

MAYOR ABRAHAM N. TOLENTINO, PETITIONER, VS. COMMISSION ON ELECTIONS, JOCELYN RICARDO, ARNEL TARUC, MARLENE CATAN, MARIA THERESA MENDOZA COSTA, FIDELA ROFOLS CASTILLO, DOMINADOR ...

G.R. Nos. 187958, 187961, and 187962. April 07, 2010

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Before us are two petitions for certiorari and prohibition assailing several orders of the Second Division (Division) of the Commission on Election (COMELEC) relative to its revision of ballots under Section 6, Rule 20 of its Rules of Procedure in the protests on the results of the local elections in 2007 in Tagaytay City.

In G.R. Nos. 187958 and 187961-62, the petitioner, Abraham N. Tolentino (Tolentino), seeks the nullification of the orders dated May 8, 2009[1] and May 25, 2009.[2] In the first order, the Division formally requested the Senate Electoral Tribunal (SET) to allow the conduct of the revision within the SET's premises; in the second, the Division denied Tolentino's motion for reconsideration vis-à-vis the first order. Tolentino prayed for the issuance of temporary restraining order (TRO) and/or a writ of preliminarily injunction.

In G.R. Nos. 187966-68, the petitioner, Celso P. De Castro (De Castro), assails the order dated June 2, 2009,[3] which denied the motion to suspend the scheduled revision of ballots in the SET premises. De Castro prayed for the issuance of a TRO or writ of preliminary injunction or status quo ante order.

The petitions were consolidated on July 28, 2009 due to their commonality as to the facts and issues.

Antecedents

In the May 14, 2007 elections, all the parties ran for elective local offices in Tagaytay City. Tolentino and De Castro were proclaimed as the duly elected Mayor and Vice-Mayor, respectively. The private respondents contested the election results in 116 ballot boxes by filing three separate election protests against the proclaimed winning candidates for Mayor, Vice-Mayor and Members of the Sanggunian Panlungsod, docketed as EPC Case

No. 2007-07,[4] EPC Case No. 2007-08,[5] and EPC Case No. 2007-09.[6] The protests were raffled to the Second Division of the COMELEC. The records do not contain the order for the consolidation of the cases, but it appears that they were consolidated previously inasmuch as the caption of all orders issued by the Division indicated the joining of the cases.

After finding the protests sufficient in form and substance, the Division required the City Treasurer of Tagaytay City to inventory the protested ballot boxes and to turn them over to the Election Officer of Tagaytay City for delivery and submission to the COMELEC's Electoral Contests Adjudication Department (ECAD) in Manila.

However, the delivery and submission took place only on December 17, 2008 due to the moves of Tolentino and De Castro of taking turns to suspend the transmittal of the ballot boxes to ECAD. Tolentino moved to defer the

transmittal of the ballot boxes to ECAD on the premise that he had to complete the photocopying and verification of the contested ballots; upon denial of his motion, he elevated the issue to the Court by petition for certiorari (docketed as G.R. No. 183806-08). The petition was eventually dismissed for lack of merit on September 16, 2008.[7] On his part, De Castro moved for the reconsideration of the September 7, 2007 order in the COMELEC en banc, which denied the motion. In the order dated March 6, 2008, the Division re-directed the City Treasurer and the Election Officer of Tagaytay City to implement the directives of its September 7, 2007 order.

In this connection, the Court ruled on September 16, 2008 in G.R. No. 183806-08 - Tolentino's earlier petition for certiorari - that there was no longer any legal bar against the full implementation of the Division's September 7, 2007 order for the immediate transmittal of the ballot boxes for purposes of the revision and recount.

Further delay occurred because 44 of the 116 contested ballot boxes became involved in the election protest of candidate Aquilino L. Pimentel III against Senator Juan Miguel F. Zubiri pending in the SET and docketed as SET Case No. 001-07.

On November 21, 2008, De Castro again sought the suspension of the revision proceedings,[8] citing the order issued on November 17, 2008 by the SET, asserting the SET's preferential custody pursuant to Section 2 of COMELEC Resolution No. 2812 over the ballot boxes, election documents, and election paraphernalia in connection with SET Case No. 001-07.

However, the Division resolved not to suspend the revision proceedings, and instead directed the Election Officer of Tagaytay City to deliver the affected ballot boxes to the SET, with the remainder of the ballot boxes to be deposited in the ECAD Ballot Box Storage Area in Manila.[9]

In his Compliance Report dated December 16, 2008,[10] the Election Officer certified that 116 ballot boxes were contested in EPC Nos. 2007-07, 2007-08 and 2007-09; that 44 ballot boxes were delivered to the SET for being simultaneously involved in SET Case No. 001-07;[11] that on December 17, 2008, 72 ballot boxes were delivered to the ECAD; that of the 44 ballot boxes delivered to the SET, 16 were set aside with appropriate remarks "No metal seal outside" or "Metal seal not properly locked";[12] and that out of the 72 ballot boxes delivered to the ECAD, 24 were set aside with the remarks "No metal seal outside", or "Metal seal not properly locked", or "2 padlocks only." [13]

In other words, 40 ballot boxes out of the 116 protested ones were set aside due to apparent sealing defects or irregularities.

On January 6, 2009, upon receipt of the 72 ballot boxes, the Division ordered the constitution of four Revision Committees,[14] for the committees to convene and commence the revision of the 72 ballot boxes in such a way that whenever a ballot box was opened, its contents should be revised for all of the three protest cases before opening the next ballot box.

On January 9, 2009, Tolentino and De Castro separately moved for the reconsideration of the Division's order. Tolentino thereby raised prematurity due to the unresolved pending issues, the absence of guidelines or procedure, and the fact that not all the involved ballot boxes were in the COMELEC's custody. De Castro sought to clarify the dispositions in the assailed order, reminding that there would be a simultaneous revision for the three protest cases involving three positions; and to suspend the proceedings until after all pending incidents were resolved pursuant to Section 2, Rule 19 of the COMELEC Rules of Procedure.

On January 12, 2009, the Division suspended the revision proceedings until all the contested ballot boxes were already in the custody of the COMELEC.[15]

It did not take long thereafter before the Division lifted the suspension of the revision proceedings upon the private respondents' manifestation, considering that the SET, through its letter dated February 16, 2009, had meanwhile agreed to accommodate the Division's request to conduct the revision proceedings in the SET's premises from March 2 to 13, 2009.[16]

On May 8, 2009, the Division issued the first assailed order in G.R. Nos. 187958 and 187961-62, formally requesting the SET to allow the revision to proceed within its premises, viz:

Acting on the JOINT MANIFESTATION WITH REQUEST TO SET SCHEDULE OF REVISION filed by protestants, through counsel on February 16, 2009 and on the COMMENTS filed by protestee, through counsel, in EPC 2007-07, Abraham N. Tolentino on February 25, 2009; protestee in EPC 2007-08, Celso P. De Castro on February 27, 2009; protestees in EPC 2007-08 x x x.

In connection thereto, in order to facilitate the resolution of election protest cases considering that barely a year is left of the contested term of offices, the Commission (Second Division) hereby REQUESTS the Senate Electoral Tribunal (SET) to allow the Commission to conduct revision within its premises, under such terms and conditions that the Tribunal may impose.

SO ORDERED.[17]

Tolentino moved to reconsider this order, but the Division denied his motion through its second assailed order dated May 25, 2009, thus:

x x x

We find protestee's allegation unmeritorious. It should be understood that the deferment of the revision was due to the unavailability at that time of the ballot boxes. To address this situation, the Commission under its plenary powers, can avail of alternative methods to facilitate the disposition of cases pursuant to the rule that election protest cases should be resolved with dispatch. Hence, coordination with other tribunals for purposes of revision of ballots subject of simultaneous protests is the usual course of action taken by the Commission.

IN VIEW THEREOF, there is no cogent reason for the Commission (Second Division) to reconsider its order dated May 8, 2009. Moreover, the Senate Electoral Tribunal, in a letter dated May 20, 2009 addressed to Presiding Commissioner Nicodemo T. Ferrer, granted the Commission's request to revise the contested ballots involved in the instant cases within its premises.

SO ORDERED.[18]

On May 25, 2009,[19] the Division directed anew the constitution of the four Revision Committees and the commencement of the revision of the 44 ballot boxes within the SET premises on June 3, 2009.

On May 29, 2009, De Castro filed a verified omnibus motion requesting the Division to formulate first the mechanics, guidelines and procedure for the simultaneous revision of the ballots for the three distinct positions protested, and to defer the revision proceedings until after all pending incidents had been resolved.[20]

In its June 2, 2009 order, the Division ruled that:

xxx there is no cogent reason to suspend the scheduled revision of ballots in these cases.

First, there is no need to specific rules regarding the revision of ballots because the Revision Committee will conduct the revision of the forty-four (44) contested ballots now in the custody of the Senate Electoral Tribunal, per case and not simultaneously. The normal procedure of revision shall be followed.

Second, considering that the twenty-four (24) segregated ballot boxes are in the custody of the Commission, the appropriate order as regards thereto shall later be issued.

Anent, protestee De Castro's submission of the names of his revisors and manifestation of his intent to photocopy all the contested ballots and other related election documents, the Commission (Second Division) hereby APPROVES and NOTES the same, respectively.

xxx

SO ORDERED.[21]

De Castro now assails the June 2, 2009 order in G.R. Nos. 187966-68. It appears that De Castro's omnibus motion and compliance filed on May 29, 2009, which was the subject of the assailed order, was in effect a motion for the reconsideration of the May 25, 2009 order of the Division received on the same date.[22]

In furtherance of his cause, Tolentino filed on June 30, 2009 his supplement to the petition,[23] alleging that events had transpired subsequent to the filing of his petition. He stated that the revision proceedings concerning EPC 2007-07 conducted within the SET premises on June 3 to 8, 2009 involved only 28 ballot boxes because the Revision Committee suspended the revision of the set-aside 16 ballot boxes.

It appears that the Division likewise ordered the Revision Committees: (a) to verify the condition of the ballot boxes and to submit a report thereon upon the termination of the revision proceedings;[24] (b) to submit a consolidated report on all the set-aside ballot boxes, including the 16 delivered to the SET whose revision was suspended by the Revision Committees;[25] and (c) not to open the set-aside ballot boxes so that the Division would not be pre-empted in resolving whether the ballot boxes found to have defective security devices should be included in the revision of ballots and, instead, to authorize the Revision Committees only to verify the condition of such ballot boxes and submit a report thereon, to become the basis for the Division to resolve the pending issue.[26]

Issues

In G.R. Nos. 187958 and 187961-62, Tolentino raises the following issues:

- WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE COMMISSION ON ELECTIONS, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ISSUANCES ORDERING THE REVISION OF THE FORTY FOUR (44) BALLOT BOXES WITH THE HONORABLE SENATE ELECTORAL TRIBUNAL WITHOUT FIRST RESOLVING WHETHER OR NOT THE SIXTEEN (16) BALLOT BOXES OF THE SAID FORTY FOUR (44) BALLOT BOXES, WHICH WERE SEGREGATED OR SET ASIDE, SHOULD BE INCLUDED IN THE REVISION.

- WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE COMMISSION ON ELECTIONS, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ISSUANCES ORDERING THE REVISION OF THE FORTY FOUR (44) BALLOT BOXES WITH THE HONORABLE SENATE ELECTORAL TRIBUNAL WITHOUT RESOLVING HOW THE REVISION PROCEEDINGS WOULD BE CONDUCTED IN EPC NOS. 2007-07 TO 09, IN LINE WITH THE ROSAL DOCTRINE AND WITH OBSERVANCE OF THE BASIC TENETS OF DUE PROCESS.

In his supplement to the petition, he adds the following issues:

- WHETHER OR NOT THE HONORABLE COMMISSION ON ELECTIONS (SECOND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT VIOLATED THE CARDINAL RULE IN ADMINISTRATIVE CASES.

- WHETHER HONORABLE COMMISSION ON ELECTIONS (2ND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED

PIECEMEAL ORDERS LEADING TO DISORDERLY PROCEEDINGS.

In G.R. Nos. 187966-68, De Castro raises the sole issue:

WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER DATED JUNE 2, 2009.

Arguments and Contentions of the Parties

Tolentino contends that the Division should first resolve the issue of the inclusion or exclusion of the protested ballot boxes, considering that the verification, investigation and examination of their condition had already been terminated by the Election Officer of Tagaytay City; that citing *Rosal v. Commission on Elections* (G.R. Nos. 172741 and 168253, March 16, 2007, 518 SCRA 473), he insists that the COMELEC should provide a reasonable procedure in view of a vital threshold issue of "whether the ballots found in the ballot boxes during the revision proceedings were the same ballots that were cast and counted in the elections;" and that the assailed issuances totally overhauled, amended, and altered the final and executory ruling of January 12, 2009 that deferred any revision proceedings until all the protested ballot boxes were all in the custody of the COMELEC.

De Castro submits that the obstinate refusal of the Division to issue an order setting forth the ground rules for the per case revision of ballots was an omission exemplifying a grave abuse of discretion and a denial of his substantive and procedural right to due process; that the caption of the orders dated May 25, 2009 and June 2, 2009 show that the three protest cases were consolidated, but the Division still chose to conduct the revision piecemeal starting with the position of Mayor, then of Vice Mayor, and finally of City Councilors, separately as provided in the June 2, 2009 order.[27]

The private respondents counter through their Consolidated Joint Comment filed on September 8, 2009[28] that Rosal does not mention any requirement for the suspension of revision of ballots or for the stoppage of the opening of a ballot box in a revision proceeding; that the set-aside ballot boxes should be opened; that a full determination of the "integrity of the ballot boxes and their contents" could be made only if the status and condition of the contents were also considered; that the disallowance of the opening of the set-aside ballot boxes pre-empted the parties' rights to examine, present and argue upon the condition of the ballot boxes and their contents; that the COMELEC could not be bound to maintain a strict adherence to its January 12, 2009 order because the SET had already allowed the revision to be conducted within its premises; and that the COMELEC had issued sufficient and adequate rules of procedure for the revision of the questioned ballots, for, as mandated in the June 2, 2009 order, the normal procedure of revision would be followed, implying that the procedure in previous revision of ballots be maintained.

Ruling

The petitions have no merit.

G.R. No. 187958 and Nos. 187961-62

At the outset, the Court holds that the order of revision and the revision of ballots synchronized with that of the SET were proper. The reasons for this holding follow.

First: In regular election contests, the general averment of fraud or irregularities in the counting of votes justifies the examination of the ballots and recounting of votes. This process of examination is the revision of the ballots pursuant to Section 6, Rule 20 of the 1993 COMELEC Rules of Procedure, to wit:

Section 6. Revision of Ballots. - When the allegations in a protest or counter-protest so warrant, or whenever in

the opinion of the Commission or Division the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots.

The protests involved herein assailed the authenticity of the election returns and the veracity of the counting of the ballots.[29] In that regard, the ballots themselves are the best evidence, for, as stated in *Miguel v. Commission on Elections*: [30]

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.

The only means to overcome the presumption of legitimacy of the election returns is to examine and determine first whether the ballot boxes have been substantially preserved in the manner mandated by law. Hence, the necessity to issue the order of revision.

Second: The synchronized revision of ballots by the SET and the Division is allowed under Section 3 of COMELEC Resolution No. 2812, which provides:

Section 3. The Tribunals, the Commission and the Courts shall coordinate and make arrangement with each other so as not to delay or interrupt the revision of ballots being conducted. The synchronization of revision of ballots shall be such that the expeditious disposition of the respective protest cases shall be the primary concern.

According to *Mendoza v. Commission on Elections*,[31] the COMELEC does not lose jurisdiction over the provincial election contest by reason of the transmittal of the provincial ballot boxes and other election materials to the SET, because its jurisdiction over provincial election contest exists side by side with the jurisdiction of the SET, with each tribunal being supreme in its respective areas of concern, with neither being higher than the other in terms of precedence; hence, the jurisdiction of one must yield to the other.

In the proper exercise of its jurisdiction, therefore, the Division, mindful of the need for the expeditious disposition of the cases, formally requested the SET to permit the revision of the 44 ballot boxes within its premises. The Division made this request although it had suspended the revision proceedings through a previous order on account of the then incomplete number of ballot boxes in ECAD's custody. In this connection, the contention that the Division's suspension order became immutable cannot be upheld; such an order, being essentially interlocutory in character, could not attain finality. An interlocutory order is one that resolves an incidental or collateral matter without putting an end to the case, and for that reason does not become final and immutable upon the expiration of the period prescribed for taking an appeal from a judgment or final order.[32]

It is clear that by its suspension order the Division only adopted an auxiliary means necessary to carry its jurisdiction into effect. In that light, we should find that there was no irregularity in the Division's lifting of the suspension, for, after all, nothing prohibited the COMELEC from undertaking the appreciation of ballots in tandem with the SET's own revision of ballots for the senatorial electoral protest.

Third: Under Section 11, Rule 20 of the COMELEC Rules of Procedure,[33] one of the most indispensable informations that should appear in the revision report relates to the conditions of the ballot boxes. The importance of this information cannot be understated. According to *Rosal v. Commission on Elections*,[34] "the integrity of the ballots and therefore their probative value, as evidence of the voters' will, are contingent on the integrity of the ballot boxes in which they were stored." This was precisely what Tolentino was asking the Division to do before the order of revision issued.

Yet, the Court rejects Tolentino's urging for obvious reasons. Any defects in the security locks or seals of the set-aside ballot boxes, as predetermined by the examining Election Officer, could not yet satisfy the requirement of the rule. For one, the COMELEC was not bound by the report simply because the defects still needed to be confirmed during the process of actual revision. Moreover, the presumption that the ballots reflected the intent of the voters, as expressly recognized in Section 6(c)(2), Rule 13 of A.M. No. 07-4-15- SC,[35] should not be done away with solely on the basis of the report of the City Election Officer, by which said officer complied with a requirement set primarily for the transmittal of the ballot boxes involved. Rosal, which A.M. No. 07-4-15- SC complements, demands more than such a report in order to overcome the presumption. More than such report, there should be a full blown trial in which all the parties concerned should be allowed the opportunity to present their own evidence, to raise their objections, and to pose their claims before reaching a finding of ballot box tampering. Rosal clearly mandates so, viz:

Under the circumstances, the question as to who between the parties was duly elected to the office of mayor cannot be settled without further proceedings in the Comelec. In keeping with the precepts laid down in this decision, the Comelec must first ascertain, after due hearing, whether it has before it the same ballots cast and counted in the elections. For this purpose, it must determine: (1) which ballot boxes sufficiently retained their integrity as to justify the conclusion that the ballots contained therein could be relied on as better evidence than the election returns and (2) which ballot boxes were in such a condition as would afford a reasonable opportunity for unauthorized persons to gain unlawful access to their contents. In the latter case, the ballots must be held to have lost all probative value and cannot be used to set aside the official count reflected in the election returns.[36]

Consequently, no ruling could be handed down against the integrity of the ballot boxes that would effectively render naught the evidentiary value of the ballots they contained unless a full blown trial on the merits was first conducted. Tolentino should accept the legal impossibility for the Division to rule on the issue of inclusion or exclusion of the set-aside ballot boxes except after the revision process.

In Rosal, we set the doctrinal guidelines in settling the issue in an election protest of who among the parties was the real choice of the electorate, thus:

We summarize the foregoing doctrines: (1) the ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and all suspicion of change, abstraction or substitution; (2) the burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant; (3) where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end; (4) it is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or the likelihood thereof shifts to the protestee and (5) only if it appears to the satisfaction of the court or Comelec that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.[37]

The foregoing guidelines were inapplicable, however, considering that the proceedings were still in the hearing stage. This explains why the Division deemed the determination of the physical conditions of the ballot boxes as a necessary measure for its final determination of whether or not to give probative value to the ballots contained in the set-aside ballot boxes. The Division had still to reach the deliberative stage of the protests, when it would decide based on the evidence presented during trial. Before then, deciding on the propriety of relying on the results of the revision of ballots instead of the election returns did not yet arise.

Rosal does not forbid the revision of the set-aside ballots. What it proscribes is the blind adherence to the result of

the recount without taking into consideration the proof of any likelihood that the integrity of the ballot boxes was compromised. It forbids the COMELEC from conducting "a fresh appreciation of the contested ballots without first ascertaining whether the ballots to be recounted had been kept inviolate." [38] Tolentino should understand that election contests would not end with the result of the revision; and that the revision reports, being evidentiary, should still be scrutinized like any other evidence presented before the Division. Verily, the revision was not an end in itself, but simply demarcated the beginning of the process of determining the true result of the election.

Fourth: The supplemental arguments of Tolentino allege a violation of his right to due process by the non-observance of the cardinal rules of due process in administrative adjudications and by the piece-meal resolution of the pending incidents.

In *Ang Tibay v. Court of Industrial Relations*, [39] the Court enunciated the cardinal rules for procedural due process in administrative or quasi-judicial tribunal, to wit:

- The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;
- The tribunal must consider the evidence presented;
- The decision must have something to support itself;
- The evidence must be substantial. Substantial evidence is such reasonable evidence as a reasonable mind might accept as adequate to support a conclusion;
- The decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;
- The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and
- The tribunal or body should render its decision in such manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered.

The *Ang Tibay* formulation was overlapping and repetitious. Hence, in *Air Manila, Inc. v. Balatbat*, [40] the formulation was simplified into four basic rights, as follows:

- The right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right;
- The right to a reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor;
- The right to a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and
- The right to a finding or decision of that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.

Gauged upon the foregoing guidelines, Tolentino's gripe was unwarranted. He was not denied procedural due process. The Division had required him to provide the names of his revisors whose tasks included the raising of objections, the claiming votes for him, or the contesting of the votes in favor of his opponent. He has neither alleged being deprived of this opportunity, nor indicated any situation in which his revisors were denied access to the revision proceedings. He could not also insist that the COMELEC did not consider his legal and factual arguments; besides, he could still raise them in his memorandum should he chose to. During the revision stage, he

should raise all objections, present his evidence and witnesses, and file his memorandum before the case would be submitted for resolution. Such manner of presenting his side would fully meet the demands of due process, for, as the Court has explained the nature of due process in *Stayfast Philippines Corporation v. National Labor Relations Commission*:^[41]

The essence of due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing. xxx

A review of the records proves that the parties, including Tolentino, were afforded ample opportunity to ventilate their respective claims, to raise their objections, to claim votes, and to contest the votes of their opponents through their duly designated revisors.

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Contrary to De Castro's submission, the Division set the ground rule for the revision of the contested ballots by laying down the procedure for the simultaneous revision of the contested ballots for all the three election protests.

Paragraph 5 of the January 6, 2009 order distinctly stated that "the revision of ballots in the above-entitled cases be conducted in such a way that when a ballot box is opened, its contents shall be revised in all three (3) cases before proceeding to the next ballot box considering that the same precincts are contested in all three (3) cases."^[42] That procedure was ideal under the obtaining circumstances, given that the same precincts were involved in all the three cases. Also, the procedure was the practical and most expeditious manner of recording the observations in the minutes of the proceedings, the segregation according to vote per candidate, and the validation and registration of all objections or contests on the votes and claims on the same. All objections and claims of each party's revisors would later on be collated on a "per case" basis and submitted to the Chairperson of each Revision Committee to aid in the preparation of the revision report for the precincts or clusters of precincts assigned to such committee.

We find no incompatibility between the order of January 6, 2009 and the order of June 2, 2009. The latter order provided that the "Revision Committees will conduct the revision of the forty-four (44) contested ballots now in the custody of the Senate Electoral Tribunal, per case and not simultaneously. The normal procedure of revision shall be followed."^[43] The purpose of the latter order was to preserve the distinction of each position, that is, by keeping the data for each of the positions separate despite the process of data-gathering being done simultaneously for all three positions.

It is noted that the three cases involved 44 ballot boxes in the custody of the SET and 72 ballot boxes in the custody of the COMELEC, all concerning the several elective positions. The task of the four Revision Committees entailed the preparation of per-precinct revision reports for each of the three positions, the number of which would depend on how many precincts or clusters of precincts were assigned to the committees. The only logical solution to the need for systematic proceedings was to do the revisions on a per-case or per-position approach, closing the ballot box only after all the data required, and the objections and claims relevant to each position had already been recorded. Such a procedure would become significant especially during the stage of the segregation of the votes per candidate, at which time the votes for each candidate would be given to the opponent's revisors who would then validate the ballots, or register objections, or claim votes for the candidates they represented, or contest the votes of their principal's opponents.

In an election protest, the electoral tribunal has an imperative duty to promptly ascertain by all means within its command the candidates the electorate have chosen. It bears stressing that in the exercise of the plenitude of its powers to protect the integrity of the elections, the COMELEC should not and must not be straitjacketed by procedural rules in resolving election disputes.[44] Thus, the Division's adoption of measures that especially respond to or address unique situations, like these cases, was incidental to the COMELEC's general authority to adopt all the means to effect its powers and exercise its jurisdiction. Such adoption is even warranted under Section 4 of the COMELEC Rules of Procedure:

Section 4. Means to Effect Jurisdiction. - All auxiliary writs, processes and other means necessary to carry into effect its powers or jurisdiction may be employed by the Commission; and if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or these rules, any suitable process or proceeding may be adopted.

The nature of election protests cases often makes the COMELEC face varied situations calling for the exercise of its general authority to adopt means necessary to effect its powers and jurisdiction. The COMELEC, in its performance of its duties, must be given a considerable latitude in adopting means and methods that would insure the accomplishment of the great objective for which it was created - to promote free, orderly, and honest elections. The choice of the means by the COMELEC should not be interfered with, unless the means were clearly illegal or the choice constituted grave abuse of discretion.[45] To require a more stringent rule would unduly handicap the COMELEC in the achievement of its mandate to expeditiously dispose of election contests. Hence, a liberal construction of its rules should be conceded to the COMELEC, for, as already held:

It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action. xxx.[46]

Moreover, the pleadings of Tolentino even showed that the ground rules and guidelines for the revision of ballots were issued to the parties a day before the revision proceedings.[47] Thus, neither petitioner could validly complain about not having been duly informed of the manner of revision, in light of the directive contained in paragraph 4 of the January 6, 2009 order that the parties should be briefed on the ground rules for the revision of ballots before the commencement of the revision.[48]

In fine, the Division did not commit any abuse of discretion, least of all grave, in its issuance of the assailed orders. Its actuations relative to the conduct of the revision proceedings in the three election protests were far from capricious or whimsical. The Division issued ground rules with sufficient notice to the parties, who were thereby adequately shielded from partiality or unfairness during the process of revision. The Division should instead be commended for carrying out its mandate to expedite the disposition of the present election controversies.

WHEREFORE, we dismiss the petitions for lack of merit.

The Second Division of the Commission on Elections is directed to proceed with dispatch on the revision of ballots in EPC Case No. 2007-07, EPC Case No. 2007-08, and EPC Case No. 2007-09, and to resolve the election

protests as soon as practicable.

This decision is immediately executory.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.
Abad, J., on official leave.

[1] Rollo, G.R. Nos. 187958 and 187961-62, pp. 43-44.

[2] Id., pp. 54-55.

[3] Rollo, G.R. Nos. 187966-68, pp. 33-34.

[4] Entitled Jocelyn Ricardo v. Mayor Abraham Tolentino.

[5] Entitled Arnel Taruc v. Vice Mayor Celso de Castro.

[6] Filed by respondents Marlene Catan, Maria Theresa Mendoza Costa, Fidel Rofols Castillo, Dominador Bassi, Roberto Malabanan Hernandez, Nerissa Manzano, Leonidez Maglabbe Hernandez, Tagumpay Reyes, Maria Corazon Marquiacias and Elino Fajardo against the proclaimed City Councilors or Members of the Sanggunian Panlungsod of Tagaytay City.

[7] Tolentino v. Commission on Elections, G.R. No. 183806-08, September 16, 2008, 565 SCRA 363.

[8] Rollo, G.R. Nos. 187958 and 187961-62, pp. 155-159.

[9] Rollo, G.R. Nos. 187958 and 187961-62, pp. 180-181.

[10] Id., p. 182.

[11] Id., pp. 183-186.

[12] Id., p. 185.

[13] Id., p. 188.

[14] Id., pp. 193-196.

[15] Rollo, G.R. Nos. 187958 and 187961-62, pp. 240-241.

[16] Id., pp. 242-245.

[17] Id., pp. 43-44; underlining supplied for emphasis.

[18] Id., pp. 54-55; underlining supplied for emphasis.

[19] Id., pp. 56-59.

[20] Rollo, G.R. Nos. 187966-68, pp. 59-67.

[21] Id., pp. 33-34.

[22] The omnibus motion and compliance was filed within the 5-day reglementary period fixed under Section 2, Rule 19 of the COMELEC Rules of Procedure, and the petition for certiorari assailing the June 2, 2009 order was filed on June 9, 2009, well within the 30 day period provided under Section 3, Rule 64 of the Rules of Court.

[23] Rollo, G.R. Nos. 187958 and 187961-62, pp. 280-301.

[24] *Id.*, pp. 305-306.

[25] *Id.*, pp. 307.

[26] *Id.*, pp. 326-328.

[27] Rollo, G.R. Nos. 187966-68, p. 25.

[28] Rollo, G.R. Nos. 187958 and 187961-62, pp. 368-390.

[29] Rollo, G.R. Nos. 187958 and 187961-62, p. 416.

[30] G.R. No. 136966, July 5, 2000, 335 SCRA 172,177-178.

[31] G.R. No. 188308, October 15, 2009.

[32] *Denso (Phils.) Inc. v. Intermediate Appellate Court*, G.R. No L-75000, February 27, 1987, 148 SCRA 280; *Romualdez v. Sandiganbayan (First Division)*, G.R. No. 105248, May 16, 1995, 244 SCRA 152; *Dizon v. Court of Appeals*, G.R. No. 96296, June 18, 1992, 210 SCRA 107.

[33] Section 11. Report of Committee on Revision. - The committee on revision of ballots shall make a statement of the condition in which the ballot boxes and their contents were found upon the opening of the same, and shall classify the ballots so examined and set forth clearly any objection that may have been offered to each ballot in the report to be submitted by them. Disputed ballots shall be numbered consecutively for purposes of identification in the presence and under the direction of the committee chairman. After examination, the ballots and other election documents shall be returned to their respective boxes under lock but disputed ballots shall be placed in a separate envelope duly sealed and signed by the members of the committee and then returned to the box. For purposes of making said report, which shall be submitted in twelve (12) legible copies, only the prescribed form prepared by the Commission shall be used.

[34] G.R. Nos. 172741 and 168253, March 16, 2007, 518 SCRA 473, 476.

[35] Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials.

[36] *Supra*, note 34, p. 498.

[37] *Supra*, note 34, p. 491.

[38] *Eriguel v. Commission on Elections*, G.R. No. 190526, February 26, 2010.

[39] 69 Phil. 635 (1940).

[40] No. L-29064, April 29, 1971, 38 SCRA 489, 492.

[41] G.R. No. 81480, February 9, 1993, 218 SCRA 596, 601.

[42] Rollo, G.R. Nos. 187966-68, p. 77.

[43] *Id.*, p. 33.

[44] Pangandaman v. Commission on Elections, G.R. No. 134340, November 25, 1999, 319 SCRA 283.

[45] Id.

[46] Pahilan v. Tabalba, G.R. No. 110170, February 21, 1994, 230 SCRA 205, 212-213; Punzalan v. Commission on Elections, G.R. No. 126669, April 27, 1998, 289 SCRA 702, 720; Bince, Jr. v. Commission on Elections, G.R. Nos. 111624-25, March 9, 1995, 242 SCRA 273, 286-287.

[47] Rollo, G.R. Nos. 187958, 187961-62, p. 285.

[48] Rollo, G.R. Nos. 187966-68, p. 77.

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