

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated JANUARY 17, 2023, which reads as follows:*

**“G.R. No. 259937 (Romeo A. Espura, Jr. v. Commission on Elections and Celso E. Peneiro).**— This Petition for *Certiorari*<sup>1</sup> under Rule 64 in relation to Rule 65 of the Rules of Court assails the Resolutions<sup>2</sup> dated October 25, 2018 and December 3, 2021 of the Commission on Elections (COMELEC) First Division and *En Banc*, respectively, in EAC No. 077-2018-B which dismissed the appeal filed by Romeo A. Espura, Jr. (petitioner) for his failure to pay the COMELEC appeal fee.

***The COMELEC En Banc acted with no grave abuse of discretion in dismissing petitioner’s appeal.***

The Court has consistently held that a petition for *certiorari* against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process; the COMELEC is presumed to be most competent in matters falling within its domain.<sup>3</sup>

Jurisprudence teems with pronouncements that grave abuse of discretion is the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.<sup>4</sup>

In the case at bench, the dismissal of petitioner’s appeal is not without any basis. As amply discussed by the COMELEC First Division and *En Banc*, there are two types of fees to be paid before the COMELEC may act,

<sup>1</sup> Rollo, pp. 3-60.

<sup>2</sup> Id. at 24-29 and 32-33.

<sup>3</sup> See *Atty. Risos-Vidal v. COMELEC, et al.*, 751 Phil. 479, 555-556 (2015), citing *Naval v. Commission on Elections*, 738 Phil. 506 (2014).

<sup>4</sup> Id., citing *Mayor Hayudini v. Commission on Elections, et al.*, 733 Phil. 822, 839 (2014).

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in due course, on an appeal from the decision of the MCTC in election contests: *one*, the appeal fee of ₱1,000.00 to be paid within five days after promulgation of the trial court's assailed decision under Sections 8 and 9 of Rule 14 of A.M. No. 07-4-15-SC; and *two*, the COMELEC appeal fee of ₱3,200.00 to be paid within 15 days from the filing of the notice of appeal before the lower court as settled in COMELEC Resolution No. 8486.<sup>5</sup>

As it happened, petitioner failed to pay the COMELEC appeal fee amounting to ₱3,200.00, which is a ground for the dismissal of his appeal under Section 9(a) of Rule 22<sup>6</sup> of the COMELEC Rules of Procedure. In *Divinagracia, Jr. v. COMELEC (Divinagracia)*,<sup>7</sup> the Court traced the jurisprudential history of payment of filing fees in election cases. *Divinagracia* noted that as early as 2007, in *Loyola v. COMELEC (Loyola)*,<sup>8</sup> the Court already warned that any claim of good faith, excusable negligence, or mistake in failure to pay the full amount of filing fees in election cases shall no longer be entertained. This strict attitude of the Court persisted in later cases.<sup>9</sup>

In *Aguilar v. COMELEC*,<sup>10</sup> the Court clarified that the appeal to the COMELEC of the trial court's decision in election contests involving municipal and *barangay* officials is perfected upon the filing of the notice of appeal and the payment of the ₱1,000.00 appeal fee to the court that rendered the decision within the five-day reglementary period. The non-payment or the insufficient payment of the additional appeal fee of ₱3,200.00 to the COMELEC Cash Division, does not affect the perfection of the appeal and does not result in outright or *ipso facto* dismissal of the appeal. However, under Section 9(a) of Rule 22 of the COMELEC Rules of Procedure, the appeal may be dismissed. Likewise, pursuant to Rule 40, Section 18 of the same rules, if the fees are not paid, the COMELEC may refuse to take action until they are paid and may dismiss the action or the proceeding. In such a situation, the COMELEC is given the discretion to dismiss the appeal or not.

<sup>5</sup> The dispositive portion, as quoted in the *rollo*, p. 32, states:

**WHEREFORE**, in view of the foregoing, the Commission hereby **RESOLVES** to **DIRECT** as follows:

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure Election Contests Before The Courts Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the COMELEC appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9 (a) of Rule 22 of the COMELEC Rules of Procedure, x x x.

<sup>6</sup> Sec. 9. Grounds for Dismissal of Appeal. - The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

a. **Failure of the appellant to pay the correct appeal fee;**

x x x x

<sup>7</sup> 611 Phil. 538, 547-549 (2009).

<sup>8</sup> 337 Phil. 134 (1997).

<sup>9</sup> *Supra* note 7 at 547.

<sup>10</sup> 609 Phil. 270, 278-280 (2009).

In the case at bench, the Court finds that the COMELEC did not gravely abuse its discretion in dismissing petitioner's appeal.

Apart from the foregoing procedural *faux pas*, petitioner's appeal likewise fails on the merits. Section 40(a) of the Local Government Code disqualifies "[t]hose sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment, within two years after serving sentence" from running for any elective local position. Although convicted of attempted homicide, petitioner claims that the grant of probation—after the filing of the certificate of candidacy and after the conduct of the elections—cures his disqualification.

*Petitioner is mistaken.* The discussion of the Court in *Moreno v. COMELEC*<sup>11</sup> regarding the effect of the grant of probation in favor of a candidate for a local elective position is quite illuminating:

In *Baclayon v. Mutia*, the Court declared that an **order placing defendant on probation is not a sentence but is rather, in effect, a suspension of the imposition of sentence.** We held that the **grant of probation to petitioner suspended the imposition of the principal penalty of imprisonment**, as well as the **accessory penalties of suspension from public office** and from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage. We thus deleted from the order granting probation the paragraph which required that petitioner refrain from continuing with her teaching profession.

Applying this doctrine to the instant case, the accessory penalties of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, attendant to the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period imposed upon Moreno were **similarly suspended upon the grant of probation.**

It appears then that **during the period of probation**, the probationer is **not even disqualified from running for a public office** because the accessory penalty of suspension from public office is put on hold for the duration of the probation.

Clearly, the period within which a person is under probation cannot be equated with service of the sentence adjudged. Sec. 4 of the Probation Law specifically provides that the grant of probation suspends the execution of the sentence. During the period of probation, the probationer does not serve the penalty imposed upon him by the court but is merely required to comply with all the conditions prescribed in the probation order.<sup>12</sup> (Emphasis supplied; citations omitted.)

While it is true that petitioner in this case was favorably placed on probation, the Probation Order was issued only on May 25, 2018. It is as

<sup>11</sup> 530 Phil. 279 (2006).


<sup>12</sup> Id. at 288-289.

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clear as day that at the time of the filing of petitioner's candidacy and at the time of the election, he was a convicted fellow and thus suffering from disqualification.

**WHEREFORE**, the Petition for *Certiorari* is hereby **DISMISSED**. The Resolutions dated October 25, 2018 and December 3, 2021 of the Commission on Elections First Division and *En Banc*, respectively, in EAC No. 077-2018-B are **AFFIRMED**. Inting and Kho, Jr., JJ., no part. (3)

By authority of the Court:

  
**MARIFE M. LOMIBAO-CUEVAS**  
Clerk of Court mm

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