HENRY “JUN” DUEÑAS, JR., PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ANGELITO “JETT” P. REYES, RESPONDENTS.

G.R. No. 185401. July 21, 2009

Ponente: CORONA, J.

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CORONA, J.:

> Sed quis custodiet ipsos custodies? (But who is to guard the guardians themselves?)[1]

Under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty.[2] The Court has the distinguished but delicate duty of determining and defining constitutional meaning, divining constitutional intent and deciding constitutional disputes. Nonetheless, its judicial supremacy is never judicial superiority (for it is co-equal with the other branches) or judicial tyranny (for it is supposed to be the least dangerous branch).[3] Instead, judicial supremacy is the conscious and cautious awareness and acceptance of its proper place in the overall scheme of government with the objective of asserting and promoting the supremacy of the Constitution. Thus, whenever the Court exercises its function of checking the excesses of any branch of government, it is also duty-bound to check itself. Otherwise, who will guard the guardian?

The Court should exercise judicial restraint as it resolves the two interesting issues that confront it in this petition: first, whether the House of Representatives Electoral Tribunal (HRET) committed grave abuse of discretion when it denied petitioner Henry "Jun" Dueñas, Jr.'s motion to withdraw or abandon his remaining 75% counter-protested precincts and second, whether the HRET committed grave abuse of discretion when it ordered that its own funds be used for the revision of the ballots from said 75% counter-protested precincts.

Factual Backdrop

Petitioner Henry "Jun" Dueñas, Jr. and private respondent Angelito "Jett" P. Reyes were rival candidates for the position of congressman in the 2[nd] legislative district of Taguig City in the May 14, 2007 synchronized national and local elections. After the canvass of the votes, petitioner was proclaimed the winner, having garnered 28,564 votes[4] as opposed to private respondent's 27,107 votes.[5]

Not conceding defeat, private respondent filed an election protest ad cautelam,[6] docketed as HRET Case No. 07-27, in the HRET on June 4, 2007. He prayed for a revision/recount in 170[7] of the 732 precincts in the 2[nd] legislative district of Taguig City so that the true and real mandate of the electorate may be ascertained.[8] In support of his protest, he alleged that he was cheated in the protested precincts through insidious and well-orchestrated electoral frauds and anomalies which resulted in the systematic reduction of his votes and the corresponding increase in petitioner's votes.[9]

Petitioner filed his answer[10] on June 25, 2007. Not to be outdone, he also counter-protested 560 precincts claiming that massive fraud through deliberate misreading, miscounting and misappreciation of ballots were also

committed against him in said precincts resulting in the reduction of his votes in order to favor private respondent.[11]

After the issues were joined, the HRET ordered that all ballot boxes and other election materials involved in the protest and counter-protest be collected and retrieved, and brought to its offices for custody.

In the preliminary conference held on July 26, 2007, petitioner and private respondent agreed that, since the total number of the protested precincts was less than 50% of the total number of the precincts in the 2[nd] legislative district of Taguig City, all of the protested precincts would be revised without need of designation of pilot precints by private respondent pursuant to Rule 88 of the HRET Rules.[12]

The HRET thereafter directed the revision of ballots starting September 18, 2007.[13] Reception of evidence of the contending parties followed after the revision of ballots in 100% of the protested precincts and 25% pilot of the counter-protested precincts. The case was then submitted for resolution upon submission by the parties of their memoranda.

In an order dated September 25, 2008, the HRET directed the continuation of the revision and appreciation of the remaining 75% of the counter-protested precincts pursuant to Rule 88 of the HRET Rules, "[i]t appearing that the [HRET] cannot determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots in some of the protested and counter-protested precincts."[14]

Petitioner moved for reconsideration[15] but the HRET denied his motion in an order dated October 21, 2008.[16] On the same day, the HRET issued another order directing petitioner to augment his cash deposit in the amount of P320,000 to cover the expenses of the revision of ballots in the remaining 75% counter-protested precincts within a non-extendible period of ten days from notice.[17]

Instead of complying with the order, petitioner filed an urgent motion to withdraw/abandon the remaining 75% counter-protested precincts on October 27, 2008.[18] This was denied by the HRET in Resolution No. 08-353 dated November 27, 2008, reiterating its order directing the continuation of the revision of ballots in the remaining 75% counter-protested precincts and recalling its order requiring petitioner to augment his cash deposit. The Tribunal instead ordered the use of its own funds for the revision of the remaining 75% counter-protested precincts.[19]

In issuing Resolution No. 08-353 dated November 27, 2008, the HRET invoked Rule 88 of the HRET Rules and settled jurisprudence, ruling that it had the discretion either to dismiss the protest or counter-protest, or to continue with the revision if necessitated by reasonable and sufficient grounds affecting the validity of the election. This was with the end in view of ascertaining the true choice of the electorate. It was the HRET's position that the mere filing of a motion to withdraw/abandon the unrevised precincts did not automatically divest the HRET of its jurisdiction over the same. Moreover, it ruled that its task of determining the true will of the electorate was not confined to the examination of contested ballots. Under its plenary power, it could motu propio review the validity of every ballot involved in a protest or counter-protest and the same could not be frustrated by the mere expedient of filing a motion to withdraw/abandon the remaining counter-protested precincts. Convinced that it could not determine the true will of the electorate of the 2[nd] legislative district of Taguig City on the basis alone of the initial revision of the 100% protested precincts and the 25% counter-protested precincts, it had no other recourse but to continue the revision and appreciation of all the remaining 75% counter-protested precincts.[20]

Aggrieved by the HRET's Resolution No. 08-353 dated November 27, 2008, petitioner elevated the matter to this Court.

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Central Issue To be Resolved

The core issue for our determination is whether the HRET committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing Resolution No. 08-353 dated November 27, 2008.

Contentions Of The Parties

Petitioner argues mainly that private respondent as protestant in the election protest at the HRET had the burden of proving his cause. Failing to do so, the protest should have been dismissed promptly and not unduly prolonged. For petitioner, the HRET's declaration of its failure to ascertain the true will of the electorate after the complete revision of all protested precincts demonstrated private respondent's failure to discharge his burden. Thus, the HRET committed grave abuse of discretion in ordering the continuation of the revision of ballots in the remaining unrevised precincts as its acts amounted to giving private respondent the undeserved chance to prevail by assisting him in his search for evidence to support his case. The HRET in effect took the cudgels for him and thereby compromised its impartiality and independence.

Petitioner also avers that private respondent's failure to prove his contentions and his (petitioner's) concomitant exercise of his right to withdraw his counter-protest made the continued revision irrelevant. He claims that, since a counter-protest is designed to protect and advance the interest of the protestee, private respondent should not expect to derive any benefit therefrom. This justified the allowance of the withdrawal of the counter-protest.[21]

Petitioner also labels as grave abuse of discretion the HRET's assumption of the burden of the costs of the continued revision. For him, the funds of the HRET should not be used for the benefit of a private party, specially when its only objective was to speculate whether "the failed protestant can win."[22] Also, the HRET's act amounted to an illegal and unconstitutional disbursement of public funds which is proscribed under Section 29 (1),[23] Article VI of the Constitution.[24]

Petitioner adds that the discretion extended to the HRET pursuant to Rule 88 of the HRET Rules (whether or not to continue with the revision) may be exercised only when the results of the initial revision show that the same reasonably affected the officially-proclaimed results of the contested election. However, the HRET never made any determination that the results of the revision showed private respondent to have made substantial recoveries in support of his cause but simply directed the continuation of the revision on the premise of its failure to determine the true will of the electorate as well as in its discovery of fake/spurious ballots. Yet, the total number of alleged fake/spurious ballots was only 75, or a little over 5% of his 1,457 lead votes; hence, it could not reasonably be inferred to have affected the officially proclaimed results. Thus, for petitioner, the fake/spurious ballots could not be made the basis for the continuation of revision of ballots.[25]

In his comment,[26] private respondent counters that no grave abuse of discretion could be attributed to the HRET in issuing the assailed resolution. The HRET had every right to order the continuation of the revision of ballots after its discovery of fake/spurious ballots in favor of petitioner. Its pronouncement that it could not determine the true will of the electorate centered on this discovery. Thus, its constitutional mandate dictated that it ferret out the truth by completing the said revision.[27]

Private respondent further argues that, under Rule 88 of its Rules, the HRET had the discretion to either dismiss the counter-protest or continue with the revision based on the outcome of the initial revision and appreciation proceedings and initial evidence presented by the parties. The mere filing of a motion to withdraw the protest on the remaining unrevised precincts did not divest the HRET of its jurisdiction over the electoral protest.[28]

Furthermore, the HRET could use its available funds to shoulder the cost of revision as this was merely an incident to its discretion under Rule 88 and of its plenary powers under the Constitution. To hold otherwise would

render its mandated functions meaningless and nugatory.[29]

For its part, the HRET insists in its comment[30] that it did not commit any grave abuse of discretion. It contends that there was a sufficient and legitimate reason to proceed with the revision of the remaining 75% counter-protested precincts. The discovery of fake/spurious ballots created serious doubts about the sanctity of the ballots subject matter of the protest and counter-protest. Thus, the HRET had no other choice but to open the ballot boxes in the counter-protested precincts and continue with its revision in order to ascertain and determine the true will of the electorate. Moreover, its discretion under the HRET Rules gave it the imprimatur to order the continuation of the revision if, based on its independent evaluation of the results of the initial revision, the same affected the officially proclaimed results of the contested election. Since the discovery of fake/spurious ballots, to its mind, had a bearing on the true results of the election, the HRET submits that it was justified in issuing said order.[31]

The HRET also points out that the withdrawal of the revision of ballots was not a vested right of any party but must give way to the higher dictates of public interest, that of determining the true choice of the people. This determination did not depend on the desire of any party but was vested solely on the discretion of the HRET as the "sole judge" of all contests relating to the elections, returns and qualifications of members of the House of Representatives. Moreover, under the HRET's plenary powers, it could motu proprio review the validity of every ballot involved in a protest or counter-protest.[32]

The HRET further claims that petitioner had no reason to worry or to object to its disbursement of its funds for the continuation of the revision since it had the allotted budget for the same under paragraph I, (C.1) of RA[33] No. 9498,[34] or the General Appropriations Act for Fiscal Year 2008.[35]

Ruling Of The Court

The petition has no merit.

We base our decision not only on the constitutional authority of the HRET as the "sole judge of all contests relating to the election, returns and qualifications"[36] of its members but also on the limitation of the Court's power of judicial review.

The Court itself has delineated the parameters of its power of review in cases involving the HRET -

> ... so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court .... the power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same.[37] (emphasis supplied)

Guided by this basic principle, the Court will neither assume a power that belongs exclusively to the HRET nor substitute its own judgment for that of the Tribunal.

The acts complained of in this case pertain to the HRET's exercise of its discretion, an exercise which was well within the bounds of its authority.

Power of HRET to Deny the Motion
To Withdraw/Abandon Counter-Protest

Petitioner submits that there was no point in continuing with the revision of the remaining 75% of the counter-protested precincts because, notwithstanding the revision of 100% of the protested precincts and 25% of the counter-protested precincts, petitioner's margin over private respondent was still more than a thousand votes.

Petitioner is wrong.

First, there are 732 precincts in the 2[nd] Legislative District of Taguig City, where respondent protested the election results in 170 precincts and petitioner counter-protested 560 precincts.[38] All in all, therefore, 730 precincts were the subject of the revision proceedings. While 100% of the protested precincts were already revised, only 25% or 140 of the counter-protested precincts (or a total of 310 precincts) were actually done. Yet, with 420 more precincts to go had the HRET only been allowed to continue its proceedings, petitioner claims that respondents were only speculating that a sufficient number of fake/spurious ballots would be discovered in the remaining 75% counter-protested precincts and that these fake/spurious ballots would overturn the result of the election.

This is ironic because, while petitioner faults the HRET for allegedly engaging in speculation, his position is itself based on conjectures. He assumes that revising the 420 remaining precincts will not substantially or significantly affect the original result of the election which will remain the same. As such, he speculates that, if revised, the 420 remaining precincts will only yield the same or similar finding as that generated in the 310 precincts already subjected to revision. He presupposes that the HRET can determine the true will of the electorate even without the 420 or 75% of counter-protested precincts. (This in fact constitutes 57% of all 730 precincts in the legislative district.)

Petitioner may have assumed too much.

Indeed, due regard and respect for the authority of the HRET as an independent constitutional body require that any finding of grave abuse of discretion against that body should be based on firm and convincing proof, not on shaky assumptions. Any accusation of grave abuse of discretion on the part of the HRET must be established by a clear showing of arbitrariness and improvidence.[39] But the Court finds no evidence of such grave abuse of discretion by the HRET.

In Co v. HRET,[40] we held that:

> The Court does not venture into the perilous area of trying to correct perceived errors of independent branches of the Government. It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.[41] (emphasis supplied)

Second, the Constitution mandates that the HRET "shall be the sole judge of all contests relating to the election, returns and qualifications"[42] of its members. By employing the word "sole," the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is exclusive and exhaustive.[43] Its exercise of power is intended to be its own -- full, complete and unimpaired.[44]

Protective of its jurisdiction and assertive of its constitutional mandate, the Tribunal adopted Rule 7 of the HRET Rules:

> RULE 7. Control of Own Functions. -- The Tribunal shall have exclusive control, direction and supervision of all matters pertaining to its own functions and operation. (emphasis supplied)

In this connection and in the matter of the revision of ballots, the HRET reserved for itself the discretion to continue or discontinue the process. Rule 88 of the HRET Rules provides:

> RULE 88. Pilot Precincts; Initial Revision. -- Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, it may direct and require the protestant and counter-protestant, in case the protest or counter-protest involves more than 50% of the total number of precincts in the district, to state and designate in writing within a fixed period at most twenty-five (25%)

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> 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/or reception of evidence shall begin with such pilot precincts designated. Upon the termination of such initial revision and/or reception of evidence, which presentation of evidence should not exceed ten (10) days, and based upon what reasonably appears therefrom as affecting or not the officially-proclaimed results of the contested election, the Tribunal may direct motu propio the continuation of the revision of ballots in the remaining contested precincts, or dismiss the protest, or the counter-protest, without further proceedings. (emphasis supplied)

The meaning of Rule 88 is plain. The HRET could continue or discontinue the revision proceedings ex propio motu, that is, of its own accord.[45] Thus, even if we were to adopt petitioner's view that he ought to have been allowed by HRET to withdraw his counter-protest, there was nothing to prevent the HRET from continuing the revision of its own accord by authority of Rule 88.

The only prerequisite to the exercise by the HRET of its prerogative under Rule 88 was its own determination that the evidence thus far presented could affect the officially proclaimed results. Much like the appreciation of contested ballots and election documents, the determination of whether the evidence could influence the officially proclaimed results was a highly technical undertaking, a function best left to the specialized expertise of the HRET. In Abubakar v. HRET,[46] this Court declined to review the ruling of the HRET on a matter that was discretionary and technical. The same sense of respect for and deference to the constitutional mandate of the HRET should now animate the Court in resolving this case.

On this specific point, the HRET held that it "[could] not determine the true will of the electorate from the [result of the] initial revision and appreciation."[47] It was also "convinced that the revision of the 75% remaining precincts ... [was] necessary under the circumstances in order to attain the objective of ascertaining the true intent of the electorate and to remove any doubt as to who between [private respondent] and [petitioner] obtained the highest number of votes in an election conducted in a fair, regular and honest manner."[48]

At the risk of unduly encroaching on the exclusive prerogative of the HRET as the sole judge of election contests involving its members, the Court cannot substitute its own sense or judgment for that of the HRET on the issues of whether the evidence presented during the initial revision could affect the officially proclaimed results and whether the continuation of the revision proceedings could lead to a determination of the true will of the electorate. Regrettably, that is what petitioner actually wants the Court to do. But in the exercise of its checking function, the Court should merely test whether or not the governmental branch or agency has gone beyond the constitutional limits of its jurisdiction, not that it erred or had a different view.[49]

Petitioner's position disregards, or at least waters down, Rules 7 and 88 of the HRET Rules. If the Court will dictate to the HRET on how to proceed with these election protest proceedings, the Tribunal will no longer have "exclusive control, direction and supervision of all matters pertaining to its own functions and operation." It will constitute an intrusion into the HRET's domain and a curtailment of the HRET's power to act of its own accord on its own evaluation of the evidentiary weight and effect of the result of the initial revision.

Libanan v. HRET[50] expressed the Court's recognition of the limitation of its own power vis-à-vis the extent of the authority vested by the Constitution on the HRET as sole judge of election contests involving its members. The Court acknowledged that it could not restrict, diminish or affect the HRET's authority with respect to the latter's exercise of its constitutional mandate. Overturning the HRET's exercise of its power under Rule 88 will not only emasculate its authority but will also arrogate unto this Court that body's purely discretionary function.

Finally, it is hornbook doctrine that jurisdiction, once acquired, is not lost at the instance of the parties but continues until the case is terminated.[51] Thus, in Robles v. HRET,[52] the Court ruled:

> The mere filing of the motion to withdraw protest on the remaining uncontested precincts, without any action on the part of respondent tribunal, does not by itself divest the tribunal of its jurisdiction over the case. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated. We agree with respondent House of Representatives Electoral Tribunal when it held:
>
> We cannot agree with Protestee's contention that Protestant's 'Motion to Withdraw Protest on Unrevised Precincts' effectively with drew the precincts referred to therein from the protest even before the Tribunal has acted thereon. Certainly, the Tribunal retains the authority to grant or deny the Motion, and the withdrawal becomes effective only when the Motion is granted. To hold otherwise would permit a party to deprive the Tribunal of jurisdiction already acquired.
>
> We hold therefore that this Tribunal retains the power and the authority to grant or deny Protestant's Motion to Withdraw, if only to insure that the Tribunal retains sufficient authority to see to it that the will of the electorate is ascertained.
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> x x x x x x x x x

Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari. This rule more appropriately applies to respondent HRET whose independence as a constitutional body has time and again been upheld by Us in many cases. As explained in the case of Lazatin v. The House of Representatives Electoral Tribunal and Timbol, G.R. No. 84297, December 8, 1988, thus:

> The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred [Angara v. Electoral Commission, supra, at 162]. The exercise of the Power by the Electoral Commission under the 1935 Constitution has been described as `intended to be complete and unimpaired as if it had remained originally in the legislature' [Id. at 175]. Earlier, this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete' [Veloso v. Board of Canvassers of Leyte and Samar, 39 Phil. 886 (1919)]. Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal [Suanes v. Chief Accountant of the Senate, 81 Phil. 818 (1948)] and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission [Lachica v. Yap, G.R. No. L-25379, September 25, 1968, 25 SCRA 140]. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution. Thus, 'judicial review of decisions or final resolutions of the House Electoral Tribunal is (thus) possible only in the exercise of this Court's so-called extraordinary jurisdiction, . . . upon a determination that the tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or, paraphrasing Morrera, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated ERROR, manifestly constituting such a GRAVE ABUSE OF DISCRETION that there has to be a remedy for such abuse.[53] (emphasis supplied)

Petitioner's argument will in effect deprive the HRET of the jurisdiction it has already acquired. It will also hold the HRET hostage to the whim or caprice of the parties before it. If the HRET is the independent body that it truly is and if it is to effectively carry out its constitutional mandate, the situation urged by petitioner should not be allowed.

Discretion of HRET to Use Its
Own Funds In Revision Proceedings

When jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have the authority to employ all writs, processes and other means to make its power effective.[54] Where a general power is conferred or duty enjoined, every particular power necessary for the exercise of one or the performance of the other is also conferred.[55] Since the HRET possessed the authority to

motu propio continue a revision of ballots, it also had the wherewithal to carry it out. It thus ordered the disbursement of its own funds for the revision of the ballots in the remaining counter-protested precincts. We hark back to Rule 7 of the HRET Rules which provides that the HRET has exclusive control, direction and supervision of its functions. The HRET's order was but one aspect of its power.

Moreover, Rule 8 of the HRET Rules provides:

> RULE 8. Express and Implied Powers. -- The Tribunal shall have and exercise all such powers as are vested in it by the Constitution or by law, and such other powers as are necessary or incidental to the accomplishment of its purposes and functions as set forth in the Constitution or as may be provided by law. (emphasis supplied)

Certainly, the HRET's order that its own funds be used for the revision of the ballots from the 75% counter-protested precincts was an exercise of a power necessary or incidental to the accomplishment of its primary function as sole judge of election protest cases involving its members.

Petitioner contends that, even if the HRET could lawfully order the continuation of the revision, RA 9498 did not authorize the Tribunal to use its own funds for the purpose. This belief is questionable on three grounds.

First, if petitioner hypothetically admits that the HRET has the power to order the continuation of the revision of the 75% remaining counter-protested precincts, then he should also necessarily concede that there is nothing to prevent the HRET from using its own funds to carry out such objective. Otherwise, the existence of such power on the part of the HRET becomes useless and meaningless.

Second, petitioner has a very restrictive view of RA 9498. He conveniently fails to mention that Section 1, Chapter 1 of RA 9498 provides that the HRET has an allotted budget for the "Adjudication of Electoral Contests Involving Members of the House of Representatives."[56] The provision is general and encompassing enough to authorize the use of the HRET's funds for the revision of ballots, whether in a protest or counter-protest. Being allowed by law, the use of HRET funds for the revision of the remaining 75% counter-protested precincts was not illegal, much less violative of Article 220 of the Revised Penal Code.

To reiterate, the law (particularly RA 9498) itself has appropriated funds for adjudicating election contests in the HRET. As an independent constitutional body, and having received the proper appropriation for that purpose, the HRET had wide discretion in the disbursement and allocation of such funds.

Third, even assuming that RA 9498 did not expressly authorize the HRET to use its own funds for the adjudication of a protest or counter-protest, it had the inherent power to suspend its own rules[57] and disburse its funds for any lawful purpose it deemed best. This is specially significant in election contests such as this where what is at stake is the vital public interest in determining the true will of the electorate. In any event, nothing prevented the HRET from ordering any of the parties to make the additional required deposit(s) to cover costs, as respondent in fact manifested in the HRET.[58] Petitioner himself admits in his pleadings that private respondent filed a

> Formal Manifestation with the respondent HRET informing respondent HRET that he [was] willing to make the added cash deposit to shoulder the costs and expenses for the revision of [the] counter-protested precincts.[59]

Such disbursement could not be deemed a giving of unwarranted benefit, advantage or preference to a party since the benefit would actually redound to the electorate whose true will must be determined. Suffrage is a matter of public, not private, interest. The Court declared in Aruelo, Jr. v. Court of Appeals[60] that "[o]ver and above the desire of the candidates to win, is the deep public interest to determine the true choice of the people."[61] Thus, in an election protest, any benefit to a party would simply be incidental.

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Moreover, the action of the HRET was permitted by the HRET Rules. Rule 33 of the HRET Rules provides:

> RULE 33. Effect of Failure to Make Cash Deposit. -- If a party fails to make the cash deposits or additional cash deposits herein provided within the prescribed time limit, the Tribunal may dismiss the protest, counter-protest, or petition for quo warranto, or take such action as it may deem equitable under the premises. (emphasis supplied)

All told, it should be borne in mind that the present petition is a petition for certiorari under Rule 65 of the Rules of Court. It alleges that the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction when it promulgated Resolution No. 08-353 dated November 27, 2008. But what is "grave abuse of discretion?" It is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for certiorari to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence.[62] Using the foregoing as yardstick, the Court finds that petitioner miserably failed to discharge the onus probandi imposed on him.

In sum, the supremacy of the Constitution serves as the safety mechanism that will ensure the faithful performance by this Court of its role as guardian of the fundamental law. Awareness of the proper scope of its power of judicial review in cases involving the HRET, an independent body with a specific constitutional mandate, behooves the Court to stay its hands in matters involving the exercise of discretion by that body, except in clear cases of grave abuse of discretion.

A Final Word

We are not declaring any winner here. We do not have the authority to do so. We are merely remanding the case to the HRET so that revision proceedings may promptly continue, precisely to determine the true will of the electorate in the 2[nd] legislative district of Taguig City for the 2007-2010 congressional term.

Indeed, considering the paramount need to dispel the uncertainty now beclouding the choice of the electorate and the lifting of the status quo ante order on June 16, 2009, the revision proceedings shall resume immediately and the electoral case resolved without delay.

WHEREFORE, the petition is hereby DISMISSED and Resolution No. 08-353 dated November 27, 2008 of the House of Representatives Electoral Tribunal AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Corona, Chico-Nazario, Velasco, Jr., Leonardo-De Castro, Brion, and Peralta JJ., concur.
Quisumbing, J., pls. see my dissent.
Ynares-Santiago, J., no part, Chair of HRET
Carpio, J., join the dissent of J. Quisumbing.
Carpio Morales, J., no part, member of the HRET
Nachura, J., please see separate opinion.
Bersamin, J., join the dissent of J. Quisumbing.

[1] Juvenal (Roman poet and author [AD. 60-138]), Satires.

[2] These correspond to the basic parts of a constitution, namely, the constitution of government, the constitution of liberties or rights and the constitution of sovereignty.

[3] This is how the American constitutional scholar Alexander Bickel describes the Supreme Court, "the least dangerous branch."

[4] Rollo, p. 68.

[5] Id., p. 131.

[6] Id., pp. 57-66.

[7] Id., pp. 108-111.

[8] Id., pp. 61-63.

[9] Id., pp. 57-66.

[10] Id., pp. 113-128.

[11] Id., p. 118.

[12] Id., p. 131.

[13] Id., pp. 136-137.

[14] Id., p. 167.

[15] Id., pp. 168-177.

[16] Id., p. 183.

[17] Id., p. 184.

[18] Id., pp. 185-199.

[19] Id., pp. 53-55.

[20] Id.

[21] Id., pp. 18-21, 32-36.

[22] Id., pp. 14-18.

[23] SEC. 29 (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

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[24] Rollo, pp. 14-18.

[25] Id., pp. 21-29.

[26] Id., pp. 255-278.

[27] Id., pp. 256-258, 270.

[28] Id., pp. 263-267.

[29] Id., p. 272.

[30] Id., pp. 288-318.

[31] Id., pp. 301-306.

[32] Id., pp. 306-307.

[33] Republic Act.

[34] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND EIGHT, AND FOR OTHER PURPOSES.

[35] Rollo, p. 312.

[36] Section 17, Article VI, Constitution.

[37] Libanan v. HRET, 347 Phil. 797, 804 (1997).

[38] 170 protested precincts plus 560 counter-protested precincts equals 730 precincts. This leaves 2 unprotested precincts.

[39] Robles v. HRET, G.R. No. 86647, 05 February 1990, 181 SCRA 780.

[40] G.R. Nos. 92191-92 and 92202-03, 30 July 1991, 199 SCRA 692.

[41] Id.

[42] Supra note 36.

[43] Dimaporo v. House of Representatives Electoral Tribunal, G.R. No. 158359, 23 March 2004, 426 SCRA 226; Angara v. Electoral Commission, 63 Phil. 139 (1936).

[44] Angara v. Electoral Commission, id., p. 175.

[45] Black's Law Dictionary.

[46] G.R. No. 173310, 07 March 2007, 517 SCRA 762.

[47] HRET order dated September 25, 2008. Rollo, p. 167.

[48] HRET order dated October 21, 2008. Id., pp. 180-183.

[49] Co v. HRET, supra note 40.

[50] Supra note 37.

[51] Jimenez v. Nazareno, G. R. No. L-37933, 15 April 1988, 160 SCRA 1.

[52] Supra note 39.

[53] Id. (citations omitted), pp. 784-786.

[54] Suanes v. Chief Accountant, 81 Phil. 818 (1948).

[55] Angara v. Electoral Commission, supra note 43.

[56] In particular, the amount of P49,727,000 was appropriated for this purpose.

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[57] This power is a necessary incident of the power of the electoral tribunals to create their own rules. (See II Records of the Constitutional Commission 87-88.)

[58] In the memorandum (p. 22), filed by private respondent in this Court, he mentioned his manifestation in the HRET that "he is willing to shoulder the expenses of the revision of the remaining unrevised precincts."

[59] Petition, p. 13. Rollo, p. 15. Petitioner made a similar statement in his memorandum (p. 18):

> ...[REYES] filed his...Formal Manifestation with the Respondent HRET declaring that, even as PROTESTANT, he was more than willing [to] shoulder the costs and remit the added cash deposits for the revision of [petitioner's] protested precincts...

[60] G.R. No. 107852, 20 October 1993, 227 SCRA 311.

[61] Id.

[62] Perez v. Court of Appeals, G.R. No. 162580, 27 January 2006, 480 SCRA 411, 416.

DISSENTING OPINION

QUISUMBING, J.:

I regret I have to register my dissent in this case. The decision gives the HRET unbridled discretion to proceed with the revision of ballots even if the protestant failed to show that the results of the initial revision reasonably affected the officially proclaimed results, in direct contravention of the parameters and guidelines that the HRET itself has set. I elucidate, thus:

Assailed via Petition for Certiorari and Prohibition with prayer for a Temporary Restraining Order (TRO)[1] is Resolution No. 08-353[2] of the House of Representatives Electoral Tribunal (HRET) dated November 27, 2008 in HRET Case No. 07-027. The HRET denied petitioner Henry "Jun" Dueñas, Jr.'s Urgent Motion to Withdraw/Abandon the Remaining Seventy-Five Percent Counter-Protested Precincts and reiterated its Order[3] dated October 21, 2008 directing the Secretary of the Tribunal to conduct revision of ballots in the 75% counter-protested precincts beginning December 2008. The HRET additionally recalled its other Order,[4] likewise dated October 21, 2008, directing protestee Dueñas to augment his cash deposit in the amount of three hundred twenty thousand pesos (P320,000.00) to cover the expenses for the said revision, and instead ordered that the said expenses be taken from the available funds of the Tribunal.

The factual antecedents are as follows:

Petitioner Henry "Jun" Dueñas, Jr. and private respondent Angelito "Jett" P. Reyes were candidates for the position of Congressman in the 2nd Legislative District of Taguig City during the May 14, 2007 synchronized national and local elections. After the canvass of the votes on May 23, 2007, Dueñas, who garnered a total of 28,564 votes,[5] was proclaimed winner by the District Board of Canvassers over Reyes who only garnered a total of 27,107 votes.[6]

On June 4, 2007, Reyes filed an Election Protest Ad Cautelam[7] before the HRET, alleging that insidious and well-orchestrated electoral frauds and anomalies were committed in various forms in 170 of the 732 precincts in the 2[nd] Legislative District of Taguig City on the day of the elections, during the counting, and during the canvass of the election returns which resulted in the systematic reduction of the actual votes obtained by him and in the corresponding increase in the votes obtained by Dueñas. Reyes asked for the revision/recount of the ballots and other election documents in 170 precincts[8] so that the true and real mandate of the electorate may be

ascertained.[9]

On June 25, 2007, Dueñas filed his Answer with Counter-Protest.[10] Dueñas denied the charges in the protest and countered that if there indeed had been electoral frauds and anomalies during the conduct of the elections, the same were perpetrated to favor Reyes.[11] Dueñas counter-protested the results of the elections in 560[12] precincts where he claimed that several ballots were deliberately misread, miscounted and misappreciated resulting in the illegal reduction of votes in his favor.[13]

After the issues were joined, the HRET ordered the collection and retrieval of all ballot boxes and other election paraphernalia involved in the protest and counter-protest to be brought to the HRET for custody.

On July 12, 2007, the HRET issued an Order setting the date of the Preliminary Conference on July 26, 2007,[14] during which Dueñas and Reyes agreed, among others, that all of the protested precincts would be revised without need of designation of pilot precincts by Reyes pursuant to Rule 88 of the 2004 HRET Rules, since the total number of the protested precincts was less than 50% of the total number of the precincts in the legislative district.[15]

On August 30, 2007, the HRET issued an Order,[16] which directed the revision of ballots starting September 18, 2007.

Reception of evidence for the parties followed upon the completion of the revision of ballots in 100% of the protested precincts and 25% of the counter-protested precincts. After the filing of the parties' respective memoranda, the case was submitted for resolution.

On September 25, 2008, the HRET issued an Order directing the continuation of the revision and appreciation of the remaining counter-protested precincts. The Order reads:

> It appearing that the Tribunal cannot determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots in some of the protested and counter-protested precincts, the Tribunal pursuant to Rule 88 of the 2004 Rules of the House of Representatives Electoral Tribunal and Section 17, Article VI of the Constitution, DIRECTS the continuation of the revision and appreciation of the remaining counter-protested precincts.
>
> SO ORDERED.[17]

Not agreeing with the HRET's Order of September 25, 2008, Dueñas moved for the reconsideration of the same.[18] However, the HRET denied his motion in its Order dated October 21, 2008 where the Tribunal decreed:

> Wherefore, protestee's Motion for Reconsideration of the Order of the Tribunal dated September 25, 2008 is DENIED. The Secretary of the Tribunal is AUTHORIZED to CONDUCT the revision of ballots in the remaining seventy-five percent (75%) counter-protested precincts involved in the instant case.[19]

On even date, the Tribunal issued another Order which directed Dueñas to augment his cash deposit, which would be used to cover the expenses of the revision of ballots in the remaining 75% counter-protested precincts. The order reads:

> WHEREFORE, protestee is DIRECTED to AUGMENT his cash deposit in the amount of three hundred twenty thousand pesos (P320,000.00) within a non-extendible period of ten (10) days from notice hereof.
>
> SO ORDERED.[20]

On October 27, 2008, Dueñas filed his Urgent Motion to Withdraw/Abandon the Remaining Seventy-Five Percent

Counter-Protested Precincts.[21] Essentially, Dueñas contended that Reyes failed to prove his case through his own evidence in the designated protested precincts. Thus, as a matter of course, the protest must be dismissed, for it is axiomatic that the protestant must rely on and stand by his own protested precincts and should not be allowed to depend on the results of the precincts that he has not protested.[22] Dueñas also maintained that being himself a protestant in his own designated counter-protested precincts, he had the prerogative of withdrawing and/or abandoning the remaining 75% counter-protested precincts, as what he was doing in this case.[23] Dueñas averred that the results of the physical count were practically the same as the officially proclaimed results, thereby showing that the revision of ballots did not alter the results of the elections in the 2[nd] Legislative District of Taguig City.[24] As such, he manifested that there was no need to continue with the revision of the remaining 75% counter-protested precincts.[25]

In his Comment/Opposition[26] filed on November 3, 2008, Reyes contended that Dueñas' allegations in his urgent motion were bereft of merit and merely dilatory. He averred that Dueñas' failure to prove his allegations of election irregularities and anomalies coupled with his failure to make a reservation during the Preliminary Conference that he would withdraw/abandon his counter-protest if the protestant failed to prove his cause of action were enough reasons not to allow him to withdraw/abandon his counter-protest, especially so when the Tribunal had found compelling reasons for its continuance. Reyes further contended that the withdrawal of the remaining unrevised precincts was highly suspect, a mere afterthought, since Dueñas decided on the same only after his motion for reconsideration of the September 25, 2008 HRET Order was denied. Contrary to the view of Dueñas, the withdrawal/abandonment and suspension of the revision of ballots lay within the exclusive prerogative and wise discretion of the Tribunal; hence, neither of the parties to an election protest may claim any vested right therefor, Reyes added.[27]

On November 27, 2008, the HRET issued its assailed Resolution No. 08-353, which (1) denied Dueñas' urgent motion, (2) reiterated its October 21, 2008 Order directing the continuation of the revision of ballots in the remaining 75% counter-protested precincts, and (3) recalled its other Order, also dated October 21, 2008, which required Dueñas to augment his cash deposit. The HRET instead ordered that the needed funds for the revision be shouldered by the Tribunal.

The HRET held that pursuant to Rule 88 of the 2004 HRET Rules and settled jurisprudence, the Tribunal has the discretion to either dismiss the protest or counter-protest, or to continue with the revision if necessitated by reasonable and sufficient grounds affecting the validity of the election, with the end in view of ascertaining the true choice of the electorate. The mere filing of a motion to withdraw/abandon the unrevised precincts, therefore, does not automatically divest it of its jurisdiction over the same. Moreover, the Tribunal ruled that its task of determining the true will of the electorate is not confined to the examination of the contested ballots. Under its plenary power, it can motu proprio review the validity of every ballot involved in a protest or counter-protest, and the same cannot be frustrated by the mere expedient of filing a motion to withdraw/abandon the remaining counter-protested precincts. Having ruled with finality that the Tribunal could not determine the true will of the electorate of Taguig City from the initial revision of the 100% protested precincts and the 25% counter-protested precincts, it had no other recourse but to continue the revision and appreciation of all the remaining 75% counter-protested precincts.[28]

Hence, the present petition where Dueñas raised the following issues for our resolution:

> I.
>
> WHETHER RESPONDENT HRET CAN FORCE/COMPEL THE REVISION OF A PROTESTEE'S COUNTER-PROTESTED PRECINCTS, EVEN AS THE PROTESTANT HAS FAILED TO PROVE HIS CAUSE IN THE MAIN PROTEST AND AFTER REVISION OF ALL [100%] OF HIS PROTESTED

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PRECINCTS; AND DESPITE THE FACT THAT THE PROTESTEE/PETITIONER DUEÑAS HAS MANIFESTED HIS DESIRE, AND FORMALLY MOVED, TO WITHDRAW AND ABANDON HIS VERY OWN REMAINING COUNTER-PROTESTED PRECINCTS.

II.

WHETHER THE RESPONDENT HRET, IN FORCING THE REVISION OF THE UNDESIRED COUNTER-PROTEST, CAN LEGITIMATELY BURDEN ITSELF WITH THE FINANCIAL OBLIGATION OF SHOULDERING THE COSTS AND EXPENSES OF THE SAID UNWANTED REVISION, IN THE PROCESS, BY DISBURSING PUBLIC FUNDS TO PURSUE AN EXERCISE THAT IS CLEARLY INTENDED TO SOLELY BENEFIT PROTESTANT/PRIVATE RESPONDENT REYES, A PRIVATE PARTY.[29]

The core issue for our determination is whether the HRET gravely abused its discretion, amounting to lack or excess of jurisdiction, in issuing the assailed resolution.

Dueñas argued in the main that the protestant in an election protest, Reyes in this case, was the party burdened and obligated to prove his cause. Failing to do so, his protest must not be unduly prolonged but must be immediately dismissed. HRET's declaration of its failure to ascertain the true will of the electorate after the revision of 100% of the protested precincts had been completed clearly demonstrated that Reyes failed in his bid. Thus, the Tribunal gravely abused its discretion when it ordered the continuation of the revision of ballots in the remaining unrevised precincts, as its acts amounted to giving Reyes the underserved chance to prevail by assisting him in speculatively searching for a basis and evidence to prove his case, effectively taking the cudgels for him, and thereby compromising its impartiality and independence. He also averred that Reyes' failure to prove his contentions and the concomitant withdrawal of the counter-protest made the continued revision irrelevant and unnecessary, insisting that he has the right to withdraw his protest. Additionally, Dueñas argued that a counter-protest was designed to protect and advance the interest of the protestee; hence, Reyes could not expect to derive any benefit therefrom. This reason, he urged, further justified the allowance of the withdrawal of the counter-protest.[30]

Dueñas also labeled as grave abuse of discretion, the Tribunal's act of assuming the burden of the costs of the revision. He argued that the funds of the Tribunal should not be used for the benefit of a private party, especially so when its only objective was to speculate whether "the failed protestant can win," and also because such amounted to illegal and unconstitutional disbursement of public funds, proscribed under Article VI, Section 29 (1)[31] of the Constitution.[32]

Dueñas added that the discretion extended to the Tribunal pursuant to Rule 88 of the 2004 HRET Rules on whether to continue with the revision may be exercised only when the results of the initial revision showed that the same reasonably affected the officially-proclaimed results of the contested election. According to him, the Tribunal never made any determination that the results of the revision showed Reyes to have made substantial recoveries in support of his cause. Rather, its first order which directed the continuation of the revision was premised on its failure to determine the true will of the electorate and its discovery of fake/spurious ballots. He further contended that in any event, the alleged fake/spurious ballots were discovered in only 2 out of the total 170 protested precincts and in only 2 out of the 140 pilot counter-protested precincts. The total number of alleged fake/spurious ballots was only 75, or a little over five percent (5%) of his 1,457 lead votes; hence, it could not reasonably be inferred to have affected the officially proclaimed results. The fake/spurious ballots could not be made the basis for the continuation of the revision of ballots.[33]

Furthermore, Dueñas maintained that the difference in the results of the physical count of ballots and the results reflected in the election returns was inconsequential. As the table[34] herein below will show, he argued that no

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substantial change in the votes of the parties occurred after the revision. In fact, he stated, it even worked against Reyes, since the results of the physical count yielded lower votes for the latter. Thus:

PROTEST PROPER (100%; 170 Precincts):

BARANGAY

Election Returns

Physical Count

Reyes

Dueñas

Reyes

Dueñas

Bagong Tanyag

1,399

2,484

1,394

2,459

Maharlika Village

170

315

154

350

Signal Village

711

1,139

703

1,129

Upper Bicutan

1,605

2,691

1,590

2,668

Western Bicutan

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1,245

1,963

1,234

1,951

TOTAL

5,130

8,592

5,075

8,557

COUNTER-PROTEST (25%; 140 Precincts):

BARANGAY

Election Returns

Physical Count

Reyes

Dueñas

Reyes

Dueñas

Maharlika Village

363

149

334

185

Signal Village

3,595

2,260

3,578

2,240

Western Bicutan

3,900

2,058

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3,868

2,033

TOTAL

7,858

4,467

7,780

4,458

On December 16, 2008, the Court issued a status quo ante order[35] requiring the parties to observe the status quo prevailing before the filing of the petition. The Court also required the respondents to comment on the petition.[36]

In his Comment,[37] Reyes countered that no grave abuse of discretion may be attributed to the Tribunal in issuing its assailed resolution. He contended that the HRET had every right to order the continuation of the revision of ballots after its discovery of fake/spurious ballots in favor of Dueñas. Its pronouncement that it could not determine the true will of the electorate, in fact, centers on this discovery. Thus, its constitutional mandate dictated that it ferret out the truth by completing the said revision. The Tribunal did not intend to favor him.[38]

Reyes also argued that Rule 88 of the 2004 HRET Rules gave the Tribunal the discretion to either dismiss the counter-protest or continue with the revision based on the outcome of the initial revision and appreciation proceedings and initial evidence presented by the parties. The mere filing of a motion to withdraw the protest on the remaining unrevised precincts did not divest the HRET of its jurisdiction over the electoral protest.[39]

Furthermore, the Tribunal may use its available funds to shoulder the cost of revision, as this was merely an incident to its discretion under the said Rule and its plenary powers under the Constitution. To hold otherwise would render its mandated functions meaningless and nugatory.[40]

The Tribunal, for its part, insisted in its Comment[41] that it did not commit any grave abuse of discretion. It belied the claim of Dueñas that there existed no legitimate reason to proceed with the revision of the remaining 75% counter-protested precincts. Like Reyes, it argued that the discovery of fake/spurious ballots created serious doubts on the sanctity of the ballots subject matter of the protest and counter-protest. Thus, it had no other choice but to open the ballot boxes in the counter-protested precincts and continue with its revision in order to ascertain and determine the true will of the electorate. Moreover, it posited that the discretion accorded to it by the Rules gave it the imprimatur to order the continuation of the revision if based on its independent evaluation of the results of the initial revision, the same affected the officially proclaimed results of the contested election. Since the discovery of fake/spurious ballots, to its mind, had a bearing on the true results of the election, the Tribunal submitted that it was justified in issuing said order.[42]

The Tribunal also pointed out that contrary to the belief of Dueñas, the withdrawal of the revision of ballots was not a vested right of any party, as it must succumb to the higher dictates of public interest--that of determining the true choice of the people. And this determination cannot be made to depend upon the desire of any party, but is vested solely upon the discretion of the HRET as the "sole judge" of all contests relating to the elections, returns, and qualifications of members of the House of Representatives. Moreover, it averred that under its plenary powers, it could motu proprio review the validity of every ballot involved in a protest or counter-protest.[43]

The Tribunal further claimed that Dueñas also had no reason to worry or to object to its disbursement of its funds

for the continuation of revision, since the Tribunal had the allotted budget for the same under paragraph I, (C.1) of Republic Act No. 9498,[44] or the General Appropriations Act for Fiscal Year 2008.[45]

For a petition for certiorari to prosper, it is incumbent upon the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because grave abuse of discretion is the capricious and whimsical exercise of judgment that amounts to lack or excess of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility--so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of law. Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.[46]

Crucial to our determination of whether grave abuse of discretion tainted the issuance of the assailed resolution of the Tribunal is Rule 88 of the 2004 HRET Rules. Said rule provides:

> RULE 88. Pilot Precincts; Initial Revision.-- Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, it may direct and require the protestant and counter-protestant, in case the protest or counter-protest involves more than 50% of the total number of precincts in the district, to state and designate in writing within a 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/or reception of evidence shall begin with such pilot precincts designated. Upon the termination of such initial revision and/or reception of evidence, which presentation of evidence should not exceed ten (10) days, and based upon what reasonably appears therefrom as affecting or not the officially proclaimed results of the contested election, the Tribunal may direct motu proprio the continuation of the revision of ballots in the remaining contested precincts, or dismiss the protest, or the counter-protest, without further proceedings. (Emphasis supplied.)

Rule 88 clearly vested the Tribunal the discretion to either direct the continuation of the revision of ballots in the remaining contested precincts or dismiss the protest or counter-protest. However, it is also explicit in the Rules that the exercise of this discretion is not unbridled, but one that must be exercised within the parameters set by the Rules.

Under the said Rule, if the protest or counter-protest involves more than 50% of the total number of precincts in the district, the Tribunal may direct the protestant or counter-protestant to choose the precincts questioned by him in his protest or counter-protest that best exemplify or demonstrate the electoral irregularities or frauds pleaded by him, but in no case shall the selected precincts be more than 25% of the total number of precincts involved in the protest or counter-protest. The revision of ballots shall begin initially with said pilot precincts. If the protest or counter-protest involves less than 50% of the total number of precincts in the district, then the entire ballots involved in the protest or counter-protest shall be revised. The Rules provides further that the Tribunal may motu proprio direct the continuation of the revision or dismiss the protest or counter-protest if the results of the initial revision reasonably show that the same affected the officially-proclaimed results of the contested election. In other words, the Tribunal can motu proprio dismiss the protest or counter-protest if the results of the initial revision show that such revision cannot possibly change the results of the contested election; otherwise, the revision of the ballots in the remaining contested precincts will continue.

All things carefully considered and viewed in their proper perspective, it is my considered view that the Tribunal acted with grave abuse of discretion in issuing the assailed Resolution.

In the case at bar, respondents invoked the discretion granted to the Tribunal under Rule 88 to direct the continuation of the revision of ballots in the remaining 75% counter-protested precincts. As I have stated, the

Rules had set guidelines for the exercise of this discretion. At the risk of being redundant, I emphasize that the ballots in the entire protested precincts had been revised. Thus, there had been not only an initial revision of ballots therein, but a total revision. Hence, with more reason that the results thereof must show that Reyes garnered significantly higher votes. However, there was no categorical pronouncement as to this. Instead, the Tribunal issued a vague Order wherein it directed the continuation of the revision of ballots in the remaining 75% counter-protested precincts, because it could not determine the true will of the electorate from the initial revision and appreciation of the 100% protested precincts and 25% counter-protested precincts and in view of the discovery of fake/spurious ballots. The justification given for the continuation of the revision is premised on the discovery of fake/spurious ballots, which according to the respondents created serious doubts as to who really won in the election.[47] The records show, however, that the fake/spurious ballots that surfaced were inconsequential. Reyes claimed that 87[48] fake/spurious ballots were uncovered after the revision of 100% of the protested precincts and 25% of the counter-protested precincts, while Dueñas said there were only 75. No matter what the number, we do not see how such can affect the result of the contested election. As admitted by the parties in the preliminary conference, Dueñas enjoys a lead of 1,457 votes.[49] Eighty-seven votes are but a fraction of Dueñas' lead margin. What can be gleaned from the foregoing is that respondents are only speculating that a sufficient number of fake/spurious ballots will be discovered in the remaining 75% counter-protested precincts and that these fake/spurious ballots will overturn the result of the election. Thus, it was a grave abuse of discretion for the Tribunal to order the continuation of the said revision based on pure conjecture.

It is conceded that the mere act of filing a motion to withdraw or abandon a counter-protest does not automatically divest the Tribunal of its jurisdiction over the case. To have it any other way will frustrate the intent of the Rules to accord the Tribunal the right to proceed with the case or dismiss the same if the evidence obtaining in the case warrants. However, to repeat, such discretion may not be exercised wantonly and in reckless disregard of the limitations set by the Rules.

What is apparent is the desire of Reyes for the revision to continue in the hope that the results therefrom would redound to his benefit, under the pretense that the paramount interest of the electorate to know the true winner prevails over technicalities.[50] Ultimately, what Reyes is trying to do is underhandedly change the theory of his case by banking on the results of the revision of ballots in the remaining 75% counter-protested precincts. This cannot be allowed.

At the outset, Reyes seemed confident that the revision of ballots in the 170 precincts he protested will guarantee his win. Seeing that the revision thereof did not give him the results he was expecting, he veered away from his original theory, and this time impugned the elections in the precincts not involved in his protest by claiming that revision of ballots must be brought to completion in order that the people's choice may be ascertained. Allowing Reyes to rely on the results of the precincts not included in his protest to establish his case is tantamount to allowing him to substantially amend his protest by broadening its scope at this very late date which is not allowed under Rule 28[51] of the 2004 HRET Rules. As the clear import of what Reyes intended to do was violative of the Rules, the Tribunal should not have acquiesced to the same by ordering the continuation of the revision.

The rule in an election protest is that the protestant or counter-protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for the filing of the protest or counter-protest.[52] Thus, Reyes is bound by the issue that he essentially raised in his election protest; that is, the revision of ballots in the 170 precincts involved in his protest will reveal the massive fraud that transpired during the election and will confirm his victory. Besides, it is difficult to comprehend why Reyes did not include in his protest the precincts he now questions, albeit impliedly, if from the very start he was convinced that the election therein was marred by electoral fraud. What can be inferred from his act is that he did not

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attribute any irregularity or fraud therein and accepts the results of the counting as is, but had to change his stance later on as a last-ditch effort to prove his case.

While it is true that an election contest is impressed with public interest, such that the correct expression of the will of the electorate must be ascertained without regard to technicalities, this noble principle, however, must not be used as a subterfuge to hide the real intent of a party to prove his case through unacceptable means. For it is also the policy of the law that election contests should be decided promptly, such that title to public elective office be not left long under cloud[53] for the obvious reason that the term of the contested office grows shorter with the passing of each day.[54]

Having said that the Tribunal gravely abused its discretion in ordering the continuation of the revision of ballots in the remaining 75% counter-protested precincts, it follows that the Tribunal had no authority to use its own funds to cover the expenses of the said revision. Even assuming that under the circumstances it could lawfully order the continuation of the revision, still nowhere in Rep. Act No. 9498 does it state that the Tribunal may use its own funds for the revision. The P49,727,000 allotted budget of the Tribunal for the adjudication of electoral contests involving members of the House of Representatives was never intended by Rep. Act No. 9498 to cover expenses for the revision of ballots involved in any electoral contest. The said amount is intended to be used for personal services and maintenance and other operating expenses.[55] As succinctly stated in Section 1 of Rep. Act No. 9498, the funds are appropriated for the operation of the government and, therefore, not for any other purpose.[56]

It will be a different situation, however, if the protestant was able to reasonably demonstrate, based on the results of the revision of ballots in the precincts he protested, that he stood a good chance of winning, and then the counter-protestant refused to pay for the costs of the continuation of the revision of the counter-protested precincts yet to be revised for the sole purpose of preventing the protestant from confirming his victory. In this scenario, I submit that nothing prevents the HRET from relaxing or suspending its Rules. Sadly, such is not the situation in this case. To repeat, the protestant has not shown that he has any chance of winning.

Accordingly, I vote to grant the petition.

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[1] Rollo, pp. 3- 46.

[2] Id. at 50-56.

[3]Id. at 180-183.

[4]Id. at 184.

[5]Id. at 68.

[6] Id. at 131.

[7]Id. at 57-66.

[8] Id. at 108-111.

[9] Id. at 61-63.

[10] Id. at 113-128.

[11]Id. at 118.

[12]Id. at 131. The Preliminary Conference Order shows, however, that the counter-protested precincts number

562.

[13]Id. at 120-125.

[14] Id. at 11.

[15] Id. at 131.

[16]Id. at 136-137.

[17] Id. at 167.

[18] Id. at 168-177.

[19] Id. at 183.

[20]Id. at 184.

[21] Id. at 185-199.

[22] Id. at 186.

[23] Id. at 187.

[24] Id. at 190-193.

[25] Id. at 193.

[26] Id. at 200-205.

[27] Id. at 200-202.

[28] Id. at 53-55.

[29] Id. at 13-14.

[30] Id. at 18-21, 32-36.

[31] Sec. 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

x x x x

[32] Rollo, pp. 14-18.

[33] Id. at 21-29.

[34] Id. at 24-25.

[35] Id. at 215-216.

[36] Id. at 213-214.

[37] Id. at 255-278.

[38] Id. at 256-258, 270.

[39] Id. at 263-267.

[40] Id. at 272.

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[41] Id. at 288-318.

[42] Id. at 301-306.

[43] Id. at 306-307.

[44] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND EIGHT, AND FOR OTHER PURPOSES, begun on July 23, 2007.

[45] Id. at 312.

[46] Cabrera v. Commission on Elections, G.R. No. 182084, October 6, 2008; pp. 4-5. Fernandez v. Commission on Elections, G.R. No. 171821, October 9, 2006, 504 SCRA 116, 119; Perez v. Court of Appeals, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

[47] Id. at 268-270, 303-306.

[48] Id. at 165.

[49] Id. at 131.

[50]Id. at 261.

[51] Rule 28. Amendments; Limitations.-- After the expiration of the period for the filing of the protest, counter-protest or petition for quo warranto, substantial amendments which broaden the scope of the action or introduce an additional cause or causes of action shall not be allowed. Any amendment in matters of form may be allowed at any stage of the proceedings.

x x x x

[52]Batul v. Bayron, G.R. Nos. 157687 and 158959, February 26, 2004, 424 SCRA 26, 33; Trinidad v. Commission on Elections, G.R. No. 134657, December 15, 1999, 320 SCRA 836, 841; Arroyo v. House of Representatives Electoral Tribunal, G.R. No. 118597, July 14, 1995, 246 SCRA 384, 402; Ticao v. Nañawa, No. L-17890, August 30, 1962, 5 SCRA 946, 950.

[53] Gementiza v. Commission on Elections, G.R. No. 140884, March 6, 2001, 353 SCRA 724, 731, citing Estrada v. Sto. Domingo, No. L-30570, July 29, 1969, 28 SCRA 890, 904.

[54]Velez v. Varela, etc and Florido, 93 Phil. 282, 284 (1953); Almeda v. Silvosa and Ramolete, etc., 100 Phil. 844, 849 (1957).

[55] C.1 of Rep. Act No. 9498

C.1 HOUSE ELECTORAL TRIBUNAL

For general administration and support, and operations, as indicated hereunder.....P 80,841,000

New Appropriations, by Program/Project

==========

Current_Operating_Expenditures

Personal Services

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Maintenance and
other
Operating
Expenses

Capital
Outlays

Total

A. PROGRAMS

x x x x

II. Operations

a. Adjudication of Electoral Contests
involving Members of the House of
Representatives

30,182,000

19,545,000

49,727,000

x x x x

[56] Section 1. Appropriation of Funds. The following sums, or so much thereof as may be necessary, are hereby appropriated out of any funds in the National Treasury of the Philippines not otherwise appropriated, for the operation of the Government of the Republic of the Philippines from January one to December thirty-one, two thousand and eight, except where otherwise specifically provided herein.

SEPARATE OPINION

NACHURA, J.:

I respectfully register my dissent to the ponencia of the Honorable Justice Renato C. Corona and join the Honorable Justice Leonardo A. Quisumbing in his conclusion that the House of Representatives Electoral Tribunal (HRET) acted with grave abuse of discretion when, on November 27, 2008, it issued the assailed Resolution No. 08-353 in HRET Case No. 07-027. I am in full agreement with the bases for Justice Quisumbing's dissent, which may be summarized, as follows:

- The Order to proceed with the revision of the remaining 75% of the counter-protested precincts--after completion of the revision of all the protested precincts, as well as 25% of the precincts cited in the counter-protest--effectively violates Rule 88 of the 2004 Rules of the HRET;

- The discretion of the HRET has to be exercised within the confines of the guidelines prescribed in the Rules;

- The number of fake/spurious ballots that surfaced during the revision was inconsequential--87 ballots (as claimed by the respondent, although petitioner admits only 75) being "a mere fraction" of petitioner's lead margin;

- To allow the protestant (respondent) to rely on the results of the precincts not included in his protest is

tantamount to granting him the right to substantially amend his protest by broadening its scope at this very late date, in violation of Rule 28 of the 2004 HRET Rules; and

- The Tribunal has no authority to use its own funds to cover the expenses of revision of the remaining 75% of the counter-protested precincts.

To this enumeration of evidently compelling reasons, I wish to interpose, very briefly, two points.

First, the discovery of some 75 (or 87) fake or spurious ballots pales into insignificance and cannot be made as basis for the course of action taken by the HRET. According to the petitioner, the ballots were discovered in only 4 of the 310 protested and counter-protested precincts already revised--2 in the precincts covered by the protest and 2 in the precincts named in the counter-protest.[1] Even if it is conceded that all the 75 or 87 ballots were to be deducted from the petitioner's votes, per physical count on revision, the result would simply involve the disregard of the spurious ballots and the maintenance of the vote counts for the precincts in question, in accordance with the canvassed election returns. In other words, the parties would simply retain their respective total votes per the canvassed election returns. Given that scenario, the protestant would still not accomplish anything, as petitioner's winning margin would not be dented.

Second, in ordering the use of its own funds--public funds--to cover the expenses which will be incurred in the revision of the remaining 75%

counter-protested precincts, the HRET would violate Article 220[2] of the Revised Penal Code, and even risk likely prosecution under Section 3(e)[3] of Republic Act No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act, by causing undue injury to the Government and giving a party an unwarranted benefit, advantage or preference in the discharge of their judicial functions through manifest partiality.

For all of the foregoing reasons, I vote to GRANT the petition.

---

[1] Petition.

[2] Article 220 of the Revised Penal Code provides:

Art. 220. Illegal use of public funds or property.--Any public officer who shall apply any public funds or property under his administration to any public use other than that for which such funds or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall suffer the penalty of temporary special disqualification.

[3] The provision reads:

SEC. 3. Corrupt Practices of Public Officers. ¾ In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other

concessions.

x x x x

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