



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.
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RESOLUTION NO. 16-06

In Resolution No. 16-03 of the Executive Committee dated 28 July 2016, the parties were required to Comment on the letter of Commissioner Christian Robert S. Lim of the Commission on Elections (Commission) dated 22 July 2016, seeking clarification on the coverage of the phrase "materials and paraphernalia" used in the Precautionary Order contained in Resolution No. 16-01 of the Executive Committee dated 07 July 2016. Both parties complied by filing their respective Comments on 09 August 2016.

In his Comment, Protestant Tolentino manifested that "save for the VCM and its electric power supply and adaptor, the CCS laptop itself, and all items which are necessary to subject the said VCM and CCS Laptop to a forensic audit, the foregoing items¹ should not be considered included within the ambit of the phrase 'other

¹ The materials and paraphernalia enumerated in Commissioner Lim's letter are the following:

1. BGANS (Satellite Antennas)
2. External Back-up Batteries
3. Vote Counting Machine (VCM) Kits
 - a. VCM and its electric power supply and adaptor
 - b. USB Modems and SIM Cards
 - c. Headphones
 - d. I-Buttons
 - e. Unused Thermal Paper Rolls
 - f. Battery Cable
 - g. Marking Pens
 - h. Documents contained inside the Kit (BEI PINs, FTS ballots, etc.)

materials and paraphernalia' mentioned in the precautionary order, as these other items – which are mostly the hardware and supplementary components of the VCMs and CCS laptops used during the elections – do not contain any election data which are pertinent to the election protest.” Accordingly, no objection was interposed to the inclusion of the said items in the 2016 AES Project closure/stripping activities of the Commission.

With respect to the ballot boxes in the foreign posts/precincts subject of the instant election protest, Protestant Tolentino submitted that “since the protest prays for the annulment of the votes cast in the said foreign precincts on the ground that a voter turnout of 100% is not only improbable, but impossible, there is no need for this Honorable Tribunal to direct the shipment and storage of said ballot boxes. Verily, in determining the merits of x x x said ground, it is not necessary to open and examine said ballot boxes.”

Finally, Protestant interposed no objection to the manual backing-up by the COMELEC's Election Records and Statistics Department of the data contained in all VCM SD Cards and CCS Laptops, provided “that proper measures are undertaken to ensure the preservation of the integrity of the electronic data contained in the said data storage devices and that the original VCM SD Cards, including the back-up SD Cards, are kept or maintained by the Commission.”

For her part, Protestee de Lima asserted in her Comment that Protestant Tolentino should be made to immediately answer for all costs and expenses relative to his prayer for issuance of a precautionary order pertaining to all of his protested precincts. Thus, he should be required to augment his cash deposit pursuant to Rule 36 of the 2013 Rules of the Tribunal,² to cover even the estimated cost of

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4. Canvassing and Consolidation (CCS) Kits
 - a. CCS Laptop
 - b. Printer and Toner
 - c. Unused Bond Paper
 - d. USB Modem and SIM cards
 - e. USB Token
 - f. Documents contained inside the Kit.

² 2nd par. of Rule 36, 2013 Rules of the Tribunal provides: “The cash deposits shall be applied to the payment of all expenses not programmed into or provided in the Tribunal's budget which may be necessary or incidental to the resolution and adjudication of the protest x x x, including, but not limited to, transportation and storage of the ballot boxes, and election documents and paraphernalia x x x. Whenever the Tribunal determines that the circumstances so dictate, it may require additional cash deposits. x x x.”

shipment and/or storage cost of the fourteen (14) foreign posts included in his protest.

Protestee de Lima prayed that in the event Protestant Tolentino delays or fails to so augment his cash deposit, the Tribunal should dismiss the protest, following Rule 37 of the 2013 Rules of the Tribunal, which provides that "(if) a party fails to make the cash deposits or additional deposits herein provided within the prescribed time limit, the Tribunal shall dismiss the protest x x x, or take such action as it may deem equitable under the circumstances."

Based on the Comment of Protestant Tolentino, there appears a need to modify the coverage of the Precautionary Order contained in Resolution No. 16-01 dated 07 July 2016 by excluding therefrom the ballot boxes, its contents and keys in the fourteen (14) foreign posts included in the electoral protest and excluding from the phrase "other materials and paraphernalia" all the items included in the list contained in the letter of Commissioner Lim, "SAVE for the VCM and its electric power supply and adaptor, the CCS Laptop itself, and all items which are necessary to subject the said VCM (pertaining to all of Protestant Tolentino's contested precincts) and CCS Laptop to a forensic audit."

Considering the provision in the AES Contract cited in the letter of Commissioner Lim that "all goods still in the possession of COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase, and the COMELEC shall pay the corresponding price [...] without prejudice to COMELEC requiring the protestant to shoulder such costs," the Executive Committee deems it advisable to inquire from the Commission on Elections the cost of the VCMs pertaining to Protestant Tolentino's protested precincts and the CCS Laptop, which amount Protestant Tolentino may be required to pay in the event that the said equipment are still in the possession of the Commission by 01 December 2016 by reason of the instant electoral protest.

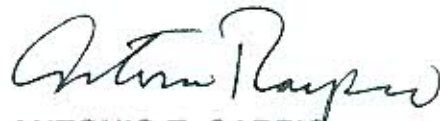
IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to:

1. **NOTE** the respective COMMENTS of the parties in compliance with Resolution No. 16-03 dated 28 July 2016;
2. **MODIFY** the Precautionary Order contained in Resolution No. 16-01 dated 07 July 2016 by: a) excluding therefrom the ballot boxes, their contents and keys, pertaining to the fourteen (14) foreign posts included in the electoral protest; and b) excluding from the phrase "other materials and paraphernalia" all the items included in the list contained in the letter of Commissioner Lim, "SAVE for the VCM and its electric power supply and adaptor, the CCS Laptop itself, and all items which are necessary to subject the said VCM (pertaining to all of Protestant Tolentino's contested precincts) and CCS Laptop to a forensic audit;"
3. **AUTHORIZE** the Commission on Elections and Smartmatic-TIM, Inc. to conduct the 2016 Automated Election System (AES) Project closure/stripping activities for all the VCM and CCS Kits except as stated in the immediately preceding paragraph;
4. **CONFIRM** all closure/stripping activities undertaken on the BGANs prior to the receipt of SET Resolution No. 16-01;
5. **AUTHORIZE** the Election Records and Statistics Department, Commission on Elections, to back up the contents of the VCM SD Cards and CCS laptops of the cities and municipalities covered by SET Resolution No. 16-01; provided that proper measures are undertaken to ensure the preservation of the integrity of the electronic data contained in the said data storage devices and that the original VCM SD Cards, including the back-up SD Cards, are kept or maintained by the Commission; and
6. **REQUEST** the Commission on Elections to inform the Tribunal within a period of ten (10) days of the cost of the VCM pertaining to the protested precincts of Protestant Francis N. Tolentino and the CCS Laptop, which amount Protestant Tolentino may be required to pay in the event that the

said equipment are still in the possession of the Commission by 01 December 2016 by reason of the instant electoral protest.

SO ORDERED.

15 August 2016.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



ARTURO D. BRION
Associate Justice
Member