



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

FRANCIS N. TOLENTINO,
Protestant,

SRT Case No. 001-16

-versus-

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16 - 102

Protestee de Lima filed on 03 January 2018 an *Urgent Motion*, praying for a declaration that Protestant Tolentino failed to obtain any reasonable recovery during the revision of his twenty-five percent (25%) designated pilot precincts; for the issuance of an Order disallowing the revision of the remaining protested precincts; and for the dismissal of the instant protest.

In her Motion, Protestee stated that, pursuant to Rule 39 (e) in relation to Rule 42 (f) of the 2013 Rules of the Senate Electoral Tribunal, Protestant Tolentino identified some Seven Hundred Fifty-One (751) clustered precincts in his Preliminary Conference Brief as his pilot protested precincts. The pilot precincts are supposedly those which Protestant deemed as best exemplifying or demonstrating the electoral fraud or anomaly being pleaded and the same are the subject of initial revision.

Protestee narrated that Fifty-Four (54) of the identified pilot precincts were from the provinces of Basilan and Lanao del Sur but these were not retrieved on account of the armed conflict prevailing in those areas during the retrieval process, and Forty-Seven (47) were for annulment of election results sans revision and re-examination of the official ballots and election documents and paraphernalia. Thus, Six Hundred Fifty (650) ballot boxes were subjected to revision from 18 October 2017 to 05 December 2017.

Protestee de Lima alleged that revision records categorically show that Protestant Tolentino had no significant vote recovery and neither was there a showing of any fraud or irregularity. Moreover, de Lima claimed that out of the 316,754 voters who actually voted in the 650 pilot clustered precincts, Tolentino only obtained a 124 vote recovery while she obtained about 172 vote recovery, or a net gain of 48 votes.

Protestee argued that as provided for under Rule 76 of the 2013 SET Rules, upon cessation or termination of the initial revision, the Tribunal has to determine if there is a valid basis to proceed with the revision of the remaining protested precincts. De Lima maintained that with Tolentino's vote recovery in his pilot precincts, there is absolutely no justifiable reason that would warrant the revision of the remaining protested clustered precincts and the most prudent course of action under the circumstances is for the Tribunal to dismiss Tolentino's baseless protest.

In an *Opposition* filed on 18 January 2018, Protestant Tolentino asserted that the Motion is premature as may be gleaned from the provisions of Rule 76 which recognizes that reception of evidence is part and parcel of the determination as to whether there will be an effect on the officially proclaimed results of the contested election.

Protestant also pointed out that the results from the 54 clustered precincts from the provinces of Basilan and Lanao del Sur and the 47 clustered precincts for annulment of election results could not yet be determined.

Further, Protestant claimed that mere physical count could not be the sole basis to dismiss a protest as there were significant observations made during revision that must be threshed-out before the Tribunal. Allegedly, there are questions that cannot be answered by a mere arithmetic of the contested ballots.

In resolving this issue, Rule 76 of the 2013 Rules of the Senate Electoral Tribunal is most instructive. To quote:

Rule 76. Pilot Precincts; Initial Determination – The revision of the ballots or the correction of manifest errors and reception of evidence shall begin with pilot precincts. If after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts, the Tribunal determines that the officially proclaimed results of the contested election will not be affected, the Tribunal shall dismiss the protest, counter or cross protest without further proceedings. (Emphasis supplied)

Clearly then, revision of ballots and election documents is only a part of the whole process before the Tribunal could issue an initial determination. It is explicitly provided that initial determination of the case may only happen after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts.

It may be well to revisit Rule 4 of the *Rules and Procedures Governing the Revision of Ballots under the Automated Election System* which states the following objectives of revision: (a) To verify the physical count of the ballots; (b) To recount the votes of the parties; (c) To record the objections and claims of the parties; and (d) To mark the ballots objected to or claimed by the parties for purposes of identification, in preparation for their examination by the Tribunal and for the reception of evidence in support of the parties' objections and claims.

While there may have been recovery of votes during revision, the Tribunal is called upon during the appreciation of ballots to rule on the respective objections and claims of the parties. While gains or losses are recorded during revision, it is during appreciation when the actual gains or losses are ascertained.

Further, reception of evidence in support of the parties' objections and claims must be undertaken, more particularly on objections that require *evidence aliunde*. Ballots or votes objected to or claimed may either be rejected or admitted based on the evidence that the parties may present.

In addition, Protestee de Lima had, in fact, recognized that Protestant Tolentino prayed for the annulment of election results sans revision in some of the pilot precincts. This, of course, requires the presentation of evidence to prove the existence of grounds that would justify the requested annulment.

To date, the reception of evidence which, upon agreement of the parties, commenced on 29 January 2018, has not been completed. Likewise, Resolution No. 16-97 dated 20 February 2018, set the continuation of the revision proceedings on 05 March 2018 for the seventeen (17) ballot boxes pertaining to the Protestant's pilot precincts that were subsequently retrieved.

IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to DENY the *Urgent Motion* of Protestee De Lima dated 03 January 2018 for being premature.

SO ORDERED.

08 March 2018.

ANTONIO T. CARPIO
Senior Associate Justice
• Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
• Member

MARIA LOURDES "NANCY" S. BINAY
Senator
Member

JOEL VILLANUEVA
Senator
Member