



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

FRANCIS N. TOLENTINO,  
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,  
Protestee.

X-----X

RESOLUTION NO. 16-21

On 10 November 2016, Protestant Tolentino filed a *Motion to Admit Supplemental Protest* dated 03 November 2016.

The *Supplemental Protest* alleged that events subsequent to Protestee's proclamation and her assumption of office have shown that Protestee is not qualified to assume the office of Senator of the Philippines. The "events" referred to was the "investigation conducted from September to October 2016 by the House of Representatives (HOR) on the proliferation of drug syndicates at the National Bilibid Prison (NBP) which has shown that Protestee had used the vast powers of her position as Secretary of the Department of Justice (DOJ) to organize imprisoned drug lords and drug pushers, some of them Chinese, into a Mafia-style core group to sell prohibited drugs to raise funds for Protestee's senatorial campaign in the last elections."<sup>1</sup>

Attached to the *Supplemental Protest* as Annex "A" is a certified true copy of the Report of the Committee on Justice which conducted the investigation in aid of legislation, allegedly finding that Protestee had, in the course of her campaign, probably violated Sections 95 and 97 of the Omnibus Election Code.<sup>2</sup>

<sup>1</sup> Supplemental Protest, p.1.

<sup>2</sup> Ibid.

In addition, Protestant Tolentino alleged that Protestee de Lima intentionally omitted to declare millions of forced contributions extorted from the drug lords prior to the elections, as can be seen from the affidavits executed by the unwilling contributors and from her Statement of Contributions and Expenditures.

Protestant Tolentino, thus, with leave of court, invoked the Tribunal's administrative powers to inquire into the irregularities and violation of the electoral laws uncovered by the investigation conducted by the HOR.

On 14 November 2016, the Executive Committee of the Tribunal issued Resolution No. 16-16, requiring Protestee de Lima to comment, within a non-extendible period of five (5) days from receipt of the resolution, on the *Motion to Admit Supplemental Protest* and, without giving due course thereto, on the *Supplemental Protest*.

In her *Comment/Opposition (To Protestant Tolentino's Motion to Admit Supplemental Protest dated 03 November 2016)*, Protestee de Lima stated that the grounds relied upon by Protestant Tolentino are in the nature of questions affecting eligibility that is a proper subject of a *quo warranto* petition, which can no longer be invoked at this stage.

She stressed that Rule 15 of the 2013 Rules of the Tribunal explicitly forbids an election protest joined with a petition for *quo warranto* or vice-versa, which is designed to avoid confusion of the two remedies in an election protest. Further, the ten (10) day period for filing a *quo warranto* petition under Rule 18 of the Tribunal Rules, which is non-extendible, had long expired. Moreover, the SET Rules does not contain any provision allowing the filing of a supplemental protest. Only amendment of pleadings is allowed.

Protestee de Lima likewise pointed out that there was no prior disqualification complaint filed before a competent court or before the Commission on Elections where she was declared by final decision guilty of violations of Sections 95 and 97 of the Omnibus Election Code. Thus, Protestant Tolentino cannot validly raise the alleged probable violation of Section 68 in the instant election protest to disqualify Protestee de Lima from office.

A cursory perusal of the *Supplemental Protest* sought to be admitted shows that the grounds relied upon therein by Protestant Tolentino are matters affecting the *eligibility* of Protestee de Lima, which properly pertain to a *quo warranto* petition.

As defined, "an Election Protest refers to an election contest relating to the election and returns of elective officials, grounded on frauds or irregularities in the conduct of the elections, the casting and counting of the ballots and the preparation and canvassing of returns. The issue is who obtained the plurality of valid votes cast."<sup>3</sup> "*Quo warranto*, under the Omnibus Election Code, refers to an election contest relating to the qualifications of an elective official on the ground of ineligibility or disloyalty to the Republic of the Philippines. The issue is whether respondent possesses all the qualifications and none of the disqualifications prescribed by law."<sup>4</sup>

What distinguished one remedy from the other is not the label given to it; it is the allegation therein stated. A petition alleging that fraud and irregularity vitiated the conduct of the election, though entitled *quo warranto*, is an election protest. Similarly, a petition alleging that the candidate-elect is not qualified for the office is a *quo warranto* proceeding, even if labeled election protest.<sup>5</sup>

Rule 15 of the 2013 Rules of the Tribunal explicitly prohibits the joining of a *quo warranto* petition with an election protest and vice-versa, thus:

"Rule 15. How Initiated.- An election contest is initiated by the filing of a verified election protest or a verified petition for *quo warranto* against a Member of the Senate. An election protest shall not include a petition for *quo warranto*, nor shall a petition for *quo warranto* include an election protest. (Underscoring supplied.)

Considering the fundamental differences between an election protest and a petition for *quo warranto*, they may not be availed of jointly and in the same proceeding. However, they can be separately filed, with the second and later

<sup>3</sup> Sec. 3, Definitions, AM No. 07-4-14-SC, Rules of Procedure in Election Contests before the Courts Involving Elective Municipal and Barangay Officials, 15 May 2007.

<sup>4</sup> *Ibid.*

<sup>5</sup> Ruben Agpalo, *The Law on Public Officers*, First Edition, 1998, p. 54.

case suspended until the earlier one is resolved. An action for *quo warranto* cannot be converted into an election protest.<sup>6</sup>

ACCORDINGLY, the Tribunal resolves to DENY the *Motion to Admit Supplemental Protest* dated 03 November 2016 filed by Protestant Francis N. Tolentino on 10 November 2016. The *Comment/Opposition (To Protestant Tolentino's Motion to Admit Supplemental Protest dated 03 November 2016)* filed by Protestee Leila M. de Lima is NOTED.

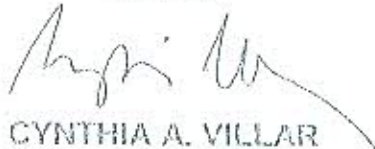
SO ORDERED.

01 December 2016.

  
ANTONIO T. CARPIO  
Senior Associate Justice  
Chairperson

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice  
Member

  
ARTURO D. BRION  
Associate Justice  
Member

  
CYNTHIA A. VILLAR  
Senator  
Member

GRACE L. POE  
Senator  
Member

  
MA. LOURDES "NANCY" S. BINAY  
Senator  
Member

  
RICHARD J. GORDON  
Senator  
Member

  
FRANKLIN M. DRILON  
Senator  
Member

ANTONIO "SONNY" F. TRILLANES IV  
Senator  
Member

<sup>6</sup> *Ibid.*