

ANUAR J. ABUBAKAR, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND NUR G. JAAFAR, RESPONDENTS.

G.R. NO. 173310. March 07, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

The petition in G.R. No. 173310 seeks to nullify Resolutions Nos. 06-047 and 06-053, dated June 8, 2006 and June 29, 2006, respectively, issued by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 04-017. Resolution No. 06-047 denied petitioner Anuar Abubakar's motion to conduct technical examination and to photocopy his ballots subject of the election protest filed by respondent Nur G. Jaafar against petitioner in connection with the May 10, 2004 congressional elections in the Province of Tawi-Tawi, Sulu. Resolution No. 06-053 denied petitioner's motion for reconsideration of Resolution No. 06-047.

On the other hand, the petition in G.R. No. 173609 seeks to nullify the Decision dated June 30, 2006 in the election protest declaring private respondent as the duly elected Representative of the Lone District of Tawi-Tawi Province in the May 10, 2004 elections and annulling petitioner's proclamation, and to nullify the Resolution dated August 3, 2006 which denied petitioner's motion for reconsideration of the Decision.

The facts are:

In the May 10, 2004 elections, Abubakar and Jaafar were among the candidates for Representative in the Lone District of Tawi-Tawi Province. On May 22, 2004, Abubakar was proclaimed winner garnering 37,720 votes against Jaafar's 35,680 votes; thus, winning by a margin of 2,040 votes.

On June 1, 2004, Jaafar filed an election protest with the HRET impugning the election results in ten municipalities of Tawi-Tawi Province. Jaafar alleged that fraudulent and illegal acts were employed by Abubakar, his supporters, the Board of Election Inspectors and some military personnel by preventing his (Jaafar's) supporters from voting through the use of force, violence, intimidation, deceit, fraud, misrepresentation and other machinations such as asking the voters to simply affix their thumbprints on sheets of paper without giving them any ballot, and massive substitute voting and substitution of ballots with ready-made ballots in the name of Abubakar.

Abubakar filed an Answer with Counter Protest denying Jaafar's allegations, and counter protested the election results in 160 precincts in nine of the ten municipalities of Tawi-Tawi on the following grounds: illegal reading and counting of ballots; presence of multiple ballots prepared by either one and the same person or individual ballots accomplished by two persons; illegal reading and counting of fake, unauthorized or unofficial ballots containing the protestant's name; misreading and/or misappreciation of ballots in protestant's favor; illegally considering the votes cast for protestee as stray votes; and prevalent erroneous counting in the election returns of the protestee's votes as votes for protestant.

During the preliminary conference conducted on February 3, 2006, the following issues were agreed upon for resolution:

- (1) Mutual charges of election irregularities, fraudulent and illegal acts committed in favor of protestant or protestee, such as substitute or impostor voting, alteration or tampering of ballots and/or election returns, misreading or miscounting of votes, use of spurious ballots, use of genuine ballots but prepared by either one or the same person or by two persons;
- (2) Re-count and re-appreciation of the ballots contested;
- (3) Whether to dismiss the protest for lack of merit; and
- (4) Whether to dismiss the protest for insufficiency in form and substance and for lack of cause of action.[1]

On March 17, 2005, a preliminary hearing was conducted on the affirmative defenses raised by protestee, thus: (1) The petition fails to state a cause of action, and (2) the petition is insufficient in form and substance.

Acting on the affirmative defenses of protestee, HRET issued Resolution No. 05-120 dated April 14, 2005 denying the prayer for dismissal of the protest for lack of merit. Protestee's Motion for Reconsideration and Motion to Defer Revision Proceedings were denied by HRET in Resolution No. 05-131 dated April 28, 2005.

From November 15, 2004 to December 8, 2004, HRET, through its representatives, collected all ballot boxes of the involved precincts in the protest and counter-protest, and some election documents and paraphernalia from the municipalities of Tawi-Tawi Province. Upon their return to office, HRET's representatives reported that the concerned election officers in the municipalities failed to turn over the Election Day Computerized Voters Lists and Book of Voters and merely surrendered the Book of Application Forms for Registration of Voters for the 2004 elections.

HRET, thereafter, ordered the revision of ballots of the 409 single and clustered contested precincts. Thus, from April 26, 2005 to May 9, 2005, revision of ballots was conducted over the 251 precincts exclusively protested by Jaafar, the 148 counter protested precincts, and the ten precincts commonly protested by Jaafar and Abubakar.

On May 31, 2006, Abubakar filed a Motion (1) to Conduct Technical Examination and (2) to Photocopy Protestee's Ballots.

In Resolution No. 06-047 dated June 8, 2006, HRET denied the motion. In support of its denial, HRET cited *Tanchangco v. Oreta* (HRET Case 92-017, April 28, 1994), where it was held:

Neither expert testimony nor technical examination of the questioned ballots is necessary for the Tribunal to properly pass on the validity of the objections and claims. The Tribunal in its evaluation and appreciation of the ballots, which are the best and conclusive evidence in respect to the claims of markings, spuriousness and other defects therein, may determine for itself which claims are duly established.[2]

HRET thus stated, "The Tribunal sees no need for the conduct of technical examination in this case, the ballots subject of this protest case having been each fully scrutinized by its members."

Moreover, HRET noted the report of the failure of the collection team, tasked to retrieve the ballot boxes and other election documents from the province of Tawi-tawi, to collect the Voters' Registration Records and Computerized Voters' Lists from the respective offices of the election officers concerned. Only the Application Forms of the Registrants in the May 2004 elections were turned over to them. Thus, HRET stated that even if granted, technical examination to be conducted by signature and handwriting experts would be useless in the absence of sufficient basis for comparison.

Abubakar's motion for reconsideration was denied by HRET in Resolution No. 06-053 dated June 29, 2006. HRET ruled thus:

The decision of the Tribunal to grant or deny a motion for technical examination as provided for under Rule 43 of the HRET Rules is discretionary depending on the circumstances obtaining in each case. For instance, in the case of *Mangotara v. Dimaporo*, HRET Case No. 01-041, the Tribunal granted the motion for technical examination because the Tribunal cannot evaluate the questioned ballots because there were no ballots but only election documents to consider. For this reason, the Tribunal found it necessary to permit protestant to engage an expert to assist him in the prosecution of his case. Thus, the Tribunal through its appreciation of all protested and counter-protested ballots, including those subject of the objections and claims by each party and even those not claimed or objected to, can ascertain the grounds invoked by the parties such as the genuineness of the ballots, identity or similarity of handwritings, and whether such ballots are spurious or tampered without the necessity of an expert or technical examination.

As regards the photocopying of ballots, the Tribunal, in almost all case, has allowed the photocopying of ballots and other election documents. However, in pursuit of its duty to preserve and safeguard the sanctity of the ballots at all times, the Tribunal has adopted stringent measures in allowing the photocopying of ballots and other election documents. Thus, it should be simultaneous with the revision proceedings.[3]

On June 30, 2006, HRET rendered its decision on the election protest, thus:

The plurality of votes belongs to protestant [Jaafar] who garnered 27,257 votes as against protestee [Abubakar] who obtained 25,705 votes.

Considering that the results of final count after revision and appreciation of the ballots show that the number of votes for protestant had overcome protestee's presumptive lead of two thousand and forty (2,040) votes as proclaimed, the Tribunal DECLARES protestant Nur G. Jaafar as the duly elected Representative of the Lone District of Tawi-Tawi Province in the May 10, 2004 elections and consequently, ANNULS the proclamation of protestee, Anuar J. Abubakar.[4]

On July 10, 2006, petitioner filed a motion for reconsideration of the Decision.

On July 18, 2006, Abubakar filed with this Court a petition for certiorari with urgent prayer for issuance of a writ of preliminary injunction, TRO or Status Quo Order on the interlocutory orders of HRET or Resolutions Nos. 06-047 and 06-053 denying petitioner's motion to conduct a technical examination and to photocopy his ballots. The petition was docketed as G.R. No. 173310.

In a Resolution dated August 3, 2006, HRET denied petitioner's Motion for Reconsideration of the Decision dated June 30, 2006.

On August 7, 2006, petitioner filed a petition for certiorari with urgent prayer for issuance of a writ of preliminary injunction, TRO or Status Quo Order against the HRET Decision declaring private respondent as the duly elected Representative of the Lone District of Tawi-Tawi Province. The petition was docketed as G.R. No. 173609.

In a Resolution dated September 12, 2006, the Court resolved to consolidate the two cases.

G.R. No. 173310

The subject matter of the petition in G.R. No. 173310 is the interlocutory order of HRET or Resolution No. 06-047 denying petitioner's motion to conduct a technical examination and to photocopy his ballots, and Resolution No. 06-053, which denied his motion for reconsideration. Petitioner points out that the subject matter of this case is distinct and separate from his motion for reconsideration of the Decision of HRET dated June 30, 2006.

Although petitioner admits that the grant of the motion to conduct a technical examination is discretionary on the part of HRET, petitioner still insists that the HRET committed grave abuse of discretion in denying the twin motions, and that he was denied due process.

Petitioner prayed that this Court (1) immediately issue a writ of preliminary injunction, TRO or Status Quo Order enjoining HRET from resolving with finality his motion for reconsideration of the Decision dated June 30, 2006 annulling his proclamation and declaring private respondent Jaafar as the Representative of Tawi-tawi; (2) direct HRET not to do anything that would render this petition moot; (3) Nullify Resolutions Nos. 06-053 and 06-047; and (4) direct HRET to conduct a technical examination and allow petitioner to photocopy his ballots.

The petition lacks merit.

As admitted by petitioner, the allowance or disallowance of the technical examination is discretionary on the part of HRET as provided by its rules;^[5] hence, there was no denial of due process.

Here, petitioner seeks to compel HRET to determine whether or not the 7,966 ballots of petitioner were prepared by one person or prepared by assistants.

It must be pointed out that the 7,966 ballots for petitioner were rejected since they were considered to be written by one person either because the Minutes of Voting in the pertinent precincts did not indicate the existence of assisted-voting or did not contain the names of the illiterate voters and their assistants in violation of the HRET rules and guidelines.

Further, HRET rendered its decision on the election protest on June 30, 2006, and petitioner received a copy of the decision on the same date. Thus, when petitioner filed a petition for certiorari on July 18, 2006 questioning the interlocutory orders of HRET issued in the main case, that is, the election protest that had already been decided, the petition had become moot.

G.R. No. 173609

The subject matter of G.R. No. 173609 is the Decision of HRET in the election protest. The main issue is whether or not HRET acted without or in excess of its jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion for reconsideration of the Decision dated June 30, 2006, which annulled petitioner's proclamation and declared private respondent as the duly elected Representative of Tawi-Tawi Province.

Petitioner also raised the following ancillary issues:

First, petitioner argues that the Decision promulgated on June 30, 2006 is void for having been promulgated outside a regular session. Considering that members of the HRET met for its regular session on June 29, 2006, the decision should have been promulgated on the same day, not the next day.

The argument is without merit.

The pertinent provisions of the HRET Rules regarding the rendition and promulgation of the questioned Decision are as follows:

Rule 69. Votes Required. - In passing on all questions submitted to the Tribunal, all the Members present, including the Chairman, shall vote. For the rendition of decisions and the adoption of formal resolutions, the concurrence of at least five (5) Members shall be necessary.

Rule 71. Procedure in Deciding Contests. - In rendering its decisions, the Tribunal shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution.

Rule 73. Promulgation and Notice of Decisions. - After the judgment and dissenting opinions, if any, are signed, they shall be delivered for filing to the Secretary of the Tribunal who shall forthwith indicate thereon the date of promulgation and cause true copies thereof to be served upon the parties or their counsel, personally or by registered mail.

In its Resolution dated August 3, 2006, HRET satisfactorily explained that it conducted its regular meeting on June 29, 2006 and deliberated and voted on the challenged decision with six members present, and signed by five members. The decision was, however, given for promulgation on June 30, 2006 because one member, who was present during the meeting, left due to an emergency without having been able to affix his signature on the decision. After the consent of said member to issue the decision even without his signature was obtained on June 30, 2006, the decision was forthwith given to the Secretary of the Tribunal for promulgation and release to the parties.

The Decision had the required number of votes under Rule 68 of the HRET Rules since it was signed, as of June 29, 2006, by five members of the HRET, namely, Supreme Court Justices Leonardo A. Quisumbing and Ma. Alicia Austria-Martinez, Congressmen Salacnib F. Baterina, Laurence B. Wacnang and Ruy Elias C. Lopez.

The Court agrees with the Tribunal that the duty of the Secretary of the Tribunal to indicate the date of promulgation and thereafter serve copies thereof to the parties as mandated by Rule 72 of the HRET Rules is ministerial after the decision, signed by the members present, is delivered and filed with the Secretary of the Tribunal so that copies thereof can be furnished to the parties involved.

Second, petitioner contends that the testimonies of the nineteen Chairpersons of the Board of Election Inspectors (BEI) were wrongfully disregarded.

The contention lacks merit.

HRET resolved objections regarding ballots written by one person by applying the following rule:

1. Multiple Ballots Written By One Person - Pairs or groups of ballots clearly prepared by one (1) person are invalid, except where the Minutes of voting show that illiterate or physically disabled persons voted with the aid of assistors. In the latter case, the ballots are valid, provided the handwriting thereon was similar to the signature of a registered assistor found in the Minutes of Voting, it being presumed that similarly written ballots were prepared by the assistor, one for himself and for not more than three (3) illiterate or disabled voters, unless the assistor was a member of the Board of Election Inspectors, in which case, the numerical limitation is not applicable.[6] (Emphasis supplied.)

It is noted that the nineteen BEI chairpersons presented by petitioner as witnesses served in only two[7] of the ten municipalities in Tawi-Tawi. Although the BEI witnesses declared that there were illiterate voters who voted in their respective precincts and that it was reflected in the Minutes of Voting of the nineteen precincts, HRET found that such claim of assisted voting was indicated in the Minutes of Voting of only ten precincts. However, the Minutes of Voting of the ten precincts failed to state the names and signatures of the alleged assisted voters and their respective assistors in violation of the aforesaid HRET rule. Thus, the ballots written by one (WBO) in said precincts were rejected. On the other hand, since the Minutes of Voting of the nine other precincts did not state any assisted voting therein, the WBO-ballots in the said precincts were also rejected. As between the testimonies of the BEI Chairpersons and HRET's actual findings per appreciation of the ballots and the documents inside the ballot boxes, particularly the entries in the Minutes of Voting, HRET correctly gave the latter greater weight. As stated by HRET, the presumption of regularity in the public official's performance of his duty holds true only when it is not found to be inconsistent with the facts.

Third, petitioner contends that invalidating 7,966 ballots in his favor, which were allegedly written-by-one person,

goes against the presumption of validity of votes and, in effect, 7966 voters were unable to vote.

The contention is untenable.

HRET aptly stated that the general rule that all ballots are presumed to be valid is applied when there is doubt in their appreciation, but not when clear and sufficient reasons justify the nullification of the ballots. The 7,966 votes were correctly invalidated as written by one person because aside from the observation that the ballots bore similar/identical handwritings, the Minutes of Voting in numerous precincts had no entries as to the names of the illiterate voters and their respective assistants, contrary to the aforecited rule applied by HRET.

Fourth, petitioner contends that since there is unusual discrepancy of votes stated in the election returns and physical count of ballots, the election returns and not the ballots should prevail. Moreover, if more than 50% of the votes are rejected, then election returns, not the ballots should be used to establish the votes of parties.

The contention is without merit.

HRET correctly considered the examination of ballots as the best evidence. In this case, the ballots were available and their integrity was unquestioned. 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.[8] It is only when the ballots cannot be produced or are not available that recourse is made to the election returns as evidence.[9]

Petitioner further alleged that 515 ballots in seven precincts in the Turtle Islands were not appreciated in his favor as they were still in the custody of the Regional Trial Court (RTC) of Tawi-Tawi because of two pending local election protests. Petitioner attached to his petition a certified true copy of the Minutes of the Revision Proceedings (Annex "G") for the Counter-Protest for the mayoralty (Jihim v. Tang, EP Case No. 43-5) and vice-mayoralty (Laurel v. Samindih, EP Case No. 44-5) candidates before the Regional Trial Court of Tawi-Tawi to prove that the ballots are with the Regional Trial Court.

In its Resolution dated August 3, 2006, HRET already denied the allegation, thus:

As regards the 515 ballots, in Precinct Nos. 2A, 7A, 8A, 9A, 10A, 11A, 12A, all of Turtle Islands, which protestee alleged are still in the possession and official custody of the Regional Trial Court (RTC) of Tawi-Tawi because of two (2) pending local election protests, records will show that all ballot boxes in the contested precincts in Turtle Islands (Protested Precincts: Precinct Nos. 2A [Poblacion], 7A, 8A, 9A [Sitio Bacungan], 10A, 11A, 12A [Sitio Buan]; Counter-Protested Precincts: Precincts Nos. 1A, 3A, 4A, 5A/6A [Barangay Dambila Poblacion], 13A, 14A, 15A [Barangay Likud Bakkao]) have been collected by the Tribunal from the RTC of Tawi-Tawi. There was no report on record that some ballots in said precincts were left in the RTC of Tawi-Tawi.

Furthermore, as correctly pointed out by the protestant, a comparison of the Minutes of Revision Proceedings in the RTC of Tawi-Tawi (Exhibit 30) and the Revision Reports of the Tribunal failed to show any discrepancy in the number of official ballots inside the ballot boxes of said precincts.[10]

The Court notes that the certified true copy of the Minutes of the Revision Proceedings (Annex "G") in the RTC of Tawi-Tawi, which was submitted by petitioner to prove that the 515 ballots for petitioner were allegedly unappreciated in his favor by HRET, is dated "12-01-04." The Decision of HRET on the election protest of private respondent was promulgated on June 30, 2006, showing that there was enough time for HRET to collect the questioned ballots from the RTC of Tawi-Tawi. Thus, the Court gives credence to the confirmation of HRET that it collected all ballot boxes in the contested precincts in Turtle Islands from the RTC of Tawi-Tawi.

This Court's jurisdiction to review decisions and resolutions of HRET operates only upon a showing of grave

abuse of discretion on the part of the Tribunal tantamount to lack or excess of jurisdiction. Such grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[11] The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[12] It is absent in this case.

The declaration of HRET that private respondent is the duly elected representative of Tawi-Tawi is based on the result of the revision and appreciation of ballots in the protested and counter-protested precincts. The HRET did not commit grave abuse of discretion in declaring private respondent Jaafar as the duly-elected Representative of Tawi-Tawi Province and in annulling the proclamation of petitioner.

WHEREFORE, the petition in G.R. No. 173310 is DISMISSED for mootness, and the Resolutions dated June 8, 2006 and June 29, 2006 of respondent House of Representatives Electoral Tribunal are AFFIRMED.

The petition in G.R. No. 173609 is DISMISSED for lack of merit. The Decision dated June 30, 2006 and the Resolution dated August 3, 2006 of respondent House of Representatives Electoral Tribunal are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Corona, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario, Garcia, Velasco, and Nachura, JJ., concur.

Quisumbing, and Austria-Martinez, JJ., no part, due prior action in HRET.

Sandoval-Gutierrez, J., no part., member of HRET who decided case.

[1] Rollo (G.R. No. 173609), p. 74.

[2] Id. at 34.

[3] Rollo (G.R. No. 173310), pp. 31-32.

[4] Rollo (G.R. No. 173609), p. 98.

[5] Rule 43. Technical Examination; Time Limits.-The motion for technical examination may be granted by the Tribunal in its discretion and under such conditions as it may impose. If granted, the movant shall schedule the technical examination, to start within ten (10) calendar days from the time he was notified of the granting of his Motion, notifying the other party and the Clerk of the Tribunal at least five (5) days in advance thereof. x x x

[6] Rollo (G.R. No. 173609), p. 81.

[7] Municipalities of Panglima Sugala and South Ubian.

[8] Lerias v. House of Representatives Electoral Tribunal, G.R. No. 97105, October 15, 1991, 202 SCRA 808,

[9] Ibid.

[10] Rollo (G.R. No. 173609), pp. 68-69.

[11] Batul v. Bayron, et al., G. R. Nos. 157687 and 158959, Feb. 26, 2004, 424 SCRA 26, 41.

[12] Ibid.

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