



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. 16-34

On 25 January 2017, Protestant Francis N. Tolentino filed thru counsel an *Urgent Motion for Reconsideration* of Resolution No. 16-29 dated 18 January 2017, the dispositive portion of which reads:

"**ACTING** on the Manifestation and Motion dated 12 January 2017 filed by the Commission on Elections on 16 January 2017, the Executive Committee of the Tribunal resolves to:

"a) **ADMIT** and **NOTE** the said Manifestation, including the Incident Report and Supporting Photographs (Annexes "A" and "B", respectively); and

"b) **GRANT** the requested authority for the Commission on Elections and its duly authorized personnel to:

1. Reboot (Power-Up) the Servers;
2. Conduct and Undertake Diagnostics thereon; and
3. Shut-Down (Power-Down) the same,

to determine if any data stored in the servers had been damaged.

"The Commission on Elections shall give due notice to the Tribunal and the parties herein at least a week before the scheduled diagnostic procedure to enable them to send their representatives to witness and observe the procedure.

"SO ORDERED."

In his *Urgent Motion for Reconsideration*, Protestant Tolentino manifested that he has serious doubts as to the reported circumstances of the sudden collapse of the ceiling of the Memory Configuration Room (MCR), a very crucial room containing servers where important data are stored. It bears emphasis, he said, that despite the purported "abnormal" and irregular shutting down of the server units on 30 December 2016, the Honorable Tribunal was notified thereof only on 16 January 2017, when the COMELEC filed its *Manifestation and Motion* dated 12 January 2017.

With the COMELEC admission that the server units had to be "abnormally" shut down because no personnel from Smartmatic Philippines, Inc. was present to properly shut down the same, Protestant Tolentino submitted that any further action by the COMELEC on the server units will raise further doubts on the integrity of the electronic data on the conduct and results of the election contained therein.

Thus, Protestant Tolentino prays of the Tribunal to: (a) reconsider its Resolution No. 16-29 dated 18 January 2017; (b) designate and request the National Bureau of Investigation to conduct a thorough investigation of the circumstances surrounding the immediate shutdown of the server units at the COMELEC warehouse on 30 December 2016; (c) enjoin the COMELEC from rebooting, conducting diagnostics on the servers and shutting down the same; and (d) should it be determined that the subject server units may be rebooted and/or tested without compromising the data stored therein, direct the COMELEC to allow herein parties and/or their authorized representatives to observe the rebooting of the servers, the conduct of the diagnostics thereon and the shutting down of said units.

Article IX (C), Section 2 of the 1987 Philippine Constitution provides:

"Sec. 2. The Commission on Elections shall exercise the following powers and functions:

"(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall."

Corollarily, Republic Act No. 8436, otherwise known as "*An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and For Other Purposes,*" provides:

"Sec. 26. Supervision and control.- The System shall be under the exclusive supervision and control of the Commission. For this purpose, there is hereby created an information technology department in the Commission to carry out the full administration and implementation of the System.

"The Commission shall take immediate steps, as may be necessary for the acquisition, installation, administration, storage, and **maintenance of equipment and devices**, and to promulgate the necessary rules and regulations for the effective implementation of this Act." (Emphasis supplied.)

It is clear from the above-quoted provisions that the automated election system is under the exclusive supervision and control of the COMELEC. The acquisition, installation, administration, storage and maintenance of equipment and devices related to the automated election system is its sole responsibility. To enable the COMELEC to carry out the full administration and implementation of the automated election system, the law itself provided for the creation of an information technology department in the COMELEC.

Prescinding therefrom, it is but proper, if not expected, that any order to conduct an investigation on the circumstances surrounding the sudden collapse of the ceiling of the Memory Configuration Room (MCR) of the COMELEC warehouse in Sta. Rosa, Laguna, should emanate from the COMELEC and not from the Tribunal. For the Tribunal to issue an order directing the conduct of an investigation as requested by Protestant Tolentino would constitute an encroachment on the authority exclusively given to the COMELEC.

Moreover, COMELEC enjoys the presumption of regularity in the performance of its functions or duty in the administration, storage, and maintenance of equipment and devices used during the 2016 Automated National

and Local Elections. Absent any showing of bad faith and malice, there is a presumption of regularity in the performance of official duties.¹

The most that the Tribunal can do, under the circumstances, is to request the COMELEC to furnish the Tribunal and the parties herein the results of the investigation, if any, conducted on the matter.

IN VIEW OF THE FOREGOING, the *Urgent Motion for Reconsideration* filed by Protestant Francis N. Tolentino is **DENIED** for lack of merit. The Commission on Elections is requested to furnish the Tribunal and the parties herein the results of the investigation, if any, conducted on the sudden collapse of the ceiling of the Memory Configuration Room at its warehouse in Sta. Rosa, Laguna.

SO ORDERED.

06 February 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member


LUCAS P. BERSAMIN
Associate Justice
Member

¹ Delos Santos vs. Commission on Audit (COA), G.R. No. 198457, August 13, 2013, 703 SCRA 501.