



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 - 85

On 24 October 2017, Protestee Leila M. de Lima, through counsel, filed a *Motion to Cite Protestant Tolentino in Contempt* dated 23 October 2017, for allegedly violating the *sub judice* rule. In her *Motion*, Protestee de Lima alleged that an interview of Protestant Francis N. Tolentino came out in several newspapers, more particularly the *Manila Times* on 20 October 2017, *Philippine Star* on 21 October 2017, and *Philippine Daily Inquirer* on 22 October 2017.

De Lima claimed that in the aforementioned news articles, Protestant Tolentino made it appear that there were several ballot boxes in the pilot precincts of Calbayog City, Western Samar that contained ballots used during the 2013 midterm elections and posed the question "how come those 2013 ballots are mixed up with the 2016 ballots?" It was Protestee's position that the said statement served no other purpose than to mislead the public and the Tribunal, since Protestant, together with his entire revision team, was fully aware that only one (1) ballot box pertaining to Clustered Precinct No. 60030008 of Calbayog City, Western Samar pertained to the 2013 elections. Protestee added that by impressing upon the public that 2013 ballots were mixed up with the 2016 ballots, Protestant Tolentino is trying to insinuate fraud or irregularity where there was none.

Protestee de Lima further stated that Protestant Tolentino made it appear that there was statistical improbability in the areas of Turtle Island, Tawi-Tawi; Isabela City, Sumisip and Tabuan-Lasa, Basilan; and Parang and Matanog, Maguindanao because he got zero votes in these areas despite winning in these provinces. To Protestee de Lima's mind, the doctrine of statistical improbability did not apply since she also garnered zero votes in the same precincts that the Protestant identified as his pilot precincts and this was presented in her Verified Answer.

Protestee de Lima declared that in the three (3) revision days that transpired prior to the questioned interview, the Protestant made no recovery on physical count in the areas where he alleged the existence of fraud and irregularities, and yet publicly he acted as though he was the victim of fraud with Protestee de Lima as the perpetrator.

In fine, Protestee de Lima posited that Protestant Tolentino's alleged false and misleading utterances put the integrity of the Tribunal's proceedings in question and violated the *sub judice* rule. In support thereof, Protestee cited the pronouncement of the Supreme Court in the case of *Reghis M. Romero et al., vs. Senator Jinggoy E. Estrada*, G.R. No. 174105, April 2, 2009, wherein the Court stated that the *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice and that a violation of the *sub judice* rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court.

On 06 November 2017, Protestant Tolentino filed his *Opposition* [To Protestee's Motion to Cite Protestant Tolentino in Contempt dated 23 October 2017] and alleged among others that Protestee's arguments are speculative, baseless and misleading.

According to the Protestant, Protestee de Lima availed herself of the wrong remedy. He averred that he could not be cited in indirect contempt through a mere motion as Rule 71, Section 4 of the Rules of Court, which finds supplementary application pursuant to Rule 87 of the 2013 Rules of the Senate Electoral Tribunal,

provides that proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed or via a verified petition.

Protestant Tolentino also anchored his position on the ruling of the Supreme Court in *Valmores-Salinas vs. Judge Bitas*, A.M. No. RTJ-12-2335, 18 March 2013, which enumerates the procedural requirements, to wit: there must be an order requiring the petitioner to show cause why he should not be cited for contempt; the petitioner must be given an opportunity to comment; there must be a hearing and the court must investigate the charge and consider the petitioner's answer; and only if found guilty will petitioner be punished accordingly.

Protestant alleged that by filing the instant motion, Protestee unjustifiably failed to observe the requirements under Rule 71, Section 4 of the Rules of Court since the motion cannot be considered as a verified petition. The media articles attached to the Motion were not certified true copies thereof and there was no showing that Protestee complied with the requirements for the filing of initiatory pleadings for civil actions. Protestant, therefore, submitted that Protestee's Motion should be denied.

Protestant further raised the following arguments if only to show that the instant motion lacked merit:

- a. Proceedings for punishment of indirect contempt are criminal in nature. Intent is necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it;
- b. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt;
- c. Protestee has the burden to prove that the alleged statements in the media are of extremely serious degree that they constitute a clear and present danger that will harm the administration of justice;

- d. The news articles that protestee cited are inadmissible in evidence for being hearsay; and
- e. Without admitting the said news articles are admissible in evidence, protestant's supposed statements therein were not an attempt to impede, interfere with or embarrass the Tribunal in the administration of justice.

In sum, Protestant claims that Protestee failed to prove beyond reasonable doubt that he was liable for indirect contempt; that the reported, but unverified, statements of Protestant, which merely mentioned the grounds of his protest, constitute extraneous influence which would create prejudice in the decision-making of the Tribunal.

In the past, the Tribunal had occasion to rule on a similar charge. In SET Case No. 001-95 (Pimentel, Jr. vs. Honasan, et al.), therein Protestee Juan Ponce Enrile moved to cite therein Protestant Aquilino Q. Pimentel, Jr. in contempt of the Tribunal for issuing a press release, attending various *fora* as well as appearing in a television program to discuss matters relating to the then pending election protest case.

In that earlier case, the Tribunal, in Resolution No. 96-27, ruled as not contemptuous: (a) an update on the findings of Pimentel's revision teams; (b) an update on the progress of his electoral protest pending before the Tribunal; and (c) an update on the other actions taken by Pimentel in relation to his electoral protest. The Tribunal found that the alleged statements, taken together, did not interfere with or obstruct the resolution of the protest. However, the Tribunal admonished both the Protestant and the Protestee not to cause the publication of the findings of their own revision and tabulation teams as those of the Tribunal and were reminded to refrain from making any comment on the ongoing proceedings other than a fair and true report thereon.

Based on the standards set in the aforesaid case, Protestant Tolentino's statements before the press could not be considered contemptuous. The aforementioned news reports did not indubitably show any intent on the part of

Protestant Tolentino to impede and / or compromise the Tribunal in the instant election protest. He merely made an update on his personal and his revision teams' findings; an update on the progress of his electoral protest; and an update on the courses of actions, which he would eventually take in relation to his electoral protest.

As stated in Resolution No. 96-27 issued in SET Case No. 001-95 (Pimentel, Jr. vs. Honasan, et al.), it would be too much to expect that a litigant would remain totally mute to the goings-on of his protest. It is but natural for him to update his supporters on the progress of the case.

WHEREFORE, the Tribunal Resolves to **DENY** Protestee de Lima's *Motion to Cite Protestant Tolentino in Contempt* for lack of merit.

However, both parties are enjoined to refrain from making any comment on the ongoing proceedings, other than a fair and true report of the same with **STERN WARNING** that any violation of this Order will be dealt with by the Tribunal accordingly.

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


JOEL VILLANUEVA
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