

CELESTINO A. MARTINEZ III, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND BENHUR L. SALIMBANGON, RESPONDENTS.

G.R. No. 189034. January 11, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This petition for certiorari under Rule 65 seeks to nullify the Decision[1] dated May 28, 2009 of the House of Representatives Electoral Tribunal in HRET Case No. 07-035 dismissing the election protest and declaring private respondent as the duly elected Representative of the Fourth Legislative District of Cebu, and the Resolution[2] dated July 30, 2009 denying petitioner's motion for reconsideration thereof.

The Facts

In the May 14, 2007 elections, petitioner Martinez and private respondent Salimbangon were among the candidates for Representative in the Fourth Legislative District of Cebu Province. On March 29, 2007, Edilito C. Martinez, a resident of Barangay Tambongon, Daan-Bantayan, Cebu, filed his certificate of candidacy for the same position.

On April 3, 2007, Martinez filed a petition to declare Edilito C. Martinez a nuisance candidate.[3] However, the Commission on Elections Second Division issued its Resolution declaring Edilito C. Martinez a nuisance candidate only on June 12, 2007 or almost one (1) month after the elections.

On July 9, 2007, Salimbangon was proclaimed winner in the congressional elections for the Fourth Legislative District of Cebu on the basis of official results showing that he garnered sixty-seven thousand two hundred seventy-seven (67,277) votes as against Martinez who garnered sixty-seven thousand one hundred seventy-three (67,173) votes, or a difference of one hundred four (104) votes.

Martinez filed an Election Protest Ad Cautelam on July 18, 2007 and on July 26, 2007, the HRET granted his motion to convert the same into a Regular Protest of all one thousand one hundred twenty-nine (1,129) precincts of the Fourth Legislative District of Cebu.

The election protest is based on three hundred (300) ballots more or less with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative which the Board of Election Inspectors (BEI) did not count for Martinez on the ground that there was another congressional candidate (Edilito C. Martinez) who had the same surname. Martinez further alleged that he lost several thousand votes as a result of incorrect appreciation of ballots not counted in his favor while clearly marked ballots, groups of ballots which appeared to have been prepared by one (1) person, individual ballots which appeared to have been prepared by two (2) or more persons, and fake and unofficial ballots were read and counted in favor of Salimbangon. He also claimed that the votes reflected in the election returns were unlawfully increased in favor of Salimbangon while votes in his favor were unlawfully decreased.[4]

Salimbangon filed his Answer with Counter-Protest stating that the Minutes of Voting (MOV) inside the ballot boxes in all the protested precincts contain no recorded objections regarding straying of votes claimed by Martinez, and that it was very seldom, if at all, that there were ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative. He counter-protested 954 precincts on grounds of coercion/intimidation and duress; massive vote-buying; "lansadera"; misreading/miscounting/misappreciation of votes; and other electoral anomalies and irregularities.

During the revision, ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative were not counted and temporarily classified as stray. These comprise majority of the 9,831 stray ballots claimed by Martinez.[5]

HRET Ruling

In its Decision dated May 28, 2009, the HRET resolved each of the claims and objections respectively raised by protestant and protestee applying the rules for appreciation of ballots. The Tribunal recognized as most crucial the issue of whether or not ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative should be counted in favor of Martinez. Thus, the election protest "will rise or fall on how the Tribunal [appreciates said] ballots." [6]

Ruling on the issue, the HRET sustained the BEI in considering the ballots as stray in accordance with Sec. 211 (1) of the Omnibus Election Code which provides:

"Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid, if there is no other candidate with the same first name or surname for the same office." [7] [EMPHASIS SUPPLIED.]

Since the name of Edilito C. Martinez was still included in the official list of candidates on election day (May 14, 2007), the HRET held that five thousand four hundred one (5,401) ballots with "MARTINEZ" or "C. MARTINEZ" only written on the line for Representative were properly denied on the ground that there was no way of determining the real intention of the voter. These ballots were included in the 7,544 ballots denied as votes for Martinez in 961 precincts.[8]

Commiserating with Martinez on the delayed resolution of SPA Case No. 07-133 (PES), the HRET stated:

"We sympathize to (sic) the protestant that he is the victim of the inaction of the Comelec in failing to decide the petition to disqualify Edilito C. Martinez as nuisance candidate on or before the May 14, 2007 elections. After all, it appears that the latter did not even lift a finger to oppose the petition for his declaration as nuisance candidate and that per its decision rendered only twenty-nine (29) days after the May 14, 2007 elections, Edilito C. Martinez was indeed a nuisance candidate.

"As it is, the delay committed by the Comelec in deciding the petition to disqualify Edilito C. Martinez as nuisance candidate on or before May 14, 2007 election did not only cause injustice to herein protestant but worst, had resulted to (sic) the disenfranchisement of five thousand four hundred one (5,401) electorates whose votes could have changed the number of votes garnered by the parties herein if not changed altogether the outcome of the election itself." [9]

The final overall results of recount and appreciation of ballots, election documents and other evidence in the entire 1,129 precincts as determined by the HRET are as follows :[10]

Overall Fourth District of Cebu Votes

PROTESTANT PROTESTEE

1] Votes per physical count* in 961 precincts where there was ballot appreciation

57,758

57,132

2] Votes in 12 precincts** without ballots found during revision (based on election returns)

998

660

3] Votes per election returns in 156 precincts in which several spurious ballots were placed after elections, counting and/or canvassing of votes

9,937

7,815

68,693

65,607

Less: Objected ballots rejected***

4,333

860

Add: Claimed ballots admitted***

2,287

2,348

Unclaimed ballots admitted***

8

11

Restored Ballots

2

Total Votes in the Contested Precincts After Appreciation of Evidence

66,655

67,108

PLURALITY OF PROTESTEE'S VOTES

453

* Taken from Revision Reports

** Namely Precinct Nos. 51A, Daan-Bantayan, 40A, 56A, 79A, all of Bantayan, 15C, 19D, 66B/67A, 88A, 105A, all of Bogo, 40A/41A, 70A/71A, all of Medellin, 30A, Sta. Fe.

*** During appreciation of ballots in 961 precincts.

On the basis of the foregoing, the HRET dismissed the election protest, affirmed the proclamation of Salimbangon and declared him to be the duly elected Representative of the Fourth Legislative District of Cebu, having won by a plurality margin of 453 votes.

Martinez moved for reconsideration of the Decision, but the HRET denied it by Resolution dated July 30, 2009.[11]

The Petition

Petitioner alleges that the HRET gravely abused its discretion when it failed to credit the "MARTINEZ" or "C. MARTINEZ" votes in his favor despite the finality of the COMELEC resolution declaring Edilito C. Martinez a nuisance candidate. Petitioner argues that the Decision disenfranchised 5,401 voters when it ruled that said votes cannot be counted as votes for him since "there is no way of determining the real intention of the voter", in utter disregard of the mandate of Art. VIII, Sec. 14 of the Constitution. He maintains that there is no clear and good reason to justify the rejection of those 5,401 ballots, and points out that at the time private respondent was proclaimed by the Board of Canvassers, only 104 votes separated private respondent from him (private respondent was credited with 67,277 votes as against 67,173 votes of petitioner, while nuisance candidate Edilito C. Martinez got a measly 363 votes.)[12]

Petitioner further alleges that the HRET invalidated ballots for him without stating the legal and factual bases therefor, and on grounds other than the objections raised by private respondent. He contends that the HRET erred in concluding that the ruling in *Bautista v. Commission on Elections*[13] cannot be applied in view of circumstances which supposedly distinguish the present case from *Bautista*. Finally, petitioner cites the dissenting opinion of the Honorable Associate Justice Antonio Eduardo B. Nachura who disagreed with the majority ruling and posited that the final declaration by COMELEC that Edilito C. Martinez was a nuisance candidate and the cancellation of his certificate of candidacy should be deemed effective as of the day of the election.[14]

In his Comment, private respondent assails the apparent desire of petitioner for this Court to review the physical appreciation of ballots conducted by the HRET when he assigned as issues the alleged erroneous invalidation by the HRET of petitioner's ballots which were ruled as written by two (2) persons, and when he even appreciated ballots that were declared by the HRET as marked ballots. Private respondent details the mostly post-election anomalies and irregularities, particularly in *Bogo City*, perpetrated by the petitioner as found by the HRET such as tampering of election returns and statement of votes and vote padding/tampering.

As to the "MARTINEZ" and "C. MARTINEZ" ballots, private respondent asserts that the HRET correctly refused to credit petitioner with these votes, stressing that there were admittedly three (3) candidates for the position of Representative for the Fourth Legislative District of Cebu as of May 14, 2007. Not a single voter in the district knew of any nuisance congressional candidate on election day. Private respondent argues that it would be illogical and most unfair to count the said ballots in favor of petitioner as it is erroneous to base the voter's intent on the supervening circumstance which was inexistent on the date the ballot was accomplished and cast. The HRET likewise did not err in holding that the *Bautista* ruling is inapplicable, there being no announced declaration yet of one (1) of the candidates as nuisance candidate when the voters cast their ballots on election day.

The Issues

What then is the legal effect of declaring a nuisance candidate as such in a final judgment after the elections? Should ballots containing only the similar surname of two (2) candidates be considered as stray votes or counted

in favor of the bona fide candidate?

Our Ruling

The Court finds the petition meritorious.

Section 69 of the Omnibus Election Code provides:

"Section 69. Nuisance candidates. -- The Commission may motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate."

Republic Act No. 6646, otherwise known as "The Electoral Reforms Law of 1987" provides in Section 5 thereof:

"SEC. 5. Procedure in Cases of Nuisance Candidates. --

(a) A verified petition to declare a duly registered candidate as a nuisance candidate under Section 69 of Batas Pambansa Blg. 881 shall be filed personally or through duly authorized representative with the Commission by any registered candidate for the same office within five (5) days from the last day for the filing of certificates of candidacy. Filing by mail shall not be allowed.

"(b) Within three (3) days from the filing of the petition, the Commission shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any.

"(c) The respondent shall be given three (3) days from receipt of the summons within which to file his verified answer (not a motion to dismiss) to the petition, serving copy thereof upon the petitioner. Grounds for a motion to dismiss may be raised as affirmative defenses.

"(d) The Commission may designate any of its officials who are lawyers to hear the case and receive evidence. The proceeding shall be summary in nature. In lieu of oral testimonies, the parties may be required to submit position papers together with affidavits or counter-affidavits and other documentary evidence. The hearing officer shall immediately submit to the Commission his findings, reports, and recommendations within five (5) days from the completion of such submission of evidence. The Commission shall render its decision within five (5) days from receipt thereof.

"(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court.

"(f) The Commission shall within twenty-four hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court to the city or municipal election registrars, boards of election inspectors and the general public in the political subdivision concerned." [EMPHASIS SUPPLIED.]

By their very nature, proceedings in cases of nuisance candidates require prompt disposition. The declaration of a duly registered candidate as nuisance candidate results in the cancellation of his certificate of candidacy. The law mandates the Commission and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought.^[15] In many instances, however, proceedings against nuisance candidates remained pending and undecided until election day and even after canvassing of votes had been completed.

Here, petitioner sought to declare Edilito C. Martinez as a nuisance candidate immediately after the latter filed his certificate of candidacy as an independent candidate and long before the May 14, 2007 elections. Petitioner

averred that Edilito C. Martinez who was a driver of a motorcycle for hire, locally known as "habal-habal", did not own any real property in his municipality, had not filed his income tax return for the past years, and being an independent candidate did not have any political machinery to propel his candidacy nor did he have political supporters to help him in his campaign. Petitioner claimed that Edilito C. Martinez after the filing of his certificate of candidacy, was never heard of again and neither did he start an electoral campaign. Given such lack of bona fide intention of Edilito C. Martinez to run for the office for which he filed a certificate of candidacy, petitioner contended that his candidacy would just cause confusion among the voters by the similarity of their surnames, considering that petitioner was undeniably the frontrunner in the congressional district in the Fourth Legislative District of Cebu as his mother, Rep. Clavel A. Martinez, was the incumbent Representative of the district.[16]

The COMELEC's Second Division granted the petition and declared Edilito C. Martinez as a nuisance candidate. It noted that the failure of said candidate to answer and deny the accusations against him clearly disclosed the fact that he had no bona fide intention to run for public office. Thus, it concluded that his only purpose for filing his certificate of candidacy was to put the election process into mockery and cause confusion among the voters by the similarity of his surname with that of petitioner.[17]

No motion for reconsideration was filed by Edilito C. Martinez and neither did he appeal before this Court the resolution declaring him a nuisance candidate. Said decision had thus become final and executory after five (5) days from its promulgation in accordance with the COMELEC Rules of Procedure.[18] But having come too late, the decision was an empty victory for petitioner who lost to private respondent by a slim margin of 104 votes. In his election protest, petitioner sought to have ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative counted in his favor. The HRET, however, considered such ballots numbering 5,401 as stray and rejected petitioner's argument that the ruling in *Bautista v. Comelec* (supra) is applicable in this case.

Bautista involves a mayoralty candidate (Cipriano "Efren" Bautista) during the May 11, 1998 elections who filed a petition to declare as nuisance candidate Edwin "Efren" Bautista, who filed a certificate of candidacy for the same position at the last minute. The COMELEC granted the petition, declared Edwin Bautista a nuisance candidate and ordered the cancellation of his certificate of candidacy. Consequently, Edwin Bautista's name was not included in the official list of candidates for the position of mayor of Navotas City and copies of the list were distributed to the boards of election inspectors (BEI). On May 8, 1998, Edwin filed a motion for reconsideration and as a result, the Election Officer of Navotas issued a directive to the BEI to include the name of Edwin Bautista in the certified list of candidates, only to recall said order in the afternoon. In view of the conflicting directives, counsel for petitioner requested the COMELEC that instructions be given to the BEI to tally separately the votes for "EFREN BAUTISTA", "EFREN", "E. BAUTISTA" and "BAUTISTA."

On May 13, 1998, the COMELEC denied Edwin Bautista's motion for reconsideration. When the canvass of the election returns was commenced, the Municipal Board of Canvassers refused to canvass as part of the valid votes of petitioner the separate tallies of ballots on which were written "EFREN BAUTISTA," "EFREN," "E. BAUTISTA" and "BAUTISTA." Petitioner then filed with the COMELEC a petition to declare illegal the proceedings of the Municipal Board of Canvassers. Meanwhile Edwin Bautista filed a petition for certiorari with this Court assailing the actions of COMELEC declaring him a nuisance candidate and ordering the cancellation of his certificate of candidacy. The Court dismissed said petition finding no grave abuse of discretion committed by the COMELEC and subsequently also denied with finality the motion for reconsideration filed by Edwin Bautista.

As to the petition to declare as illegal the proceedings of the Municipal Board of Canvassers for its refusal to include the stray votes in the separate tally sheet, the COMELEC dismissed the same, citing Sec. 211 (4)[19] of the Omnibus Election Code. Petitioner Bautista elevated the case to the Supreme Court which ruled in his favor, thus:

"At the outset and initially setting aside all the ramifications of the substantive issue of the instant petition, the primordial concern of the Court is to verify whether or not on the day of the election, there was only one 'Efren Bautista' as a validly registered candidate as far as the electorate was concerned.

"x x x

"Edwin Bautista moved for reconsideration on May 8, 1998. Unfortunately, said motion was not resolved as of election day. Technically, the April 30, 1998 decision was not yet final as of May 11, 1998, and this technicality created serious problems on election day.

"x x x

"An analysis of the foregoing incidents shows that the separate tallies were made to remedy any prejudice that may be caused by the inclusion of a potential nuisance candidate in the Navotas mayoralty race. Such inclusion was brought about by technicality, specifically Edwin Bautista's filing of a motion for reconsideration, which prevented the April 30, 1998 resolution disqualifying him from becoming final at that time.

"Ideally, the matter should have been finally resolved prior to election day. Its pendency on election day exposed petitioner to the evils brought about by the inclusion of a then potential, later shown in reality to be nuisance candidate. We have ruled that a nuisance candidate is one whose certificate of candidacy is presented and filed to cause confusion among the electorate by the similarity of the names of the registered candidate or by other names which demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate (*Fernandez vs. Fernandez*, 36 SCRA 1 [1970]).

"It must be emphasized that the instant case involves a ground for disqualification which clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity. (*Silverio vs. Castro*, 19 SCRA 521 [1967]).

"x x x x

"As discussed in the COMELEC's April 30, 1998 decision, in accordance with Section 69, Edwin Bautista was found to be a nuisance candidate. First and foremost, he was running under the name of Edwin 'Efren' Bautista, when it had been established that he was really known as 'Boboy' or 'Boboy Tarugo.' Second, the following circumstances saliently demonstrate that he had no bona fide intention of running for the office for which he filed his certificate of candidacy: He is said to be engaged in a 'buy and sell' business, but he has no license therefor. He declared that he had a monthly income of P10,000.00 but with expenses totalling P9,000.00. He does not own any real property. He did not file his income tax return for the years 1995 and 1996 and when asked why, he said he did not have any net income and that he was only earning enough to defray household expenses. He even violated COMELEC rules since he failed to submit the names of individuals who paid for his campaign materials as well as the printing press he dealt with. He did not have a political line-up and had no funds to support his campaign expenses. He merely depended on friends whose names he did not submit to the COMELEC. And as straightforwardly found by the COMELEC, he 'has not demonstrated any accomplishment/achievement in his twenty-six (26) years of existence as a person that would surely attract the electorate to choose him as their representative in government.'

"In contrast, it was shown that petitioner had previously held under his name Cipriano and appellation, 'Efren' Bautista, various elective positions, namely: Barangay Captain of Navotas in 1962, Municipal Councilor of Navotas in 1970, and Vice-Mayor of Navotas in 1980. He is a duly registered Naval Architect and Marine Engineer, and a member of various civic organizations such as the Rotary Club of Navotas and the Philippine Jaycees.

"It seems obvious to us that the votes separately tallied are not really stray votes. Then COMELEC Chairman Bernardo P. Pardo himself, now a respected member of the Court, in his May 14, 1998 Memorandum, allowed the segregation of the votes for "Bautista," "Efren," and "Efren Bautista," and "E. Bautista" into a separate improvised tally, for the purpose of later counting the votes. In fine, the COMELEC itself validated the separate tallies since they were meant to be used in the canvassing later on to the actual number of votes cast. These separate tallies actually made the will of the electorate determinable despite the apparent confusion caused by a potential nuisance candidate. What remained unsaid by the COMELEC Chairman was the fact that as early as May 13, 1998, the COMELEC had already spoken and stated its final position on the issue of whether or not Edwin Bautista is a nuisance candidate. It had already denied Edwin's motion for reconsideration in its May 13, 1998 Order x x x

"x x x x

"This important detail only shows that as of May 14, 1998, when Chairman Pardo issued the aforesaid Memorandum, Edwin Bautista had already been finally declared as a nuisance candidate by the COMELEC. And when Edwin Bautista elevated the matter to this Court, we upheld such declaration. How then can we consider valid the votes for Edwin Bautista whom we finally ruled as disqualified from the 1998 Navotas mayoralty race? That is like saying one thing and doing another. These are two incompatible acts the contrariety and inconsistency of which are all too obvious." [20] [EMPHASIS SUPPLIED.]

Petitioner now invokes this Court's pronouncement in *Bautista* to the effect that votes indicating only the surname of two (2) candidates should not be considered as stray but counted in favor of the bona fide candidate after the other candidate with a similar surname was declared a nuisance candidate. In refusing to apply the ruling in *Bautista*, the HRET said that the factual circumstances in said case are different, thus:

"Protestant strongly asserts that the 'MARTINEZ' or 'C. MARTINEZ' only votes be counted in his favor invoking the ruling in the case of *Bautista vs. Comelec*, G.R. No. 133840, November 13, 1998 (298 SCRA 480) where the Supreme Court held that the final and conclusive ruling on the declaration of a nuisance candidate retroacts on the day of the election.

"We disagree.

"While the *Bautista vs. Comelec* case also involves a candidate declared as nuisance by the Comelec, the case herein is not on all fours with it. x x x

"x x x

"It is clear from the foregoing facts of the *Bautista* case that the nuisance candidate, Edwin Bautista, was declared as such on April 30, 1998, eleven (11) days before the May 11, 1998 elections. Although the decision was not yet final on Election Day because of a Motion for Reconsideration that Edwin Bautista had filed on May 8, 1998, nevertheless, his name was not included in the list of candidates for the position of Mayor for Navotas. This is not the situation in the present case for Edilito C. Martinez was not yet declared disqualified during the May 14, 2007 elections. There were, therefore, two (2) congressional candidates on the day of the election with "MARTINEZ" as surname, Celestino A. Martinez and Edilito C. Martinez.

"More importantly, in the *Bautista* case, while the Comelec's decision declaring Edwin Bautista a nuisance candidate had not yet attained finality on election day, May 11, 1998, the voters of Navotas were informed of such disqualification by virtue of newspaper releases and other forms of notification. The voters in said case had constructive as well as actual knowledge of the action of the Comelec delisting Edwin Bautista as a candidate for mayor. This is not so in the present case for Edilito C. Martinez was not yet disqualified as nuisance candidate during the May 14, 2007 elections. There were no newspaper releases and other forms of notification to the voters of the Fourth District of Cebu on or before May 14, 2007 elections that Edilito C. Martinez was disqualified as a nuisance candidate." [21] [EMPHASIS SUPPLIED.]

It is clear that Bautista is anchored on the factual determination that the COMELEC resolution declaring Edwin Bautista a nuisance candidate was already final since his motion for reconsideration was already denied by the Commission when canvassing of the votes started. Hence, the segregated and separately tallied votes containing only the similar first names/nicknames and surnames of the two (2) candidates were considered as not really stray votes. We held that the separate tallies validated by the COMELEC actually made the will of the electorate determinable despite the apparent confusion caused by a nuisance candidate.

In the case at bar, there was no segregation or separate tally of votes for petitioner. Unlike in Bautista, there was simply no opportunity for petitioner to request the segregation and separate tally of expected ballots containing only the surname "MARTINEZ" as the resolution granting his petition was promulgated only a month later. The HRET, while not closing its eyes to the prejudice caused to petitioner by COMELEC's inaction and delay, as well as the disenfranchisement of the 5,401 voters, refused to credit him with those votes on the ground that there was no way of determining the real intention of the voter.

We disagree.

The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. Election contests, therefore, involve the adjudication not only of private and pecuniary interests of rival candidates, but also of paramount public interest considering the need to dispel uncertainty over the real choice of the electorate.[22]

In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no bona fide intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.

In elections for national positions such as President, Vice-President and Senator, the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. Thus we explained in *Pamatong v. Commission on Elections*[23]:

"The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a bona fide intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. As the United States Supreme Court held:

[T]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot -- the interest, if no other, in avoiding confusion, deception and even frustration of the democratic [process].

"x x x x

"There is a need to limit the number of candidates especially in the case of candidates for national positions because the election process becomes a mockery even if those who cannot clearly wage a national campaign are allowed to run. Their names would have to be printed in the Certified List of Candidates, Voters Information Sheet and the Official Ballots. These would entail additional costs to the government. x x x

"The preparation of ballots is but one aspect that would be affected by allowance of "nuisance candidates" to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place, watchers in the board of canvassers, or even the receipt of electoral contributions. Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

"Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with bona fide candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. x x x

"x x x" [24] [emphasis supplied]

Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in Pamatong. A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least 18 parts of the country. The success of this clever scheme by political rivals or operators has been attributed to the last-minute disqualification of nuisance candidates by the Commission, notably its "slow-moving" decision-making.[25]

As illustrated in Bautista, the pendency of proceedings against a nuisance candidate on election day inevitably exposes the bona fide candidate to the confusion over the similarity of names that affects the voter's will and frustrates the same. It may be that the factual scenario in Bautista is not exactly the same as in this case, mainly because the Comelec resolution declaring Edwin Bautista a nuisance candidate was issued before and not after the elections, with the electorate having been informed thereof through newspaper releases and other forms of notification on the day of election. Undeniably, however, the adverse effect on the voter's will was similarly present in this case, if not worse, considering the substantial number of ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative - over five thousand - which have been declared as stray votes, the invalidated ballots being more than sufficient to overcome private respondent's lead of only 453 votes after the recount.

Bautista upheld the basic rule that the primordial objective of election laws is to give effect to, rather than frustrate, the will of the voter. The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the bona fide candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. Any delay on the part of the COMELEC increases the probability of votes lost in this manner. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.

The Court will not speculate on whether the new automated voting system to be implemented in the May 2010 elections will lessen the possibility of confusion over the names of candidates. What needs to be stressed at this

point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate determinable, following the precedent in *Bautista*. These can be gleaned from the findings of the Commission on the personal circumstances of Edilito C. Martinez clearly indicating lack of serious intent to run for the position for which he filed his certificate of candidacy, foremost of which is his sudden absence after such filing. In contrast to petitioner who is a well-known politician, a former municipal mayor for three (3) terms and a strong contender for the position of Representative of the Fourth Legislative District of Cebu (then occupied by his mother), it seems too obvious that Edilito C. Martinez was far from the voters' consciousness as he did not even campaign nor formally launch his candidacy. The HRET likewise failed to mention the total number of votes actually cast for Edilito C. Martinez, which can support petitioner's contention that the "MARTINEZ" and "C. MARTINEZ" votes could not have been intended as votes for Edilito C. Martinez.

Petitioner should not be prejudiced by COMELEC's inefficiency and lethargy. Nor should the absence of objection over straying of votes during the actual counting bar petitioner from raising the issue in his election protest. The evidence clearly shows that Edilito C. Martinez, who did not even bother to file an answer and simply disappeared after filing his certificate of candidacy, was an unknown in politics within the district, a "habal-habal" driver who had neither the financial resources nor political support to sustain his candidacy. The similarity of his surname with that of petitioner was meant to cause confusion among the voters and spoil petitioner's chances of winning the congressional race for the Fourth Legislative District of Cebu. As it turned out, there were thousands of ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative, votes considered stray by the BEI and not counted in favor of petitioner, and which the HRET affirmed to be invalid votes. Had the Commission timely resolved the petition to declare Edilito C. Martinez a nuisance candidate, all such ballots with "MARTINEZ" or "C. MARTINEZ" would have been counted in favor of petitioner and not considered stray, pursuant to COMELEC Resolution No. 4116,[26] issued in relation to the finality of resolutions or decisions in disqualification cases, which provides:

"This pertains to the finality of decisions or resolutions of the Commission en banc or division, particularly on Special Actions (Disqualification Cases).

Special Action cases refer to the following:

- (a) Petition to deny due course to a certificate of candidacy;
- (b) Petition to declare a candidate as a nuisance candidate;
- (c) Petition to disqualify a candidate; and
- (d) Petition to postpone or suspend an election.

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, RESOLVES, as it is hereby RESOLVED, as follows:

- (1) the decision or resolution of the En Banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court;

x x x

- (4) the decision or resolution of the En Banc on nuisance candidates, particularly whether the nuisance candidate has the same name as the bona fide candidate shall be immediately executory;

- (5) the decision or resolution of a DIVISION on nuisance candidate, particularly where the nuisance candidate has the same name as the bona fide candidate shall be immediately executory after the lapse of five (5) days unless a motion for reconsideration is seasonably filed. In which case, the votes cast shall not be considered stray but shall be counted and tallied for the bona fide candidate.

All resolutions, orders and rules inconsistent herewith are hereby modified or repealed." [emphasis supplied.]

We held in several cases that the judgments of the Electoral Tribunals are beyond judicial interference, unless rendered without or in excess of their jurisdiction or with grave abuse of discretion.[27] The power of judicial review may be invoked in exceptional cases upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a clear denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of direction that there has to be a remedy for such abuse.[28] 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. 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.[29] Respondent HRET gravely abused its discretion in affirming the proclamation of respondent Salimbangon as the duly elected Representative of the Fourth Legislative District of Cebu despite the final outcome of revision showing 5,401 ballots with only "MARTINEZ" or "C. "MARTINEZ" written on the line for Representative, votes which should have been properly counted in favor of petitioner and not nullified as stray votes, after considering all relevant circumstances clearly establishing that such votes could not have been intended for "Edilito C. Martinez" who was declared a nuisance candidate in a final judgment.

Ensnared in our jurisprudence is the well-founded rule that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative. [30] The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. Thus, in certain situations as in the case at bar, final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of election day. Otherwise, potential nuisance candidates will continue to put the electoral process into mockery by filing certificates of candidacy at the last minute and delaying resolution of any petition to declare them as nuisance candidates until elections are held and the votes counted and canvassed.

We therefore hold that ballots indicating only the similar surname of two (2) candidates for the same position may, in appropriate cases, be counted in favor of the bona fide candidate and not considered stray, even if the other candidate was declared a nuisance candidate by final judgment after the elections. Accordingly, the 5,401 votes for "MARTINEZ" or "C. MARTINEZ" should be credited to petitioner giving him a total of 72,056 votes as against 67,108 total votes of private respondent. Petitioner thus garnered more votes than private respondent with a winning margin of 4,948 votes.

WHEREFORE, the petition is GRANTED. The Decision dated May 28, 2009 and Resolution dated July 30, 2009 of the House of Representatives Electoral Tribunal in HRET Case No. 07-035 are ANNULLED and SET ASIDE. Petitioner Celestino A. Martinez III is hereby declared the duly elected Representative of the Fourth Legislative District of Cebu in the May 14, 2007 elections. This decision is immediately executory.

Let a copy of the decision be served personally upon the parties and their counsels.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Leonard-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Perez, and Mendoza, JJ., concur.

Nachura, J., no part, member of HRET.

[1] Rollo, Vol. II. 96-144.

[2] Id., Vol. XVI, pp. 7186-7187.

[3] Docketed as SPA Case No. 07-133 (PES).

[4] HRET Decision, Rollo, pp. 97-98.

[5] Id., pp. 99 and 117.

[6] Id., p. 117.

[7] Id., p. 119.

[8] Id., pp. 120-121.

[9] Id., pp. 119-120.

[10] Id., pp. 140-141.

[11] Rollo, Vol. XVI, pp. 7186-7187.

[12] Id., Vol. I, pp. 9-10, 14-18.

[13] G.R. No. 133840, November 13, 1998, 298 SCRA 480.

[14] Rollo, pp. 10-14, 18-19.

[15] Sec. 72, Omnibus Election Code (B.P. Blg. 881).

[16] Rollo, Vol. XVI, pp. 7188-7190.

[17] Id., pp. 7194-7198.

[18] Rule 18, Sec. 13 (c), COMELEC Rules of Procedure.

[19] Section 211. Rules for the appreciation of ballots. - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will:

x x x x

4. When two or more words are written on the same line on the ballot, all of which are the surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favor of the latter.

When two or more words are written on different lines on the ballot all of which are the surnames of two or more candidates bearing the same surname for an office for which the law authorizes the election of more than one and there are the same number of such surnames written as there are candidates with that surname, the vote shall be counted in favor of all the candidates bearing the surname.

x x x x

[20] Bautista v. Commission on Elections, *supra*, at pp. 487-492.

[21] Rollo, Vol. II, pp. 117-119.

[22] *Batul v. Bayron*, G.R. Nos. 157687 and 158959, February 26, 2004, 424 SCRA 26, citing *Barroso v. Hon. Ampig, Jr.*, 385 Phil. 237 (2000).

[23] G.R. No. 161872, April 13, 2004, 427 SCRA 96.

[24] *Id.*, pp. 104-105.

[25] *In the Playing Field of Local Politics, Dirty Tricks Win the Game* published by the Philippine Center for Investigative Journalism sourced from the Internet at <<http://www.pcij.org/stories/1998/dirty.html>>

[26] May 7, 2001.

[27] *Lazatin v. House Electoral Tribunal*, No. L-84297, December 8, 1988, 168 SCRA 391, 404; *Co v. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92 and 92202-03, July 30, 1991, 199 SCRA 692, 700; *Libanan v. House of Representatives Electoral Tribunal*, G.R. No. 129783, December 22, 1997, 283 SCRA 520, 529.

[28] *Robles v. House of Representative Electoral Tribunal*, G.R. No. 86647, February 5, 1990, 181 SCRA 780, 785-786.

[29] *Abubakar v. House of Representatives Electoral Tribunal*, G.R. Nos. 173310 & 173609, March 7, 2007, 517 SCRA 762, 776, citing *Batul v. Bayron*, G.R. Nos. 157687 & 158959, February 26, 2004, 424 SCRA 26, 41.

[30] *Punzalan v. Commission on Elections*, G.R. Nos. 126669, 127900, 128800 and 132435, April 27, 1998, 289 SCRA 702, 720.

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