



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

FRANCIS N. TOLENTINO,
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16-45

At the Preliminary Conference held on 26 January 2017, Protestant Tolentino was required to submit in regard to particular allegations in his Amended Election Protest, the list of his witnesses thereon, numbering not more than three per clustered precinct, their addresses and the purposes of their testimonies, as well as the list of documentary evidence sought to be subpoenaed. It was also agreed upon that counsel for Protestant Tolentino would meet with the Canvass Board Service (CBS) for the purpose of reconciling his list of pilot precincts with the COMELEC Project of Precincts (POP). The meeting was scheduled on 02 February 2017.

On 31 January 2017, Protestant Tolentino filed an *Urgent Manifestation and Motion* of even date praying that he be allowed to reduce his pilot precincts from 3,507 to 2,973, representing 21.57% of his total contested precincts, with the corresponding adjustment in the cost estimates for the collection of the ballot boxes and election documents from P8,492,275.00 to P7,145,775.47. He further prayed that he be allowed to pay the said adjusted amount in two (2) equal installments of P3,572,887.74 each on or before 06 February and 06 April 2017, respectively.

Protestant Tolentino's *Motion* was granted by the Executive Committee of the Tribunal in Resolution No. 16-33 dated 06 February 2017, with the modification that he was required to pay the adjusted cost estimate in accordance with the following schedule: (1) P3,572,887.74 on or before 06 February 2017; (2) P1,786,443.87 on or before 06 March 2017; and (3) P1,786,443.87 on or before 06 April 2017.

In the meantime, at the meeting held on 02 February 2017, counsel for Protestant Tolentino was required by the CBS to submit not later than 16 February 2017 a list of his pilot precincts clustered in accordance with the COMELEC POP. In compliance, Protestant Tolentino filed a *Manifestation* dated 16 February 2017 containing a list of his clustered pilot precincts. A closer scrutiny of the list, however, showed some inaccuracies; hence, another meeting was set on 28 February 2017.

During the 28 February 2017 meeting, counsel for Protestant Tolentino was directed to submit the correct clustering of his pilot precincts for some areas, specifically Tongkil, Sulu; San Narciso, Quezon; Al-Barka, Basilan; Manukan, Zamboanga Del Norte; and Arayat, Pampanga.

Despite the failure of Protestant Tolentino to comply with the second directive, the CBS was able to ascertain the correct clustering of the pilot precincts using the COMELEC POP. Moreover, CBS observed that the list contained in the *Manifestation* dated 16 February 2017 included precincts which were not enumerated in the Preliminary Conference Brief of Protestant Tolentino.

On 01 March 2017, Protestant Tolentino filed a *Manifestation*, stating the purposes of his documentary and testimonial evidence, the names and addresses of his witnesses and the documents to be subpoenaed.

On 02 March 2017, the Tribunal issued Resolution No. 16-38, containing the Preliminary Conference Order and directing the parties to submit within five (5) days from receipt of the Resolution their comment thereon, which should be restricted solely to whether or not the Resolution faithfully reflected the admissions and stipulations of the parties. The parties and their counsel were further notified that they could not add any new matter with respect to the issues agreed upon and

the evidence to be presented. The Resolution did not reflect the contents of Protestant Tolentino's *Manifestation* filed on 01 March 2017.

In her *Comment (To SET Resolution No. 16-38)* dated 11 March 2017, Protestee de Lima confirmed that Resolution No. 16-38 reflected the admissions and stipulations of the parties. On the other hand, Protestant Tolentino, in his *Comment (On Resolution No. 16-38 dated 02 March 2017)* and *Motion* dated 10 March 2017, moved that the Tribunal amend Resolution No. 16-38 to reflect the purposes of his documentary and testimonial evidence, the names and addresses of the corresponding witnesses and the documents to be subpoenaed as stated in his *Manifestation* dated 01 March 2017. He further moved that the Tribunal note the list of his pilot clustered precincts in Tongkil, Sulu; San Narciso, Quezon; Al-Barka, Basilan; Manukan, Zamboanga Del Norte; and Arayat, Pampanga, contained in the same *Comment (On Resolution No. 16-38 dated 02 March 2017)* and *Motion* dated 10 March 2017.

On 27 March 2017, the Executive Committee issued Resolution No. 16-42, requiring Protestee de Lima to comment on Protestant Tolentino's *Comment (On Resolution No. 16-38 dated 02 March 2017)* and *Motion* dated 10 March 2017.

As required, Protestee de Lima filed on 03 April 2017 her *Comment/Opposition* dated 30 March 2017, alleging that Protestant Tolentino still could not seem to decide exactly which clustered precincts to protest and which clustered precincts would be his pilot precincts pursuant to Rule 42 (f) of the 2013 Rules of the Tribunal. Worst, she continued, in his *Manifestation* dated 16 February 2017 and in his *Comment (On Resolution No. 16-38 dated 02 March 2017)* and *Motion*, Protestant Tolentino once more attempted to expand the scope of his protest, specifically, the scope of his pilot precincts. Protestee de Lima thus prayed that Protestant Tolentino's *Comment and Motion* be denied for utter lack of merit, and in the alternative, that his amended election protest be dismissed.

Considering that Protestee de Lima did not pose any objection to the motion of Protestant Tolentino that Resolution No. 16-38 dated 02 March 2017 be amended to reflect the purposes of his documentary and testimonial evidence, the names and addresses of his corresponding witnesses, as well as the documents

to be subpoenaed, the Tribunal resolves to grant the requested amendment.

With respect, however, to Protestant Tolentino's identification of his pilot precincts, it must be stressed that what was granted in Resolution No. 16-33 dated 06 February 2017 was the reduction of the number of pilot precincts enumerated by Protestant Tolentino in his Preliminary Conference Brief. The word "reduction" means the bringing down to a smaller extent, size, amount, number, etc. It cannot, by any stretch of usage or practice, be made synonymous with "addition" or "substitution" which by design or accident Protestant Tolentino appears to be doing or attempting to do in the course of the proceedings as regards his pilot precincts.

The uncertainty resulting from the failure of Protestant Tolentino and his counsel to determine with finality the list of his pilot precincts seriously impinges upon the very purpose of conducting a preliminary conference; that is, to aid in the prompt disposition of the case. In fact, such uncertainty also brings to fore the question of whether or not Protestee de Lima's right to due process is being seriously prejudiced. It is therefore apropos to remind Protestant Tolentino that the 2013 Rules of the Tribunal was purposely crafted to provide an expeditious and inexpensive procedure for the just determination of election cases brought before the Tribunal. The provisions on Preliminary Conference are not mere technicalities which the parties may blithely ignore or trifle with. They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed. (Cabrera vs. Comelec and Michael Montenegro, G.R. No. 182084, October 6, 2008.)

Be that as it may, CBS was able to ascertain the correct clustering of the pilot precincts listed in Protestant Tolentino's Preliminary Conference Brief. Precincts not included in the enumeration contained in said Preliminary Conference Brief shall not, and cannot form part of his pilot precincts, as reduced in Resolution No. 16-33 dated 06 February 2017. Specifically, only the precincts included in the list attached to Resolution No. 16-38 dated 02 March 2017 (Preliminary Conference Order) as Annex "A" shall form part of Protestant Tolentino's pilot precincts.

We note that in the Preliminary Conference Order sought to be amended, the collection of ballot boxes was tentatively scheduled to commence on 20 March 2017 and to continue until 18 May 2017, revision of the ballot boxes and election documents was set from 15 May 2017 to 30 June 2017; and reception of evidence was slated from 02 May 2017 to 25 July 2017.

Evidently, these schedules are no longer feasible. Such being the case, the Canvass Board Service and the Legal Service are directed to prepare within ten (10) days from receipt of this Resolution another Schedule of Proceedings for the approval of the Executive Committee. Thereupon, copies thereof shall be served upon the parties for their information and guidance.

IN VIEW OF THE FOREGOING, the Tribunal Resolves to:

a. **AMEND** Resolution No. 16-38 dated 02 March 2017 to reflect the purposes of Protestant Tolentino's testimonial and documentary evidence, the names and addresses of his witnesses and the documents to be subpoenaed as stated in his *Manifestation* dated 01 March 2017;

The Amended Preliminary Conference Order shall now be known as Resolution No. 16-45-A.

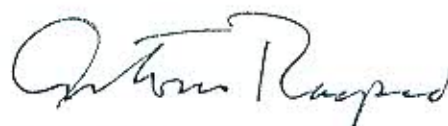
b. **DIRECT** the Canvass Board Service and Legal Service to prepare within ten (10) days from receipt of this Resolution a new Schedule of Proceedings for approval by the Executive Committee. Thereupon, copies thereof shall be served upon the parties for their information and guidance;

c. **NOTE** Protestant Tolentino's compliance with the directive to submit the list of clustered precincts in Tongkil, Sulu; San Narciso, Quezon; Al-Barka, Basilan; Manukan, Zamboanga Del Norte; and Arayat, Pampanga. However, precincts not listed in his Preliminary Conference Brief shall not be included in his pilot precincts. Only the precincts enumerated in the list attached to Resolution No. 18-36 dated 02 March 2017 as Annex "A" shall form part of Protestant Tolentino's pilot precincts; and

d. NOTE Protestee de Lima's Comment (To SET Resolution No. 16-38) dated 11 March 2017 and Comment/Opposition dated 30 March 2017.

SO ORDERED.

09 May 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member

CYNTHIA A. VILLAR
Senator
Member

GRACE L. POE
Senator
Member



MARIA LOURDES NANCY S. BINAY
Senator
Member

RICHARD J. GORDON
Senator
Member



FRANKLIN M. DRILON
Senator
Member

ANTONIO "SONNY" F. TRILLANES IV
Senator
Member