



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 - 84

In a notice dated 29 March 2017, the Commission on Elections (COMELEC), through Commissioner Christian Robert S. Lim, informed all concerned parties that: (a) 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 Consolidation and Canvassing System (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.

Reacting thereto, Protestant 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 in the system date of the CCS laptops; and for the COMELEC to hold in abeyance the implementation of said proposed change, pending an independent IT expert's assessment.

Tolentino stated that during the scheduled demonstration, he opposed 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.

Acting on Tolentino's *Comment and Motion*, the Executive Committee of the Tribunal issued Resolution No. 16-46 dated 09 May 2017 requiring COMELEC and the counsel for Protestee de Lima to comment thereon within five (5) days from receipt of the Resolution.

In her *Comment* dated 15 May 2017, Protestee de Lima manifested 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's proclamation.

COMELEC, on the other hand, in its *Manifestation and Comment* (on Protestant Francis N. Tolentino's *Comment and Motion* dated 17 April 2017) dated 30 May 2017, assented 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 Commission, and offered no opposition to hold in abeyance the implementation of the system date change of the CCS laptops. COMELEC further manifested that it was not able to back up significant reports and data contained in the CCS laptops in view of the expiration of the digital certificates of the CCS in December 2016.

After consultation with the respective counsel of the parties, the Tribunal, in Resolution No 16-54 dated 18 July 2017, required COMELEC to submit to the Tribunal and to the parties within fifteen (15) days from receipt of said 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. COMELEC was likewise directed to hold in abeyance the implementation of the proposed system change until further notice from the Tribunal.

In the same Resolution, the parties were required to evaluate the COMELEC's explanation and submit their respective comments within ten (10) days from receipt thereof, copy furnished the other party.

After two (2) *Motions for Extension* filed by the COMELEC which were respectively granted in Resolution No. 16-58 dated 15 August 2017 and Resolution No. 16-61 dated 31 August 2017, COMELEC filed on 14 September 2017 its *Manifestation* with attached *Compliance* dated 05 September 2017.

In its *Compliance*, COMELEC submitted the Internal Memorandum dated 24 August 2017 of Mr. Alvin V. Genota of its Information and Technology Department (ITD). The Internal Memorandum is hereby quoted in full, thus:

"We need to change the dates of the CCS Laptop so that all the reports created by the CCS in the May 9, 2016 National and Local Elections (NLE) can be backed up. Changing the system dates of a CCS Laptop will not affect any election data contained therein. It will:

- 1. Allow access to canvassing reports. All canvassing reports (the Initialization Report, Canvass Report, Certificate of Canvass and Proclamation, and the Statement of Votes that were already generated during the May 9, 2016 National and Local Elections (NLE) canvassing will not be altered in any way (all information including the date of generation of the report). The change of date will be reflected in the audit logs and all reports will be antedated.*
- 2. Transactions that will be recorded in the audit logs after changing the date will show the current (modified) date of the CCS.*

3. *Allow back-up of all reports generated and election results.*"

Protestant Tolentino filed a *Motion for Extension* dated 25 September 2017, requesting for an extension of fifteen (15) days from 28 September 2017, or until 13 October 2017, within which to file the required *Comment*. The Executive Committee of the Tribunal granted the requested extension in Resolution No. 16-66 dated 28 September 2017.

On 13 October 2017, Protestant filed his *Comment* (on the COMELEC's "Compliance dated 05 September 2017") manifesting the following:

- a. *Blocking the access to a system due to an expired license is a common practice. Therefore, a system with an expired license does not become accessible to unauthorized users simply through a change in the system date. Only the software provider can enable access to a system with an expired license by way of an overriding or special license.*
- b. *In its normal state, the file extraction feature should be available in the CCS, without the necessity of changing its system date or time.*
- c. *The COMELEC ITD failed to show how it can safeguard the integrity of the reports stored therein after it "regains" access to the CCS.*
- d. *The COMELEC ITD dangerously claims that the transactions that will be recorded in the audit logs after the change in the system date will show the current (modified) date of the CCS. If the succeeding logs will show the date as the modified date, then it means that someone could enter a date similar to any of the transmission dates during the elections, and the logs would appear as if the transaction happened on that day itself.*
- e. *It is highly irregular that the back-up of all reports generated and election results in the CCS have not been previously stored by the COMELEC.*

Protestant, thus, claimed that the COMELEC's proposal to change the system date of the CCS underscores its vulnerability to unauthorized access. The

explanation failed to specify the measures that may be taken by the COMELEC to ensure the integrity of the canvassing reports and stability of the CCS laptops. He, therefore, urged the Tribunal not to allow the COMELEC to “hack” into the CCS without a valid license and, thus, condone a blatant infringement upon the software provider’s intellectual property rights.

Protestant reiterated his prayer for the appointment of an independent IT consultant, as may be agreed upon by the parties, to assess the COMELEC’s proposed change in the system date of the CCS laptops; and for the issuance of a directive for the COMELEC to hold in abeyance the implementation of its proposed system date change, pending such independent IT expert’s assessment.

On the part of Protestee de Lima, the deadline for the filing of a Comment had already lapsed. Protestee’s right to comment any further regarding this issue is deemed waived.

It would appear that the report of Mr. Alvin V. Genota, which was confirmed by the COMELEC *en banc*, merely enumerated the possible effects of the proposed system date change but failed to substantiate his position by explaining in detail how and why he arrived at such conclusion. On the other hand, the position taken by Protestant Tolentino offered another possible repercussion of the proposed activity.

Such being the case, it becomes apparent that the appointment of an independent IT Expert to assess the situation will not solve the issue at hand. Any findings or recommendations of such IT Expert would likewise serve no other purpose than to increase the number of possibilities. Such findings or recommendations would merely be speculations or conjectures. To validate all offered possibilities, COMELEC should be given the opportunity to conduct the system date change under a controlled environment.

It may be recalled that in Resolution No. 16-37 dated 02 March 2017, COMELEC was required to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops, forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant’s *Manifestation*

dated 18 November 2016 and one hundred six (106) VCMs and their Secure Digital (SD) Cards enumerated in Protestant's *Motion* dated 18 November 2016.

The Tribunal will have to require COMELEC to identify which among those six (6) CCS laptops has the least amount of protested data or, better yet, does not have any protested data for all elected positions. Once identified, COMELEC shall bring the said CCS laptop before the Tribunal for the conduct of system date change. The COMELEC-designated IT shall conduct the system date change in the presence of the Tribunal IT personnel who shall record the result thereof. The findings of the Tribunal IT personnel shall be the official position of the Tribunal.

ACCORDINGLY, the Tribunal Resolves to:

1. **REQUIRE** the COMELEC to identify which among those six (6) CCS laptops mentioned in Resolution No. 16-37 dated 02 March 2017, has the least amount of protested data or, better yet, does not have any protested data for all elected positions and bring the identified CCS laptop before the Tribunal within ten (10) days from receipt of this Resolution. All costs attendant to the transport of the CCS laptop from the COMELEC office or warehouse to the Tribunal, if there be any, shall be charged against the deposit of Protestant Tolentino;
2. **DESIGNATE** MR. LARRY U. AUMENTADO, Legislative Staff Officer V of Information and Communication Systems and Judicial Records Management Service (ICSJRMS) of the Tribunal as its official IT representative who will assess the COMELEC's actual system date change;
3. **DIRECT** the Acting Secretary of the Tribunal to set the schedule for the actual system date change upon receipt of the CCS laptop from the COMELEC and **NOTIFY** the COMELEC and the parties of the said schedule;

4. **PARTIALLY LIFT** the Order to hold in abeyance the implementation of the proposed system date change only with respect to the CCS laptop to be identified by the COMELEC for the actual system date change.

SO ORDERED.

22 November 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member



MARIA LOURDES "NANCY" S. BINAY
Senator
Member



GRACE L. POE
Senator
Member



RICHARD J. GORDON
Senator
Member



JOEL VILLANUEVA
Senator
Member



FRANKLIN M. DRILON
Senator
Member

ANTONIO "SONNY" F. TRILLANES IV
Senator
Member