



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 – 110

With the termination of the revision proceedings involving the pilot precincts of Protestant Francis N. Tolentino, the following incidents must also be resolved:

1.) Turn Over of 2013 Ballot Boxes to the Collection Team

The Tribunal, in Resolution No.16-83 dated 22 November 2017, required Mr. Aristo G. Catalla, Municipal Treasurer of Pagbilao, Quezon and Ms. Ma. Evelyn O. Sunio, Assistant City Treasurer of Calbayog City to explain why the ballot boxes which were turned over to the SET collection team contained 2013 ballots and election documents and to show cause why they should not be held in contempt of the Tribunal for failing to turn over the correct ballot boxes. They were further required to bring to the SET offices the ballot boxes containing the 2016 ballots and election documents.

On 06 December 2017, Mr. Catalla submitted his *Compliance* stating that the turn over of 2013 ballot boxes to the SET Collection Team was an honest mistake, done without intention to cause prejudice to any of the parties and with no intention to delay the proceedings of the Tribunal. Explaining further, he said that his staff pulled out from the warehouse/stockroom the requested ballot boxes based purely on the marking of Clustered Precinct Numbers and without making any verification of C.E. Form No. A14 which contains a listing of serial numbers of the metal and plastic seals.

For her part, Ms. Ma. Evelyn O. Junio (not Sunio as stated in the resolution) submitted her *Compliance* on 11 December 2017 explaining that the turn over of the ballot box for Clustered Precinct No. 8 containing 2013 ballots and election documents, instead of 2016, was not deliberate but by sheer inadvertence. She stated that the ballot boxes used during the 2013 and 2016 elections were co-mingled in view of lack of office space. She attributed the mistake, in part, to the fact that their storage room is not spacious enough and not well-lighted.

2.) Turn Over of Ballot Boxes Containing Ballots from Different Clustered Precincts

Resolution No.16-83 dated 22 November 2017 also required Ms. Ofelia C. Adesas, ICO Municipal Treasurer of San Jorge, Western Samar to explain why the ballot box which purportedly pertains to Precincts Nos. 15 and 15A/B contains ballots and election documents pertaining to Precincts Nos. 17 A/B and to show cause why she should not be held in contempt of the Tribunal for failing to turn over the correct ballot boxes.

In her *Explanation* dated 06 December 2017, she stated that the error was not intentional but was brought about by confusion. She added that the ballot box was mislabeled by reason of limited space of the storage room, aside from the fact that it was not well-lighted.

In a similar resolution, Resolution No. 16-88 dated 15 January 2018, the Tribunal required Ms. Grace A. Jomillo, Municipal Treasurer of Dumangas, Iloilo to explain why the contents of the ballot box for Clustered Precinct No. 8 which was turned over to the SET collection team contained ballots and election documents belonging to another Clustered Precinct. Further, it required Ms. Alona U. Friades, Municipal Treasurer of Tongkil, Sulu to explain why the ballot box for Clustered Precinct No. 15 which was turned over to the SET collection team also contained ballots and election documents belonging to another Clustered Precinct. Said Municipal Treasurers were likewise required to show cause why they should not be held in contempt of the Tribunal for failing to turn over the ballot box containing the correct ballots and election documents.

Ms. Jomillo, in her *Affidavit*, stated that during the May 2016 National and Local Elections, she was in charge of receiving the ballot boxes from the Board of

Election Inspectors (BEI). Since the ballot boxes were sealed, she was not authorized to open the same. She explained that the basis in segregating the ballot boxes that were retrieved by the SET Collection Team are the Serial Numbers of the Metal/Plastic Seals listed in CEF 14 (Certificate of Receipt of Official Ballots, Other Forms and Supplies by the Board of Election Inspectors). She came to realize later that the Metal Seals for Clustered Precinct Nos. 8 and 43 were interchanged. Such fact was recorded in a yellow paper which she found later in the Treasurer's Office duly signed by the BEI.

Aforesaid explanation was attested to by the *Joint Affidavit* of Ms. Ma. Teresa D. Dequiña (Head Teacher III, in charge of Clustered Precinct No. 8) and Ms. Sussette D. Deanon (Grade School Teacher, in charge of Clustered Precinct No. 43). They declared that after the voting, they brought their respective ballot boxes to the Municipal Building of Dumangas and during the sealing, they inadvertently interchanged the metal seals. They attributed the inadvertence to fatigue as it was already in the middle of the night and they had been working the whole day without rest.

With respect to Ms. Alona U. Friades of Tongkil, Sulu, a copy of Resolution No. 16-88 dated 15 January 2018 which was intended for her was not served. It was sent thru courier, LBC Express, Inc., on 22 January 2018. On 22 March 2018, the pouch containing the resolution was returned to the Tribunal.

As stated in Resolution No. 16-104, the more prudent course of action is to resend the notice to Ms. Friades instead of asking her to testify during the reception of evidence. Upon verification, there appears to be no courier operating in the area. Likewise, it is not within the coverage of postal services. To remedy the situation, service of the resolution may be coursed through the Provincial Treasurer who is based in Jolo, Sulu.

3.) Ballot ID Different from the COMELEC-assigned Ballot ID

Resolution No.16-83 dated 22 November 2017 aforementioned likewise requested the Commission of Elections to shed light on why the Ballot IDs for Clustered Precincts Nos. 4 and 6 of San Jorge, Western Samar differ from the COMELEC-assigned ballot IDs.

In its *Compliance* filed on 27 December 2017, the COMELEC Law Department submitted the Memorandum, dated 22 December 2017, of Atty. Genevieve E. Velicaria-Guevarra, Vice Chairperson of the Printing Committee for the 09 May 2016 National and Local Elections. As explained in the Memorandum, the Ballot IDs for the Municipality of San Juan de Buan, also in Western Samar, were inadvertently copied as the Ballot IDs of San Jorge. Attached to the Memorandum is the corrected Ballot IDs for the Municipality of San Jorge, which clearly showed that the Ballot IDs of subject precincts recorded during revision were the correct COMELEC- assigned Ballot IDs.

4.) Damaged Ballots

In Resolution No. 16-88 dated 15 January 2018, the Tribunal required the following: 1) City Treasurer of Dipolog City, Zamboanga del Norte, 2) Municipal Treasurer of Tuburan, Cebu, and 3) City Treasurer of San Fernando City, Pampanga to explain why certain ballot boxes contained wet or damaged ballots and election documents and to show cause why they should not be held in contempt of the Tribunal for failing to preserve and maintain the integrity of ballots and other election documents while the same are under their custody.

In a letter received by the Tribunal on 01 February 2018, Mr. Sancen D. Caroro, City Treasurer of Dipolog City, Zamboanga del Norte explained that when the City Government implemented the 5S Program which required them to declutter and free their office spaces and pathways from obstructions, the ballot boxes which were then stored at the corridor fronting the Office of the City Treasurer were transferred to the City Motorpool which is about five (5) kilometers from the City Hall. Since it was a common stockroom, some construction materials punctured and damaged the ballot boxes which were already brittle. When the City suffered torrential rains, some of the ballot boxes were drenched but it was only belatedly that they learned of the damage suffered by the ballot boxes, i.e., when they were informed by the Tribunal.

Mr. Caroro added that what happened to the ballot boxes were unintentional and were beyond his immediate control and was primarily brought about by the lack of logistics and limited resources to make a more secure space for the ballot boxes.

For Tuburan, Cebu, Municipal Treasurer Francisca M. Jumao-as explained in her letter received by the Tribunal on 30 January 2018 that in view of the objection of the Protestant in a local protest that the 79 ballot boxes be transferred to a government building as it was allegedly controlled by the Protestee, the ballot boxes were placed in an open space at the back of the municipal building under a make shift tent to make them visible to the watchers assigned by both parties. She added that additional security measures were put in place, namely, installation of additional lights, CCTV or closed-circuit television, and night guards. Likewise, the ballot boxes were elevated from the ground and the top of the ballot boxes were covered with laminated sack.

When the transfer to the open space was made, Treasurer Jumao-as and Election Officer Gilbert Pepito who made the decision, were of the belief that subject ballot boxes would not stay long in said location as they expected that these would be transferred to the Regional Trial Court (RTC) of Toledo City. However, toward the end of CY 2016, while awaiting instructions from the RTC, the worsening weather condition, like the consistent heavy downpour and threats of typhoons, prompted them to transfer the ballot boxes to an enclosed area beside the Municipal Trial Court despite the strong opposition of their local Protestant. The transfer was made on 26 November 2016.

Ms. Jumao-as explained further that prior to the transfer, each ballot box was wrapped with plastic and sealed with masking tape. She was, thus, dismayed to learn that one ballot box was found to contain wet ballots despite the measures that were undertaken to protect the ballot boxes. She believes that the condition suffered by the said ballot box occurred before the transfer on 26 November 2016.

In the case of San Fernando City, Pampanga, the City Treasurer, Ms. Mary Ann P. Bautista, submitted her *Compliance/Explanation* on 15 February 2018. She stated therein that the ballot boxes retrieved by SET representatives on 25 July 2017 were in good condition. The SET representatives carefully inspected and thoroughly examined the ballot boxes. Had there been signs that the subject ballot box for Clustered Precinct No. 10 was soaked in water, this observation could not have escaped the inspection team and should have been place on the SET Inventory Form.

She added that the ballot boxes were taken out from the storage room that is dedicated exclusively for ballot boxes. It is properly locked and beyond the reach of water. She claimed that utmost diligence was exercised in the custody of the ballot boxes.

As further compliance to Resolution No. 16-83 dated 22 November 2017 and Resolution No. 16-88 dated 15 January 2018, the ballot boxes containing the 2016 ballot boxes, as well as the ballot boxes containing the correct clustered precincts, were delivered to the Tribunal on various dates, except the ballot box from Tongkil, Sulu. These ballot boxes, which were included in the revision proceedings conducted on March 5 to 7, 2018 as directed in Resolution No. 16-97 dated 20 February 2018, are as follows:

- a.) Pagbilao, Quezon - 9 ballot boxes;
- b.) Calbayog City, Western Samar - 1 ballot box;
- c.) San Jorge, Western Samar -- 1 ballot box; and
- d.) Dumangas, Iloilo – 1 ballot box.

On 02 March 2018, prior to the start of the revision proceedings, Protestant Tolentino moved for the exclusion from the revision proceedings the nine (9) ballot boxes of Pagbilao, Quezon and one (1) ballot box of Calbayog City, Western Samar. Said motion was, however, denied in Resolution No. 16-101 dated 05 March 2018. In a *Manifestation* dated 08 March 2018, Protestant Tolentino manifested his continuing objection to the opening of the said ballot boxes and that his participation in the revision proceedings should not be construed as a waiver of his right to further object and subsequently question the integrity, accuracy and authenticity of the contents therein.

Revision proceedings disclosed that the correct ballot boxes were indeed delivered to the Tribunal. The Revision Teams that examined the above-mentioned ballot boxes found them in good condition and no unusual observations were recorded in the Revision Reports.

The aforesaid *Manifestation* of Protestant Tolentino dated 08 March 2018 is hereby NOTED.

After deliberating on the explanations respectively submitted by the custodians of the ballot boxes, the Executive Committee of the Tribunal FINDS the explanations of the following to be SATISFACTORY:

1. Mr. Aristo G. Catalla, Municipal Treasurer of Pagbilao, Quezon;
2. Ms. Ma. Evelyn O. Junio, Assistant City Treasurer of Calbayog City;
3. Ms. Ofelia C. Adesas, ICO Municipal Treasurer of San Jorge, Western Samar;
4. Ms. Grace A. Jomillo, Municipal Treasurer of Dumangas, Iloilo; and
5. Ms. Francisca M. Jumao-as, Municipal Treasurer of Tuburan, Cebu.

The Tribunal also FINDS the explanation submitted by the Commission on Elections with respect to the questioned Ballot ID of two (2) clustered precincts of San Jorge, Western Samar to be SATISFACTORY.

On the other hand, the Tribunal FINDS the explanations given by Mr. Sancen D. Caroro, City Treasurer of Dipolog City, Zamboanga del Norte and Ms. Mary Ann P. Bautista, City Treasurer of San Fernando City, Pampanga to be UNSATISFACTORY.

In the case of Mr. Caroro, the Tribunal understands his predicament on the lack of secure space for the ballot boxes. However, a periodic inspection of the storage area would have prevented the damage caused on the ballot boxes. Clearly, he was negligent in the care and custody of the ballot boxes. For his negligence, a FINE of FIVE THOUSAND PESOS (PHP5,000.00) is imposed on Mr. Sancen D. Caroro, City Treasurer of Dipolog City, Zamboanga del Norte, to be paid to the Tribunal within a non-extendible period of fifteen (15) days from receipt of this Resolution.

On the explanation of Ms. Mary Ann P. Bautista that the ballot boxes turned over to the SET Collection were on good condition, the same is not controverted. It should be noted, however, that the said condition refers only to the external condition of the ballot boxes. The SET Collection Team, or anyone for that matter, cannot possibly determine the condition of the contents. It was only when the ballot boxes were opened during the revision proceedings that the contents of Clustered Precinct No. 10 were discovered to be solidified, an indication that the ballot box was previously soaked in water. The state of the ballots and election

documents at the time of revision on 21 November 2017 indicates that the water damage had occurred prior to the transfer of the ballot boxes to the custody of the Tribunal. For this, Ms. Bautista cannot escape liability. In view of her failure to safeguard and maintain the ballots and other election documents for Clustered Precinct No. 10 in good condition while in her custody, a FINE of FIVE THOUSAND PESOS (PHP5,000.00) is imposed on Ms. Mary Ann P. Bautista, to be paid to the Tribunal within a non-extendible period of fifteen (15) days from receipt of this Resolution.

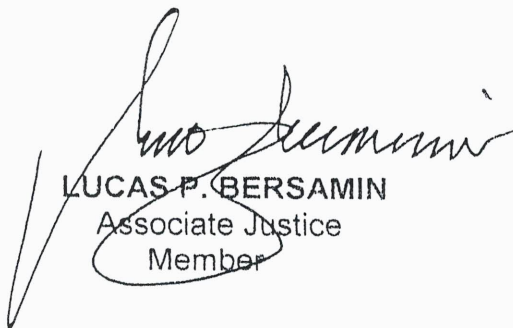
Finally, Municipal Treasurer Alona U. Friades of Tongkil, Sulu, is REQUIRED to EXPLAIN why the ballot box for Clustered Precinct No. 15 which was turned over to the SET collection team contained ballots and election documents belonging to another Clustered Precinct and to SHOW CAUSE why she should not be held in contempt of the Tribunal for this irregularity, both within ten (10) days from receipt of this Resolution. The Acting Secretary is DIRECTED to cause the service of this Resolution through the Provincial Treasurer of Jolo, Sulu.

SO ORDERED.

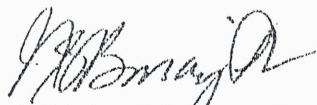
27 April 2018.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice
Member



MA. LOURDES "NANCY" S. BINAY
Senator
Member