



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

FRANCIS N. TOLentino,
Protestant,

- VERSUS -

NCE Case No. 001-17

LIELA M. DE LIMA,
Protestant.

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PROTESTANT MOTION NO. 16-56

Protestant Francis N. Tolentino filed on 19 April 2017 a *Comment and Motion* dated 17 April 2017, praying for the appointment of an independent IT consultant, as may be agreed upon by the parties, to assess the proposed change of the Commission on Elections (COMELEC) in the system date of the Consolidation and Canvassing System (CCS) laptops; and for the COMELEC to hold in abeyance the implementation of said proposed change, pending an independent IT expert's assessment.

Protestant Tolentino's Motion stemmed from the Notice dated 29 March 2017 of the COMELEC, through Commissioner Christian Robert S. Lira, informing all concerned parties that: (a) the COMELEC had suspended the backing up of the Secure Digital (SD) cards, pursuant to its Notice dated 10 March 2017; (b) the Certificates of Canvass (COC) and Statistical Reports could not be retrieved from the CCS laptops because the certificates installed in the CCS Universal Serial Bus (USB) tokens expired in December 2016; (c) to address the concern, the COMELEC proposes to change the system date of the CCS laptops to an earlier period, preferably between October and November 2016; and (d) the COMELEC would demonstrate the changing in the system date on 03 April 2017.

In his Motion, Protestant Tolentino informed the Tribunal that during the scheduled demonstration on 03 April 2017, he objected to the proposed change in the system date as this would create serious doubts on the integrity of the transmitted election data and would necessarily alter the time logs for the transmittal of the election data. Instead of changing the system date, and to avoid any doubt or question on the integrity of the said activity, he proffered that it would be more prudent for the COMELEC to cause the renewal of the certificates installed in the CCS USB tokens, CCS laptops and Election Management System (EMS) server in order to preserve the election data.

Protestant Tolentino added that the proposed change in system date was merely through the initiative of the Office of Commissioner Lim and that the same was not approved by the COMELEC *En Banc*. Without such approval, the proposed action, in his opinion, would be invalid or, at the very least, questionable.

Moreover, according to Protestant Tolentino, Commissioner Lim failed to comply with Section 52 (i) of B.P. Blg. 881, otherwise known as the Omnibus Election Code of the Philippines, as amended, requiring the notification of the authorized representatives of accredited political parties and candidates in areas affected by the use or adoption of technological devices not less than thirty (30) days prior to the effectivity of the use of such devices. Thus, Protestant Tolentino was not given sufficient time to field his trusted IT consultants, or to determine other measures to gain access to the COCs and Statistical Reports, other than COMELEC's proposed system date change.

On 09 May 2017, the Executive Committee of the Tribunal issued Resolution No. 16-46 requiring the COMELEC and the counsel for Protestee de Lima to comment within five (5) days from receipt of the Resolution on Protestant's *Comment and Motion*. On 15 May 2017, Protestee de Lima seasonably filed her *Comment*, while the COMELEC filed a Motion for Extension of Time to File Comment.

In her *Comment*, Protestee de Lima emphasized and maintained that her electoral win was a product of an honest, credible, peaceful and orderly elections

and that the results of the 2016 National and Local Elections were truly reflective of the sovereign will of the people. She, however, acknowledged that any proposed change involving any material dates in any of the election management system machines, paraphernalia, security protocol or data might cause risks which have to be explained thoroughly to the parties involved, especially the question of whether such proposed change would affect the 2016 election results that formed the basis of Protestee de Lima's proclamation.

Consequently, Protestee de Lima would like the COMELEC to thoroughly explain to the parties, in writing, the impact of such proposed change in the system date, meticulously assessing the risks involved, if there be, and thereafter allow the parties sufficient time to evaluate and/or consult IT experts regarding such assessment, if necessary. Protestee de Lima likewise suggested that until such process shall have been undertaken, COMELEC should, consistent with due process, hold in abeyance the implementation of the proposed change in the system date of the CCS laptops.

On 29 May 2017, the Executive Committee of the Tribunal issued Resolution No. 16-52, granting the COMELEC additional period until 31 May 2017 within which to file the comment required in Resolution No. 16-46 dated 09 May 2017. COMELEC filed its *Manifestation and Comment (on Protestant Francis N. Tolentino's Comment and Motion dated 17 April 2017)* on 30 May 2017.

In said Comment, COMELEC manifested that pursuant to COMELEC Minute Resolution No. 17-0271 (In the Matter of the Request for Authority to Comply with Senate Electoral Tribunal Resolution No. 16-46 dated May 9, 2017), which was adopted by the COMELEC during its 16 May 2017 Regular *En Banc* Meeting, COMELEC assents to the appointment of an independent IT expert for the purpose of assessing the proposed change in the system date of the CCS Laptops, subject to the condition that the same shall be at no cost to the COMELEC, and offers no opposition to hold in abeyance the implementation of the system date change of the CCS laptops. COMELEC further manifested that, to date, it has not been able to back up significant reports and data contained in

the CCS laptops since the digital certificates of the CCS expired in December 2016.

Meanwhile, pending resolution of the instant incident, the COMELEC Law Department filed on 21 June 2017 a *Manifestation and Technical Report on the Election Management System Server* detailing the events that transpired during the conduct of Power-Up, Diagnostics and Power-Down of the Election Management System (EMS) Server on May 12 and 13, 2017 at the Memory Configuration Room, COMELEC Warehouse, Sta. Rosa City, Laguna.

Considering that the parties differed as to the course of action being sought from the Tribunal to resolve the issue, the parties were invited to a conference on 13 July 2017. Appearing before Hearing Commissioner Atty. James G. Allanigue, the parties' respective counsel agreed to pursue Proteslee de Lima's suggested course of action, i. e. to request the COMELEC to explain in writing to the Tribunal and the parties the impact of the proposed change in the system date, assessing the risk involved, if any, and thereafter, after evaluation of the said explanation, for the parties to submit to the Tribunal their respective comment thereon, copy furnished the other party.

Further, the parties agreed that it is imperative that COMELEC identify the Information Technology (IT) resource persons who prepared the explanation so that in the event the parties, or even the Tribunal, would need to consult IT experts to evaluate the COMELEC explanation, an independent IT Expert/Consultant other than the COMELEC resource person/s would be engaged to do the task.

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

- a. **REQUIRE** the COMELEC to submit to the Tribunal and to the parties within fifteen (15) days from receipt of this Resolution a written explanation on the impact of the proposed system date change, assessing the risks involved,

if any, and to identify the Information Technology (IT) resource persons who prepared and/or contributed in the preparation of its explanation;

- b. REQUIRE the parties to evaluate the COMELEC's explanation and submit their respective comments within ten (10) days from receipt thereof, copy furnished the other party;
- c. DIRECT the COMELEC to hold in abeyance the implementation of the proposed system change until further notice from the Tribunal; and
- d. NOTE the *Manifestation* filed by the COMELEC Law Department on 21 June 2017 and the *Technical Report on the Election Management System Server* detailing the events that transpired during the conduct of Power-Up, Diagnostics and Power-Down of the Election Management System Server on May 12 and 13, 2017 at the Memory Configuration Room, COMELEC Warehouse, Sta. Rosa City, Laguna.

SO ORDERED.

18 July 2017.



ANTONIO E. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member