

EN BANC

[G.R. No. 129958, November 25, 1999]

**MIGUEL MELENDRES, JR., PETITIONER, VS. THE COMMISSION
ON ELECTIONS AND RUPERTO P. CONCEPCION, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Challenged in this petition for certiorari is the Resolution^[1] of the respondent Commission on Elections (COMELEC) dated July 17, 1997, in SPR No. 16-97 entitled "Ruperto P. Concepcion, *Petitioner* v. Hon. Maria Cristina Cornejo, Presiding Judge, Branch 66, MTC, Pasig City and Miguel Melendres, Jr., *Respondents*" the dispositive portion of which reads:

WHEREFORE, the questioned Orders of public respondent are hereby set aside for being NULL and VOID. The public respondent is hereby ordered to cease and desist from further acting on Election Case No. 083-97 entitled Miguel Melendres, Jr. v. Ruperto Concepcion.

SO ORDERED.

Petitioner alleges that the COMELEC gravely abused its discretion in issuing and promulgating *ex parte* the assailed resolution without complying with the provisions of Sections 5 and 6 of Rule 28, Section 1 of Rule 10, Sections 1 to 6 of Rule 14, Sections 1 to 4 of Rule 17 and Section 9 of Rule 18, all of the COMELEC Rules of Procedure.

The factual antecedents of the controversy which are matters of record have been summed thus by the COMELEC:

Petitioner (herein private respondent Ruperto P. Concepcion) and private respondent (herein petitioner Miguel Melendres, Jr.) were candidates for the position of Barangay Chairman of Barangay Caniogan, Pasig City, in the May 12, 1997 barangay elections. After the counting of the votes, petitioner (Concepcion) was proclaimed as the duly elected Barangay Chairman. On May 21, 1997, private respondent (Melendres) filed an election protest against petitioner (Concepcion) with the Metropolitan Trial Court of Pasig City, contesting therein the results of the election in all forty-seven (47) precincts of said barangay. The case was assigned to Branch 68.

On June 4, 1997, after the preliminary hearing of the election case, it was shown that no filing or docket fee was paid by the protestant therein, which payment is required in the COMELEC Rules of Procedure, Rule 37, Sec. 6. Petitioner Concepcion moved to dismiss the case on the ground of failure to comply with this requirement. In the contested Order, public respondent denied the motion to dismiss on the

ground that the requirement of payment of filing or docket fee is merely an administrative procedural matter and [is] not jurisdictional. Petitioner presented an oral motion for reconsideration of the Order, which oral motion was promptly denied by public respondent. Consequently, the contested ballots were scheduled for review.

On June 16, 1997, Concepcion filed this instant case for Certiorari and Prohibition, with a prayer for a Temporary Restraining order and/or Preliminary Injunction. On June 25, 1997, he filed an Urgent Motion for Immediate Issuance of a Temporary Restraining Order to "temporarily restrained (*sic*) public respondent from commencing with the revision [of the ballots], pending the hearing of the petition, in order to maintain the *status quo* and in order that the issues raised and the prayer stated in the petition may not become moot and academic; xxx" The move was prompted by the Order issued by the public respondent on June 6, 1997, which deferred the revision of ballots to give way to the petition for certiorari brought to this Commission, as it involves a question of the court's jurisdiction. The order also stated that, as agreed upon by both parties, if no injunction is issued by the end of June, 1997, the revision of ballots would proceed.

On July 1, 1997, public respondent issued another Order scheduling the revision of ballots on July 9, considering that no injunctive writ was issued by the Commission. Consequently, on July 7, 1997, the latter filed a Second Urgent Motion for Immediate Issuance of a Temporary Restraining Order with this Commission.

On the same day, respondent Melendres filed with the Commission a Manifestation wherein he claimed that the contested issue of non-payment of filing fee was now moot and academic as the same had been paid on June 6, 1997, ten days before this petition was filed.

On the basis of the foregoing factual recital, respondent COMELEC rendered the challenged Order nullifying the orders of the public respondent in SPR No. 16-97.

Asserting that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction, petitioner contends that public respondent erred -

- 14.1 in disregarding and violating its own rules, specifically Section 5, Rule 28 of the COMELEC RULES OF PROCEDURE, in not issuing and serving an order requiring the Respondents to answer the petition filed before it;
- 14.2 in disregarding and violating its own rules, specifically Section 1, Rule 10 of the COMELEC RULES OF PROCEDURE, in not issuing and serving the Summons and COPY OF THE PETITION to the Respondents, both private and public, in SPR 16-97;
- 14.3 in disregarding and violating its own rules, specifically the provisions of Sections 2 to 6, Rule 14 of the COMELEC RULES OF PROCEDURE requiring the issuance, service and proof of service of summons to the respondents in SPR 16-97;
- 14.4 In disregarding and violating its own rules, specifically

Section 6, Rule 28 and Sections 1 to 4, Rule 17, when it did not set or conduct any hearing in SPR 16-97;

- 14.5 in disregarding and violating its own rules when it promulgated the questioned Resolution despite the clear provision of Section 6, Rule 28, that it shall render judgment only "AFTER SUCH HEARING";
- 14.6 in disregarding and violating its own rules, specifically Section 9 (a), Rule 18 of the COMELEC RULES OF PROCEDURE, when it issued the questioned Resolution even though SPR 16-97 is not yet DEEMED SUBMITTED FOR DECISION;
- 14.7 in resolving the Petition (SPR 16-97) without a hearing, when Respondent Concepcion himself requests for a decision on his petition AFTER HEARING;
- 14.8 in acting on the Petition for Certiorari raised by Respondent Concepcion even though it involves the denial of his Motion to Dismiss by the lower Court, a PROHIBITED PLEADING under Section 1, Rule 13 of the COMELEC RULES OF PROCEDURE;
- 14.9 in ruling on the issue of non-payment of filing fee, when said issue was never raised as a Special or Affirmative Defense in the Answer of Respondent Concepcion;
- 14.10 in circumventing its own rules when it allowed the issue of non-payment of filing fee to be discussed even if the same was not raised in the Answer, but only in a Motion to Dismiss, a prohibited pleading under the RULES;
- 14.11 in applying the case of *Gatchalian v. Court of Appeals*^[2] even if the *Gatchalian* case involves the NON-PAYMENT of filing fee, whereas SPR 16-97 involves the WILLFUL REFUSAL of the Clerk of Court to accept the payment of filing fee;
- 14.12 in applying the *Gatchalian* case notwithstanding FULL PAYMENT made by the Petitioner following a lawful order of the Court;
- 14.13 in ignoring the real issue in SPR 16-97, which is the right and the authority of the lower court to order the Clerk of Court to accept the payment of the filing fee in protest cases;
- 14.14 in overturning the doctrine consistently laid down by the Supreme Court in a long line of decisions that "election cases must be construed liberally to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections"; and

14.15in not applying the decision of the Supreme Court in the case of *Rodillas v. Commission on Elections*^[3] consistent with the provisions of Section 18 of Rule 42 of the COMELEC RULES OF PROCEDURES."

The Court issued a Resolution dated September 14, 1999 which, among others, gave due course to the petition and required the parties to submit their respective memoranda within thirty (30) days from notice. However, in view of petitioner's "Urgent Motion for Early Resolution"^[4] and private respondent's Comment^[5] thereon, echoing petitioner's desire that the petition be "immediately resolved in order that the issues raised may be finally put to rest," the Court deemed it to the best interest of justice to dispense with the filing of the said memoranda and to forthwith decide the questions raised on the basis of the parties' pleadings.

The issues raised here boils down to whether or not: 1.] the payment of the filing fee in an election protest is a jurisdictional requirement and non-compliance can be a valid basis for the dismissal of the protest; 2.] subsequent full payment of the filing fee after the lapse of the reglementary period will cure the jurisdictional defect; and, 3.] public respondent observed due process prior to the promulgation of the questioned resolution in SPR No. 16-97.

With regard to the first issue, it appears from the record that private respondent was proclaimed as the duly elected *Punong Barangay* of *Barangay Caniogan*, Pasig City on May 12, 1997.^[6] On May 21, 1997, petitioner filed an election protest challenging the results of the *barangay* elections with the Metropolitan Trial Court of Pasig City where the same was docketed as Election Protest Case No. 083-97 and raffled to Branch 68 of said court.

On June 4, 1997, after the preliminary hearing of the case, it was shown that no filing or docket fee was paid by petitioner/protestant,^[7] prompting private respondent/protestee to move for the dismissal of the election protest on the ground of lack of jurisdiction for failure to comply with the jurisdictional requirement of payment of filing fee as required under Section 6, Rule 37 of the COMELEC Rules of Procedure which provides that -

SEC. 6. *Filing fee.* - No protest shall be given due course without the payment of a filing fee of One Hundred Pesos (P100.00) and the legal research fee as required by law. (Emphasis supplied).

On June 5, 1997, the Presiding Judge of the Metropolitan Trial Court of Pasig City, Branch 68, issued an Order which reads:

Upon verification with the Clerk of Court, Metropolitan Trial Court of Pasig City, it was found out that *indeed, no filing fee was paid for this petition, as none was collected* by the Clerk of Court from all those who filed election protests.

Be that as it may, the question raised in this case is whether or not compliance with Sec. 6, Rule 37 of the COMELEC Rules of Procedure is jurisdictional.

In ordinary civil actions to which the Revised Rules of Court and other related doctrines apply, the court acquires jurisdiction over the case only upon payment of the filing fee. It should be noted, however, that the instant case is not an ordinary

action but an election case. By express provision of Rule 143, the Revised Rules of Court shall not apply to election cases except by analogy or in a supplementary character whenever practicable and convenient. Suffice it to say that the supplementary character is applied only when a law or Rule in question is silent on the matter in contention. The COMELEC Rule in question is, however, explicit. Under the circumstances, the Revised Rules of Court and its related doctrines do not apply to this case.

As afore-cited, the COMELEC Rule in question (Sec. 6, Rule 37) is explicit. The Rule does not speak of conferment of jurisdiction upon the Court or the acquisition by the Court of jurisdiction upon payment of the filing fee. Nothing extant in the COMELEC Rules either expressly or by implication requires the payment of the filing fee for purposes of conferment upon or acquisition by the Court of jurisdiction over the case. The Rule speaks only of "giving due course" to the protest upon the payment of the filing fee. Undeniably therefore, the payment of the filing fee is an administrative procedural matter, proceeding as it does from an administrative body.

Due course has been given to this protest when it was accepted for filing by the Clerk of Court without payment of the filing fee. There was an honest error of omission on the part of the Clerk of Court as evidenced by the fact that all the other election protests were accepted for filing by the Clerk of Court without the payment of filing fee. This petition was no exception. There simply was an administrative procedural lapse but which does not detract from the fact that the Court has jurisdiction over this case as conferred upon it by substantive law, the Omnibus Election Code.

The Court had acquired jurisdiction over the case. The jurisdiction of the Court over a contest attaches when motion containing the proper jurisdictional averments is filed within the time prescribed by law; the jurisdiction of the Court cannot thereafter be determined by law; what the law itself may do or may not do (*Lucero vs. De Guzman*, 46 Phil. 852). The payment of the filing fee is not one of the jurisdictional facts required to be alleged in the petition. At any rate, the sufficiency of the allegations in the petition is not essential for the acquisition of jurisdiction (which had already been acquired by the filing of the petition, as afore-cited), but only to continue in its exercise, once it has been acquired (*Santiago vs. Ignacio*, 52 Phil. 376).

It is axiomatic that an election contest, involving as it does not only the adjudication and settlement of private interests of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogative of the officers within their girth, is a proceeding imbued with public interest which raises it onto a plane over and above ordinary civil actions. For this reason, broad perspective[s] of public policy impose upon the Courts the imperative duty to ascertain by all means within their command who is the real candidate elected in an expeditious manner as possible, without being fettered in technicalities and procedural barriers to the end that the will of the people may not be frustrated (*Sibulo vda. de Mesa, et al. vs. Hon. Eulogio Mencias, et al.* Oct. 29, 1966, citing *Ibasco vs. Ilao, et al.*, Dec. 20, 1960.)

On the basis of all the foregoing considerations, it is resolved that the payment of the filing of fee for purposes of an election protest and counter-protest is not