

JAIME T. TORRES, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND NINFA GARIN, RESPONDENTS.

G.R. No. 144491. February 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Assailed in this special civil action for certiorari is the July 13, 2000 Resolution[1] of the House of Representatives Electoral Tribunal dismissing the election protest of herein petitioner Jaime T. Torres in HRET Case No. 98-017; and the August 3, 2000 Resolution thereof denying petitioner's motion for reconsideration. Petitioner Torres questioned the election of private respondent Ninfa S. Garin as Member of the House of Representatives representing the First Legislative District of Iloilo.

Petitioner Jaime T. Torres and private respondent Ninfa S. Garin were among the candidates for the said Congressional seat in the May 11, 1998 elections. On May 17, 1998, upon canvassing the votes cast, the Provincial Board of Canvassers of Iloilo proclaimed the private respondent as the winner, with Sixty Thousand Eight Hundred Fifty One (60,851) votes, over petitioner's Fifty Nine Thousand Four Hundred Forty Seven (59,447) votes, or a margin of One Thousand Four Hundred Four (1,404) votes.

Petitioner seasonably filed an election protest before the Tribunal questioning the results of the elections in all the precincts of the seven (7) municipalities of the First Legislative District of Iloilo.[2] He claimed, in essence, that a number of votes cast in his favor were invalidated and not counted, while a number of invalid votes were counted in private respondent's favor.

In her Answer with Counter Protest, private respondent denied the allegations in the protest. She counter-protested the results of the elections in all the 158 precincts of Miag-ao and 126 precincts of Tigbauan. She claimed that it was petitioner who had committed various election frauds, anomalies and irregularities particularly in the precincts of Miag-ao and Tigbauan.

In the preliminary conference held on August 6, 1998, the parties agreed and stipulated, among other things, that the issues involved are: (1) revision, recount and appreciation of ballots; and (2) election irregularities, fraud, etc. as alleged in the counter-protest. The parties likewise designated their respective pilot precincts in accordance with Rule 68 of the 1998 House of Representatives Electoral Tribunal Rules - 185 for the petitioner and 67 for the private respondent, 15 of which were commonly protested or a total of 237 precincts.[3] During revision, however, a total of 5 precincts were deducted from the original lists of pilot precincts submitted by the parties. It turned out that there were only 232 ballot boxes belonging to the pilot precincts - 182 for the petitioner and 65 for the private respondent, 15 of which were commonly protested.[4]

Based on the Election Returns (ERs), Tally Boards (TBs) (when ERs are missing or unreadable), or from the Statement of Votes (SOVs) (when both ER and TB are not available), the respective votes of the parties, prior to revision, were 17,023 for the petitioner and 22,087 for the private respondent in the pilot protested and counter-protested precincts, broken down as follows:

Data before revision

Protestant

Protestee

Data from ER

15,847

21,004

Data from TB

1,010

980

Data from SOV (Precinct No.78A/78A1, Tigbauan)

166

103

Total

17,023

22,087

However, the revision of ballots from February 9 to February 16, 1999 yielded a total of 16,945 votes for petitioner and a total of 20,357 votes for private respondent. The Tribunal noted that petitioner's votes decreased by 78 votes, while private respondent's votes went down by about 1,730 votes after physical count of votes in the pilot protested and counter-protested precincts. As a result, private respondent's proclamation lead of 1,404 votes was obliterated after only the physical count of the ballots in the 25% pilot precincts.

In a "Manifestation" and "Supplemental Manifestation" filed on February 22, 1999, private respondent contended, among other things, that the revision results in the 23 Miag-ao precincts could only be due to ballot switching or substitution at the post-counting stage. According to her, the valid ballots as initially cast in her favor by the voters were replaced by fake ballots containing no Cong./Rep. vote, in numbers approximating the number of the replaced valid Garin votes and that petitioner's complete political control of these precincts had emboldened him to tamper with the results of the elections in these precincts by changing and/or stealing the votes officially cast and credited in favor of the Protestee.

In his "Comments on Protestee's Manifestation and Supplemental Manifestation" filed on March 22, 1999, petitioner attributed the decrease in the number of votes for the private respondent during revision to irregularities committed by the boards of election inspectors during the precinct level counting of votes. He bolstered this allegation by claiming that the self-locking metal seals used to close the outer and inner covers of the ballot boxes at the time of revision have the same and identical serial numbers as those allocated to the BEIs, thus implying that the ballot boxes were not tampered with at the post-counting stage.

The Tribunal conducted full-blown hearings and admitted all documentary exhibits offered by both parties for whatever evidentiary purpose they may serve. Thereafter, private respondent filed her Memorandum on October 21, 1999, while petitioner filed his on October 25, 1999. Both were noted by the Tribunal in its Resolution No. 99-248, dated November 18, 1999.

On April 17, 2000, a Resolution was issued by the Tribunal requiring the parties to show cause why the protest and counter-protest, respectively should not be dismissed on account of the following findings of the Tribunal:

"..., there is no doubt the official ballots cast in the 23 precincts of Miag-ao have been tampered with and that the authentic ballots, now missing have been replaced by fake ones. Moreover, as observed by the Protestee, the Tribunal has confirmed that the number of fake ballots in each of the 23 precincts more or less correspond to the number of missing votes for the Protestee as reflected in the election returns.

Consequently, the votes determined after the revision in said 23 precincts cannot be relied upon as they do not reflect the true will of the electorate. Thus, in determining the number of votes for the Protestee in the aforesaid 23 precincts, the 289 ballots for the Protestee during physical count were appreciated by the Tribunal and it accordingly ruled on the admissibility or validity of the same. As regards the missing votes, inasmuch as there is no basis to rule on their admissibility, the Tribunal had to rely on what was reflected on the election returns, the same being the best evidence of the results of the election in the said precincts, in the absence of the genuine ballots. Thus, the missing votes were added back to Protestee's votes after revision/appreciation.

The votes of the parties in the other protested and counter-protested pilot precincts were likewise determined after a careful scrutiny of the ballots involved therein. The result shows that Protestant obtained 17,0043 votes, while Protestee garnered 22,309 votes in the pilot protested precincts. Adding these figures to the votes in the contested non-pilot and uncontested precincts, the total votes in the First District of Iloilo will be 59,428 for the Protestant and 60,803 for the Protestee or a margin of 1,375 votes."[5]

On April 28, 2000, private respondent filed her "Compliance (With Show Cause Resolution) With Prayer for Dismissal of the Case", while on May 2, 2000, petitioner filed his "Justifications/Reasons Why the Election Protest Should Not Be Dismissed." Both pleadings were noted by the Tribunal in Resolution No. 00-59 dated May 11, 2000."[6]

In its assailed decision, the Tribunal dismissed the election protest and counter-protest without further proceedings.

Thus, the present recourse on the following grounds:

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RESORTING TO VOTES REFLECTED IN ELECTION RETURNS AS THE VOTES TO BE CREDITED TO PRIVATE RESPONDENT IN 23 PRECINCTS OF MIAG-AO, ILOILO, INSTEAD OF THE PHYSICAL COUNT OF THE BALLOTS FOUND INSIDE THE BALLOT BOXES DURING REVISION;
- PUBLIC RESPONDENT'S FAILURE TO INVALIDATE NUMEROUS BALLOTS OF PROTESTEE, EITHER IN PAIRS OR IN GROUPS, CONTESTED AS WRITTEN BY ONE (1) PERSON CONSTITUTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT INVALIDATING NUMEROUS INDIVIDUAL BALLOTS OF PRIVATE RESPONDENT CONTESTED AS WRITTEN BY TWO (2) PERSONS;
- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT INVALIDATING NUMEROUS BALLOTS OF THE RESPONDENT CONTESTED AS MARKED BALLOTS DUE TO THE PRESENCE OF IDENTIFYING AND DISTINGUISHING MARKS ON THE FACE OF THE CONTESTED BALLOTS; and
- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT ADJUDICATING IN FAVOR OF PETITIONER NUMEROUS STRAY BALLOTS CLAIMED BY PETITIONER.[7]

It is the petitioner's view that: (1) resort to the votes reflected in the election returns in 23 precincts of Miag-ao as basis of the votes to be credited to private respondent is improper and unwarranted and that the physical count of the ballots should prevail over the votes appearing in the election returns; (2) that the ballots contested as (a) written by one person; (b) written by two persons; (c) marked ballots should have been invalidated against private respondent; and that finally, all the stray ballots claimed by petitioner should be included in his total votes. Consequently, petitioner contends that the election protest should have been allowed to proceed with respect to the remaining 75% unrevised protested precincts in view of the decrease of the number of valid ballots for the private respondent wherein the latter's presumptive lead of 1,404 votes of over the petitioner had been overcome and surpassed.

The petition is devoid of merit.

First of all, the Tribunal found that the discrepancy in the number of votes reflected on the ballots vis-à-vis the election returns and tally boards that appeared after revision, wherein private respondent's votes suffered a substantial decrease is attributable to ballot switching and/or substitution during the post-counting stage. The theory of petitioner that there was misappreciation or misreading committed by the boards of election inspectors during the precinct level counting of votes was negated by the overwhelming and indubitable evidence presented by private respondent before the Tribunal and confirmed by the latter's own examination of the ballots. The Tribunal ratiocinated thus:

"The Tribunal, however, is not convinced that the integrity of the ballot boxes was duly maintained at the post counting stage. To start with, the Report on Revision Results, duly signed by both parties' revisors, shows that there were ballot boxes particularly in the questioned precincts of Miag-ao which either have no self-locking metal seals, have tampered metal seals, or whose padlocks cannot be opened by their respective keys and have to be forcibly opened by designated HRET personnel during the revision. Thus, it cannot be conclusively stated, as claimed by the Protestant, that the ballot boxes at the time that they were opened for revision purposes were in the same condition as when they were closed by the BEIs after the completion of the proceedings.

Because Protestee's allegation that the valid votes cast in her favor were substituted with fake stray ballots during the post-counting stage, it is imperative to resolve at this point whether there were indeed fake ballots and whether these were placed inside the ballot boxes to replace the votes of Protestee.

At the onset, it is significant to lay down the basis in claiming whether a ballot is genuine or fake. As elaborated by Protestee's witness, Mr. Teofilo Ferrer of the COMELEC, the characteristics of the 1998 official ballot, are as follows:

1)

The material is white paper with watermarks;

2)

The design of the watermark consists of a ballot box design with a balance composed of a sword and a scale and quill pen measuring two and a half by 3 inches (2 ½ x 3") spread all over the ballot paper with figures 1998 in between the ballot box design;

3)

The ballot contains fluorescent pigments of red, yellow and blue randomly scattered on the paper. Some pigments are visible to the naked eye and some are invisible but can be seen through the use of an ultraviolet light.

As differentiated from the 1998 official ballot, the watermark of the 1995 official ballot contains the seal of the COMELEC which is a circle with the ballot box design and the name "Commission on Elections" and "Republic of the Philippines" surrounding it. It has the year 1995 printed in between the design. Instead of pigments, colored fibers of red, yellow and blue which appear as strands of hair were used as one of the security marks of the 1995 ballot.

The foregoing explanations are significant in the light of the findings that cropped up from an examination of the alleged fake ballots.

It will be noted that Protestee's revisors recorded their comments and observations in the Revision Report with respect to the nature of some ballots that underwent revision particularly those of Miag-ao. The said revisors noted that most of the stray ballots: 1) either do not bear watermarks or colored pigments or bear the 1995 instead of the 1998 watermarks; 2) are of different material than the 1998 official ballots; or 3) bear signatures at the back which are different from the original signatures of the BEI.

Mr. Ferrer himself was made to examine unclaimed stray ballots from Precincts Nos. 3A/3A1, 20A/20A1, 36A, 96A, 148A to determine their nature. His observations were as follows:

1)

Seventy-four (74) out of the 78 unclaimed stray ballots in Precinct 3A/3A1 do not contain watermark nor the visible or invisible pigments and the material are not of the same thickness as that of the 1998 official ballot;

2)

Thirty-six (36) out of the 39 unclaimed stray ballots in Precinct 20A/20A1 contain the 1995 COMELEC seal and have colored fibers instead of pigments;

3)

All of the 136 unclaimed stray ballots in Precinct 36A, 117 in Precinct 96A and 65 in Precinct 148A do not have watermarks nor the visible or invisible pigments and the material is thinner than that of the 1998 official ballot.

The findings of the COMELEC expert was further confirmed by the findings of the Tribunal itself after a scrutiny of the subject ballots. In the nineteen (19) protested precincts and four (4) counter-protested precincts of Miag-ao, the following observations were noted:

1)

Precincts Nos. 3A/3A1; 9A; 25A; 31A; 36A; 43A/43A1; 57A; 61A; 81A; 96A; 102A; 120A; 125A; 128A; and 142A

a)

Most, if not all of the stray ballots were found to be without the 1998 COMELEC watermarks and colored dots unlike what appear in the genuine ballots;

b) Those without watermarks appear to be machine copies on ordinary white paper;

c)

The signatures at the back of the ballots were different from the signature of the BEI appearing on the other genuine ballots;

d)

All the lower and upper detachable coupons inside the ballot box bear the 1998 COMELEC watermarks and colored dots;

e)

Additionally, but only in Precincts Nos. 81A and 87A, the upper portion of the lower detachable coupons have smooth edges indicating that the same have been cut by a sharp instrument from the authentic ballots. In contrast, all the 136 stray ballots in these two (2) precincts have rough lower edges indicating that the lower detachable coupons were torn by hand.

2) Precincts Nos. 8A; 20A/20A1; 42A/42A1; and 79A/79A1

a)

Most, if not all, of the stray ballots (For Precinct No. 8A, 92 out of 93 stray ballots, for Precinct No. 20A/20A1, 36 out of 39 stray ballots, for Precinct No. 79A/79A1, all the 85 stray ballots) bear the 1995 COMELEC watermarks and colored fibers instead of the 1998 watermarks and colored dots;

b) The signatures at the back of the ballots were different from those found on the genuine ballots;

c)

All the lower detachable coupons bear the 1998 COMELEC watermarks and colored dots and thus came from genuine ballots.

3) Precinct No. 148A

All the 65 stray ballots are without the 1998 COMELEC watermarks and colored dots and are with signatures affixed at the back thereof that appear to be imitation of the signatures of the BEI Chairman appearing on other genuine ballots.

Also considered one of the authenticating marks of a genuine ballot is the signature or initials of the Chairman of the BEI. For this reason, the testimonies of the BEI Chairman who all declared that the signatures at the back of the ballots presented to them (the same ballots confirmed by the Tribunal as fake) were not theirs further corroborated the above-cited findings of fake ballots.

In view of the foregoing confirmation as to the presence of fake ballots, the next question is at what point were these fake ballots placed inside the ballot boxes. Protestant claims that the alleged fake ballots containing stray votes were already among the ballots deposited inside the ballot boxes during the voting but misread/misappreciated as among the valid votes for the Protestee.

An evaluation, however, of the testimonies of the 32 BEI members contradict Protestant's theory that the discrepancy in the number of votes reflected on the ballots vis-à-vis the election returns and tally boards is attributable to misreading of ballots, to wit:

1)

The individual ballots distributed to the voters were taken from official ballots which were in pads or booklets and the ballots were signed by the BEI Chairmen before giving them to the voters;

2)

The accomplished ballot was returned to the BEI in the same appearance when it was handed to the voter and it was the BEI who detached the detachable coupon from the ballot;

3)

The signatures appearing at the back of the alleged fake ballots were not the genuine signatures of the BEI Chairmen;

4)

The BEIs did not recall having encountered a big number of ballots with no entries in the space for Representative during the counting of votes;

5)

The watchers were situated very near the BEI Chairmen so that they could actually see what were being read from the ballots.

The finding alone that the lower and upper detachable coupons found inside the ballot boxes bear the 1998 COMELEC watermarks and colored dots (and are, therefore, genuine) implies that they were parts of genuine ballots which were distributed to the voters and returned to the BEIs. Parenthetically, it was established through the testimony of Mr. Teofilo Ferrer, on cross-examination, that all portions of the ballot should contain the security watermark, to wit:

"Q: It is possible that it [the security watermark] may be on the upper stub of the ballot, is it not?

A: Yes, sir.

Q: It may also be possible that it may be on the lower detachable coupon, is it not?

A: Yes, sir.

Q: And there is nothing on the body of the ballot, is it not?

A:

No. The body can also contain portion of the watermark because when we design the security watermark, we see to it that all, at least all portions of the ballot can contain certain security watermark.

Q: All portions?

A: All portions.

Q:

Even if there is already a portion of that security watermark at the upper stub, the portion of that security watermark will still appear on the body of the ballot?

A: Yes, sir.

Q:

If there is a portion of the security watermark found on the detachable coupon, the portion may still be found on the body of the ballot?

A: Yes, sir."

Thus, it is quite impossible that the coupons detached by the BEIs from the ballots were all genuine while the ballots were not.

Moreover, as observed by the HRET, the number of fake ballots in each of the 23 precincts more or less corresponds with the number of missing votes for the protestee as reflected in the election returns, as shown below:

PRECINCT NO.**BALLOTS FOR PROTESTEE PER ER PER PHYSICAL COUNT****MISSING VOTES OF PROTESTEE****BALLOTS FOUND TO BE FAKE****3A/3A1**

85

11

74

73

8A

101

9

92

92

9A

24

14

10

10

25A

75

13

62

62

31A

47

12

35

35

36A

153

20

133

136

57A

76

10

66

67

61A

55

8

47

48

68A

99

18

81

80

79A/79A1

92

6

86

85

81A

77

10

67

67

87A

70

9

61

62

96A

139

20

119

117

102A

60

7

53

54

120A

110

15

95

97

125A

50

5

45

45

135A

31

7

24

24

142A

108

11

97

100

148A

72

7

65

65

20A/20A1

40

4

36

39

42A/42A1

109

21

88

93

43A/43A1

100

21

79

80

128A

76

31

45

45

TOTAL

1,849

289

1,560

1,576

In light of the foregoing, there is no doubt that the official ballots cast in the 23 precincts of Miag-ao have been tampered with and that the authentic ballots, now missing, have been replaced by fake ones.

In such a situation, the physical count of votes in the said 23 precincts as determined during the revision of ballots cannot be considered the correct number of votes cast for the Protestee in those precincts. Thus, in determining the number of votes for the protestee in the aforesaid 23 precincts, the 289 ballots for the protestee during physical count were subjected to appreciation. Accordingly, the Tribunal ruled on the admissibility or validity of the same. Of the 289 ballots, two (2) out of the 197 ballots objected to by Protestant were rejected while twelve (12) out of the 43 ballots claimed by the Protestee were admitted.

As regards the missing votes, inasmuch as there is no basis to rule on their admissibility, the tribunal had to rely on what was reflected in the election returns, the same being the best evidence of the results of the election in the said precincts. Moreover, the election returns, appear untampered and have no signs of alterations. Thus, the total votes for the Protestee appearing on the election returns, that is, 1,849 less the 289 genuine ballots appreciated by the Tribunal represents the missing votes for the protestee. The number of missing votes, i.e., 1,560 was thus added back to Protestee's votes after revision/appreciation of ballot, including appreciation of the evidence presented by the parties below:

Votes of Protestee per physical count 289

Votes per appreciation:

Add: Admitted ballots

12

Less: Rejected ballots 2

Add: Missing votes per ER 1,560

Total votes of Protestee 1,859

In the subject 23 precincts

It is incorrect to say, as protestant does, that by counting the fake ballots as ballots for the Protestee, the protestant is being penalized for the substitution of the original ballots with fake ballots. Protestant avers that it may be

possible that Protestant may have been the candidate voted for in the missing genuine ballots. In the first place, the crediting was not done without any and without regard to the possibility that the votes in the missing ballots may have been for the Protestant. The votes of the Protestee were determined on the basis of what were reflected in the election returns and taking into consideration the available evidence. Without declaring that substitution was the work of a certain party, it was incumbent upon the Tribunal to conduct a fair calculation on the basis of the election returns and other evidence."[8]

Second, it is futile for petitioner to insist that the physical count of ballots found inside the ballot boxes during revision must prevail over the votes reflected in election returns in the revised protested precincts despite the above-quoted findings that the integrity of the ballot boxes was not preserved prior to revision. Further, this issue has been squarely addressed in *Lerias vs. House of Representatives Electoral Tribunal*[9] in this wise:

"In an election contest where what is involved is the correctness of the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves. But where the ballots cannot be produced or are not available, the election returns would be the best evidence. Where it has been duly determined that actual voting and election by the registered voter had taken place in the questioned precincts or voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting. Canvassing boards, the COMELEC and the HRET must exercise extreme caution in rejecting returns and may do so only upon the most convincing proof that the returns are obviously manufactured or fake. And, conformably to established rules, it is the party alleging that the election returns had been tampered with, who should submit proof of this allegation."

Indeed, with respect to the missing votes, the Tribunal had to rely on the election returns which per its own examination, "appear untampered and have no signs of alterations."

Third, it has been held in *Punzalan vs. COMELEC*,[10] "that the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC", which ruling applies with equal force to the Tribunal as the constitutional creation vested with the power to be the "sole judge of all contests relating to the election, returns and qualifications of their respective members." [11] This Court's jurisdiction to review decisions and orders of electoral tribunals operates only upon a showing of grave abuse of discretion on the part of the tribunal.[12] Verily, only where such grave abuse of discretion is clearly shown shall the Court interfere with the electoral tribunal's judgment.[13] There is no such showing in the present petition.

In the instant case, the Tribunal reviewed and passed upon the validity or invalidity of ballots objected to or claimed by the parties, exhaustively and judiciously, adhering to the "basic principle that the cardinal objective of ballot appreciation is to discover and give effect to, rather than frustrate the intention of the voters, thus, every ballot shall be presumed valid unless clear and good reasons justify its rejection." [14] Moreover, the specific objections were passed upon in accordance with the existing rules and rulings in the appreciation of votes. We find no reason to disturb the Tribunal's appreciation of the ballots contested as written by one person; written by two persons; and as marked ballots. We quote pertinent portions of the Tribunal's resolution addressing these issues, to wit:

"A. Ballots objected to by the parties

- Multiple Ballots Written by One Person

The Tribunal ruled on the validity of "written by one" ballots only when such are objected to, or even if not objected, are plainly null and void. Taken into consideration is the existence of assisted voting where illiterate or physically disabled voters are allowed to vote with the aid of assistants, it being presumed that identically written ballots were prepared by the assistant, one for himself and the other/s for the illiterate or physically

disabled voter/s. The presence of assisted voters was determined from the data reflected in the Minutes of Voting. The number was limited to three (3), unless the assistor was a member of the Board of Election Inspectors, in which case the limitation did not apply. Thus, the pairs or groups of ballots which were prepared by one person and which fall within the limits of assisted voting were admitted, provided that the handwriting thereon was similar to the signature of the assistor as appearing in the Minutes of Voting. The rest were rejected. Likewise, where the Minutes of Voting shows that there were no registered illiterate/disabled voters in the precinct, or where the uniform handwritings on the pair or group of ballots were not similar to that of the assistor indicated on whose signature appeared on the Minutes of Voting, all ballots clearly appearing to have been written by only one person were invalidated. In those instances where the Minutes of Voting was not available, the Computerized Voter's List was used to determine if there were illiterate voters.

On the basis of the foregoing rules, 30 ballots for the Protestant and 39 ballots for the Protestee were rejected. Admitted, on the other hand, were 4,795 ballots for the Protestant and 9,888 for the Protestee.

The list of ballots admitted and rejected are specified in Annexes "A" and "A-1", respectively.

- Ballots each written by two or more persons

Ballots which clearly appeared to have been filled by two persons before being deposited in the ballot box are null and void in the absence of evidence aliunde that the second handwriting was placed on the ballot after it was deposited in the ballot box, since the presumption is that the entries on the ballot were made prior to the casting of the vote.

In determining whether or not ballots were written by two or more persons, certain characteristics, such as, the following, were considered: (1) size of letter, (2) features and uniqueness, (3) terminal spurs and strokes, (4) proportion of letters, (5) connecting strokes, (6) pen lifts and hesitations, (7) letter spacing, slants and line quality, and (8) punctuation and other markings. Where it appears that there is a marked disparity or dissimilarity between the handwriting in one part of the ballot and the handwriting in another part and that the votes had clearly not been written by the same hand, the ballot was rejected. Upon the other hand, the following circumstances were held as not supporting the conclusion that the ballots were accomplished by two or more persons and consequently, the ballots were considered valid:

1)

Ballots in which the name of a candidate was written with big printed letters while the rest of the names in ordinary script, as such manner of voting was interpreted as merely an effort of the voter to emphasize his vote in favor of a candidate;

2)

Where the name of a candidate was written in a manner different from the other candidates voted for;

3)

The use of different strokes, style or manner of writing, or different inks or colors of ink, unless it is clearly evident that this scheme was used to serve as a mark.

4)

Where no marked disparity or dissimilarity appeared between the handwriting in one part of the ballot and the handwriting in another part;

Moreover, one of the cardinal principles of ballot appreciation is that the acts of persons other than the voters, without the latter's consent, should not affect the validity of lawfully cast ballots. Hence, ballots where the entries on lines/spaces other than that of the Representative were written by another person without the consent

of the voter where admitted, provided that: a) the name of either the Protestant or Protestee was written on the space/line for Representative; and b) said name was clearly written by the voter. In the same manner, where a person other than the voter crossed out the originally written name and replaced it with the name of another candidate, the vote was admitted for the original candidate and rejected for the second candidate.

The foregoing rules applied, 111 ballots for the Protestant and 50 ballots for the Protestee were rejected while 1,100 ballots for the Protestant and 2,391 ballots for the Protestee were admitted.

Annexes "B" and "B-1" show the respective list of admitted and rejected ballots.

- Marked Ballots

In ruling on the parties' objections on allegedly marked ballots, the Tribunal primarily adopted the basic rule that no ballot shall be rejected as marked unless clear and sufficient reason justify the action and that doubts should be resolved in favor of the validity of the ballot.

The Tribunal invalidated ballots for containing marks effected as follows:

- a) Impertinent, irrelevant and unnecessary words, phrases or expressions, such as "NEGRO," "IL NINIO," "LA NINIA," "TATANDA KA NA," "Abo," "Ikaw," "Kita Javan," "Dinuguan Sumouman," "LABHANG," "TAMBILAWAN," "OK KA," "(BLUE TEAM)," and others, as they serve no other purpose than to mark the ballots;
- b) Name, signature or initial of the voter appears on the ballot;
- c) Name, signature or initial of the voter appears on the ballots. The Tribunal referred to the Computerized Voters' List (CVL) to determine if the name written was indeed the name of the voter;
- d) Words or names written on spaces not intended for voting, such as the upper right side of the ballot;
- e) Names of non-candidates who are: a) famous historical figure such as "LUIS TARUC"; b) TV or movie personalities such as "German Moreno," and "NOLI DE CASTRO;" and basketball players, such as "Abarientos Johnny," "Lastimosa Jojo," "Hawkins Bong," "Derandes Kenneth," "Michael Jordan";
- f) Drawings such as that of a horse;
- g) Numeric figures written after a candidate's name or on any space for candidates;
- h) Names of non-candidates, as verified from the official list of candidates for the said election, such as "DOMIS BURHOT," "APING TIKAL," "SABING GAREZA," "OYA," "Gerino Gentapan," "Junior Nelly," "Joseph Elbannuena," "Dorry Garra," etc. written on ballots; Non-candidate's name repeatedly written on the ballot;
- i) Names of political parties such as "LAMMP," "KPP," "UMDP," "LAKAS," "PRP, "Independent," written on the ballot;
- j) Letters or alphabets which could not be considered middle initials;
- k) Pattern markings, in which a number of ballots are similarly marked, suggesting a common instruction of the vote buyer complied with by the bought voters. Ballots bearing the following identical patterns in at least three (3) ballots in one (1) precinct or in at least three (3) precincts were considered pattern voting:
 - i) Numeric figures written after the name of a candidate for Representative;
 - ii) "Blue Team" written after the name of a candidate for Representative;
 - iii) Encircled letters such as "BA," "MB," "SI," on line for Representative;

iv) Words as "Parin," "Ako," "Ikaw," "Kami," or "Sila," written after the name of a candidate for Representative;

v) Specific name of non-candidates written on lines for Senators.

Ballots rejected as marked were specified in Annex "C-1".

The following marks or signs, however, were not considered distinguishing or identifying marks and did not invalidate the ballots containing the same, provided that they had not been used by the voter for the purpose of identifying his vote:

a)

Erasures, retracing, superimpositions, crossed-out words, heavy writing or alterations of letters in the names of candidates which were regarded as attempts by the voters to correct and rectify what they had originally written;

b)

Circles, crosses, lines and "x" marks on spaces in which the voter did not write the name of any candidate, as they were considered as merely indicative of desistance;

c)

Checks, crosses, asterisks and other similar marks before or after the names of candidates, as they were presumed to be placed by the BEI in the course of the counting of the ballots;

d)

Commas, dots, lines or hyphens or other similar marks between the first name and surname of a candidate or in other parts of the ballot;

e)

Stains, smudges, ink or carbon markings, the presence of such marks not appearing to have been deliberately done or placed by the voters;

f)

Mere similar sequencing of the names of candidates, or uniformity of entries, either wholly or in part, as it is not unusual for a number of voters to copy the names of the candidates from similar sample ballots considering the number of candidates to be voted for;

g) Prefixes or suffixes before or after the name of candidates;

h)

Use of registered name or nickname;

i)

Use of nicknames and appellations of affections and friendship, if accompanied by the first name or surname of the candidate;

j) Any ballot written in crayon, lead pencil, or ink, wholly or in part;

k)

The use of different inks or colors of ink and/or two kinds of writing;

l) Undetached coupons;

m)

Ballots not completely filled up;

n)

Torn ballots, in the absence of any showing that the tearing was intentionally done by the voter to mark the ballot;

o) Use of descriptio personae;

p) Unintelligible words;

q) Candidate's name written twice on the ballot.

On the basis of the foregoing rules, 115 ballots for the Protestant and 159 for the Protestee were rejected. Admitted were 6,328 ballots for the Protestant and 1,568 ballots for the Protestee.

The respective list of admitted and rejected ballots objected to as marked are shown in Annexes "C" and "C-1".[15]

In fine, the dismissal of the election protest is clearly warranted by Rule 68 of the 1998 HRET which reads:

RULE 68. - Pilot precincts; Initial Revision. - Any provision of these Rules to the contrary notwithstanding, as soon as the issue in any contest before the Tribunal have been joined, it may direct and require the protestant and counter-protestant to state and designate in writing within fixed period at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said party deems as best exemplifying or demonstrating the electoral irregularities or frauds pleaded by him; and the revision of the ballots and reception of evidence shall begin with such pilot precincts designated. Upon the termination of such initial revision and reception of evidence, and based upon what reasonably appears therefrom as affecting or not the officially-proclaimed results of the contested election, the Tribunal may dismiss the protest or counter-protest, as the case may be, or require the party concerned to show cause why the protest or counter-protest should not be dismissed with out further proceedings."[16]

as shown by the Tribunal's summary of appreciation of ballots, viz.:

- Ballots for Protestant Torres Objected to by Protestee Garin

Admitted

Rejected

Protest

9,487

182

Counter-Protest

5,359

77

TOTAL

14,846

259

- Ballots for Protestee Garin Objected to by Protestant Torres

Admitted

Rejected

Protest

13,537

237

Counter-Protest

1,591

21

TOTAL

15,128

258

- Ballots Claimed by Protestant Torres

Admitted

Denied

Protest

204

86

Counter-Protest

113

49

TOTAL

317

135

- Ballots Claimed by Protestee Garin

Admitted

Denied

Protest

341

365

Counter-Protest

39

48

TOTAL

380

413

With regard to the votes pertaining to the non-pilot as well as the uncontested precincts, the same were arrived at as follows:

Protestant

Protestee

Total votes in the district as proclaimed

59,447

60,851

LESS:

Votes in the contested pilot precincts (based on Election Returns/Tally Boards and Statement of Votes)

17,023

22,087

EQUALS:

Total Votes in the contested non-pilot precincts and uncontested precincts

42,424

38,764

Having determined the said votes, the corresponding results after recount and appreciation of votes are as follows:

PROTESTANT

PROTESTEE

Votes per revision (physical count of votes)

16,926

20,335

ADD

A. Votes admitted on appreciation

317

380

Votes resorted on appreciation

1

B. Votes in Precinct 140A, Miagao (no ballots found inside ballot box)

19

22

C. Missing votes for Protestee per ER in 23 precincts of Miagao

1,560

Sub-Total

17,263

22,297

LESS

Votes rejected on appreciation

259

258

EQUALS

Total votes in the contested pilot

precincts after appreciation

17,004

22,039

ADD

Total votes in the contested non-pilot

precincts and uncontested precincts

42,424

38,764

EQUALS

TOTAL VOTES IN THE 1st DISTRICT OF ILOILO

59,428

60,803

As succinctly put by the Tribunal, "[t]he foregoing results of revision and appreciation of ballots in the 25% pilot precincts, based on the evidence of the parties, show that the plurality of Protestee's votes over those of Protestant has been reduced by 29 votes only. Thus, there is no showing that the officially-proclaimed results of the election

which show that Protestee had a lead of 1,404 votes, will be substantially affected if the proceedings with respect to the remaining 75% of the contested precincts were continued." [17]

WHEREFORE, the Court hereby resolves to DISMISS the present petition for lack of merit. The resolution of the respondent House of Representatives Electoral Tribunal dated July 13, 2000 is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Melo, J., no part, Chairman of the HRET.

Vitug, J., no part; took part in the HRET deliberation on the case.

Mendoza, J., no part, having taking part in the decision of case in the HRET.

[1] Petition, Annex "A," p. 33, Rollo.

[2] Tubungan (53); Igbaras (73); Oton (145); Guimbal (73); Miag-ao (158); Tigbauan (126); San Joaquin (115) - or a total of 743 precincts.

[3] 185 pilot protested precincts + 67 pilot counter-protested precincts = 252 - 15 commonly contested precincts.

[4] For precincts listed in the protest: from the municipality of Miag-ao, no separate ballot box was found for Precinct 8A1; from the municipality of Guimbal, Precinct Nos. 53A & 53A-1 were listed as separate precincts but are actually clustered. For precincts listed in the counter-protest: from the municipality of Miag-ao, Precinct Nos. 16A and 17A were listed as separate precincts but are actually clustered; no ballot box was found for Precinct No. 143A.

[5] Rollo, Annex "3"; pp. 341-349.

[6] HRET Resolution, pp. 1-17; Rollo, pp. 33-49.

[7] Petition, pp. 7-8; Rollo, pp. 9-10.

[8] HRET Resolution, pp. 19-28; Rollo, pp. 51-60.

[9] 202 SCRA 808 (1991).

[10] 289 SCRA 702 (1998).

[11] 1987 Constitution, Art. VI, Section 17.

[12] Peña vs. HRET, 270 SCRA 340 (1997).

[13] Ibid.

[14] HRET Resolution, p. 30; Rollo, p. 62.

[15] HRET Resolution, pp. 30-38; Rollo, pp. 62-70.

[16] Emphasis ours.

[17] HRET Resolution, p. 52-53; Rollo, pp. 84-85.

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