriental Mindoro, dated October 1, 1998 and February 1, 1999, which denied petitioner's motion to dismiss the election protest filed by private respondent against petitioner and the motion for reconsideration, respectively.

Petitioner and private respondent were both candidates for mayor of the municipality of Bansud, Oriental Mindoro in the May 11, 1998 elections. On May 14, 1998, the municipal board of canvassers proclaimed petitioner Ferdinand Thomas Soller duly elected mayor.

On May 19, 1998, private respondent Angel Saulong filed with the COMELEC a "petition for annulment of the proclamation/exclusion of election return".^[1] On May 25, 1998, private respondent filed with the Regional Trial Court of Pinamalayan, Oriental Mindoro, an election protest against petitioner docketed as EC-31-98.

On June 15, 1998, petitioner filed his answer with counter-protest. Petitioner also moved to dismiss private respondent's protest on the ground of lack of jurisdiction, forum-shopping, and failure to state cause of action.^[2]

On July 3, 1998, COMELEC dismissed the pre-proclamation case filed by private respondent.

On October 1, 1998, the trial court denied petitioner's motion to dismiss. Petitioner moved for reconsideration but said motion was denied. Petitioner then filed with the COMELEC a petition for certiorari contending that respondent RTC acted without or in excess of jurisdiction or with grave abuse of discretion in not dismissing private respondent's election protest.

On August 31, 1999, the COMELEC *en banc* dismissed petitioner's suit. The election tribunal held that private respondent paid the required filing fee. It also declared that the defect in the verification is a mere technical defect which should not bar the determination of the merits of the case. The election tribunal stated that there was no forum shopping to speak of.

Under the COMELEC Rules of Procedure, a motion for reconsideration of its *en banc* ruling is prohibited except in a case involving an election offense.^[3] Since the present controversy involves no election offense, reconsideration is not possible and petitioner has no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Accordingly, petitioner properly filed the instant petition for certiorari with this Court.

On September 21, 1999, we required the parties to maintain the *status quo ante* prevailing as of September 17, 1999, the date of filing of this petition.

Before us, petitioner asserts that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction:

[I]

... IN AFFIRMING RESPONDENT RTC'S REFUSAL TO DISMISS PRIVATE RESPONDENT'S ELECTION PROTEST DESPITE HIS (sic) LACK OF JURISDICTION OVER THE SAME BY REASON OF THE FAILURE OF THE PRIVATE RESPONDENT TO PAY ALL THE REQUISITE FILING FEES.

[II]

... IN AFFIRMING RESPONDENT'S RTC'S REFUSAL TO DISMISS PRIVATE RESPONDENT'S ELECTION PROTEST DESPITE THE INSUFFICIENCY OF HIS PETITION IN FORM AND SUBSTANCE AND ITS FAILURE TO STATE A CAUSE OF ACTION.

[III]

...IN AFFIRMING RESPONDENT RTC'S REFUSAL TO DISMISS THE ELECTION PROTEST BELOW ON THE GROUNDS OF FORUM-SHOPPING AND FAILURE TO COMPLY WITH THE SUPREME COURT CIRCULAR REQUIRING A TRUTHFUL CERTIFICATION OF NON-FORUM SHOPPING DESPITE INCONTROVERTIBLE EVIDENCE THEREOF.^[4]

In our view, notwithstanding petitioner's formulation of issues, the principal question presented for our resolution is whether or not public respondent COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in not ordering the dismissal of private respondent's election protest.

At the outset, even if not squarely raised as an issue, this Court needs to resolve the question concerning COMELEC's jurisdiction. Unless properly resolved, we cannot proceed further in this case.

Section 3, Subdivision C of Article IX of the Constitution reads:

"The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite the 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 decision shall be decided by the Commission *en banc*."

Thus, in *Sarmiento vs. COMELEC*^[5] and in subsequent cases,^[6] we ruled that the COMELEC, sitting *en banc*, does not have the requisite authority to hear and decide election cases including pre-proclamation controversies in the first instance. This power pertains to the divisions of the Commission. Any decision by the Commission *en banc* as regards election cases decided by it in the first instance is null and void.

As can be gleaned from the proceedings aforesated, petitioner's petition with the COMELEC was not referred to a division of that Commission but was, instead, submitted directly to the Commission *en banc*. The petition for certiorari assails the trial court's order denying the motion to dismiss private respondent's election protest. The questioned order of the trial court is interlocutory because it does not end the trial court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other.^[7] In our view, the authority to resolve petition for certiorari involving incidental issues of election protest, like the questioned order of the trial court, falls within the division of the COMELEC and not on the COMELEC *en banc*. Note that the order denying the motion to dismiss is but an incident of the election protest. If the principal case, once decided on the merits, is cognizable on appeal by a division of the COMELEC, then, there is no reason why petitions for certiorari relating to incidents of election protest should not be referred first to a division of the COMELEC for resolution. Clearly, the COMELEC *en banc* acted without jurisdiction in taking cognizance of petitioner's petition in the first instance.

Since public respondent COMELEC had acted without jurisdiction in this case, the petition herein is without doubt meritorious and has to be granted. But in order to write *finis* to the controversy at bar, we are constrained to also resolve the issues raised by petitioner, *seriatim*.

Petitioner contends that private respondent's protest should have been dismissed outright as the latter failed to pay the amount of P300.00 filing fee required under the COMELEC rules.^[8] Petitioner's contention is supported by Section 9, Rule 35 of the COMELEC Rules of Procedure^[9] and corresponding receipts^[10] itemized as follows:

P368.00 - Filing fee in EC 31-98, O.R. 7023752;
P 32.00 - Filing fee in EC 31-98, O.R. 7022478;
P 46.00 - Summons fee in EC 31-98, O.R. 7023752;
P 4.00 - Summons fee in EC 31-98, O.R. 4167602;
P 10.00 -- Legal Research Fund fee, O.R. 2595144, and;
P 5.00 -- Victim Compensation Fund, O.R. 4167979

P465.00

Close scrutiny of the receipts will show that private respondent failed to pay the filing fee of P300.00 for his protest as prescribed by the COMELEC rules. The amount of P368.00 for which OR 7023752 was issued for the Judiciary Development Fund as shown by the entries in the cash book of the clerk of court.^[11] Thus, only P32.00 with OR 7022478 credited to the general fund could be considered as filing