

## EN BANC

[ G.R. No. 123673, June 19, 1997 ]

**PEDRO C. CALUCAG, PETITIONER, VS. COMMISSION ON ELECTIONS, MANILA; THE MUNICIPAL TRIAL COURT, BRANCH 04, TUGUEGARAO, CAGAYAN AND CESAR CARBONEL, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court questioning the dismissal of petitioner's appeal before the Commission on Elections (COMELEC) on the ground of prescription of time for filing an appeal.

Petitioner Pedro Calucag and private respondent Cesar Carbonell were both candidates for Barangay Captain in Barangay Caritan Centro, Tuguegarao, Cagayan during the May 9, 1994 elections. Petitioner garnered 478 votes while private respondent obtained 477 votes or a difference of one vote.

Private respondent filed an election protest with the Municipal Trial Court, Branch 4 of Tuguegarao, Cagayan praying for the judicial recount of the ballots cast and the annulment of the proclamation of petitioner. As agreed upon by the parties, a recount/revision of the votes/ballots was made. As a result, private respondent obtained 491 votes as against petitioner's 489 votes. On May 31, 1994, the MTC promulgated a decision in open court declaring the former as the duly elected Barangay Captain of Caritan Centro, Tuguegarao.<sup>[1]</sup> Petitioner appealed this ruling to the Regional Trial Court of Tuguegarao, Cagayan, Branch 3 which appeal was opposed by private respondent in a Motion to Dismiss on the ground of lack of jurisdiction, the proper forum being the Commission on Elections (COMELEC).<sup>[2]</sup> On July 18, 1994, the RTC issued an Order dismissing the appeal based on such ground.<sup>[3]</sup> Petitioner filed a motion for reconsideration of the order of dismissal which was also seasonably denied.<sup>[4]</sup>

On appeal, the COMELEC likewise dismissed petitioner's case for lack of appellate jurisdiction in its order dated August 12, 1994, which provided, inter alia:

"Guided by the pronouncement of the Supreme Court in the case of Flores vs. COMELEC (GR No. 89604, April 20, 1990), We have disregarded the detour of the appeal to the Regional Trial Court and considered this appeal direct to the Commission from the Municipal Trial Court of Tuguegarao, Cagayan, however, unlike in Flores case, this appeal was not perfected as it is wanting on the required payment of appeal fees on time, hence the appellate jurisdiction of this Commission does not attach.

ACCORDINGLY, the Commission (First Division) hereby DISMISSES the instant appeal for lack of appellate jurisdiction."<sup>[5]</sup> (Underscoring supplied)

A motion for reconsideration of said order was filed, but this was also denied by the Commission en banc which found the motion to be devoid of merit, not because of non-payment of appeal fees on proper time but because the same was filed out of time.<sup>[6]</sup>

Hence, this petition.

The main issue which must be addressed herein is whether the COMELEC has exclusive appellate jurisdiction over election contests involving elective barangay officials decided by trial courts of limited jurisdiction.

It is high time that this question be settled definitively to obviate situations similar to the one at bar.

The Court has categorically pronounced in *Flores vs. Commission on Elections* that Section 9 of R.A. No. 6679, insofar as it provides that the decision of the Municipal or Metropolitan Trial Court in a barangay election case should be appealed to the Regional Trial Court, is unconstitutional. Said pronouncement is hereby reiterated here. The section is in direct contravention of Article IX-C, Section 2(2) of the Constitution, providing that the COMELEC shall:

"(e)xercise exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction."

Petitioner wishes this Court to entertain his case and rule as it did in *Flores*. This, however, cannot be done anymore even if the facts of this case were on all fours with *Flores* because in said case, the petitioner, Roque Flores, was proclaimed Punong Barangay in accordance with Section 5 of R.A. No. 6679<sup>[7]</sup> after having received the highest number of votes for Kagawad in the March 28, 1989, elections. The private respondent, Nobelito Rapisora, filed an election protest with the MTC of Tayum, Abra which sustained his arguments and installed him in place of Flores as Punong Barangay. The latter appealed to the RTC of Abra, which affirmed in toto the challenged decision. Thereafter, Flores went to the COMELEC which dismissed his appeal on the ground that it has no power to review the decision of the RTC. Said ruling was based on Section 9 of R.A. No. 6679<sup>[8]</sup> which states that decisions of RTC's in electoral contests brought to it on appeal from the MTC regarding questions of fact shall be final and unappealable. In resolving the petition for certiorari, the Court supported the dismissal of the appeal, not on the basis of said provision but on Constitutional grounds. Section 9 of R.A. No. 6679 was declared unconstitutional even if it was not squarely and properly challenged by Flores. Despite the non-compliance by Flores with the requisites of a judicial inquiry into a constitutional question,<sup>[9]</sup> the Court felt that it was fruitless to wait for the issue to be raised anew, perhaps in the next barangay elections, before being resolved. Technical obstacles were disregarded so that the defect in R.A. No. 6679 may be brought to