

## EN BANC

[ G.R. No. 204123, March 19, 2013 ]

**MARIA LOURDES B. LOCSIN, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND MONIQUE YAZMIN MARIA Q. LAGDAMEO, RESPONDENTS.**

### D E C I S I O N

**LEONEN, J.:**

The Constitution provides that public respondent House of Representatives Electoral Tribunal (HRET) is the *sole judge* of all contests relating to the election, returns, and qualifications of their members.<sup>[1]</sup> This Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise, this Court will not interfere with an electoral tribunal's exercise of its discretion or jurisdiction.<sup>[2]</sup>

This is a *Petition for Certiorari and Prohibition* under Rule 65 of the Rules of Court filed by petitioner Locsin praying:

- i. for the WRIT OF CERTIORARI declaring the assailed *Decision* promulgated on 17 September 2012 and *HRET Resolution No. 12-209* dated 15 October 2012 as NULL AND VOID and/or to REVERSE OR SET ASIDE the issuances for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction;
- ii. for the WRIT OF PROHIBITION to enjoin and prohibit the Public Respondent HRET from implementing the assailed *Decision* promulgated on 17 September 2012 and *HRET Resolution No. 12-209* dated 15 October 2012;
- iii. to NULLIFY the proclamation of private respondent Lagdameo;
- iv. to DECLARE and PROCLAIM petitioner Locsin as the duly elected Representative of the First District of Makati City having received the HIGHEST NUMBER OF VALID VOTES during the May 10, 2010 elections.

<sup>[3]</sup>

Petitioner Locsin and private respondent Lagdameo, along with three other candidates, vied for the position to represent the First Legislative District of Makati in the 2010 national elections. Respondent Lagdameo was proclaimed winner by the City Board of Canvassers on 11 May 2010 garnering 42,102 votes. Petitioner came in second with 41,860 votes or a losing margin of 242 votes.<sup>[4]</sup>

On 21 May 2010, petitioner Locsin instituted an election protest before the HRET impugning the election results in all 233 clustered precincts in Makati's First District. [5] Petitioner alleged that the results were tainted by election fraud, anomalies, and irregularities. On 2 July 2010, Lagdameo filed her *Answer with Counter-Protest* questioning the results in 123 clustered precincts.

During the preliminary conference, Locsin designated 59 clustered precincts as the pilot precincts for her protest while Lagdameo designated 31 clustered precincts as the pilot precincts for her counter-protest. The revision/recount proceedings for 59 clustered precincts covering 25% of the pilot protested precincts were conducted from 14 April 2011 to 19 April 2011. Thereafter, petitioner presented her documentary evidence. By *Resolution No. 11-268*, the HRET admitted in evidence all documentary exhibits offered by petitioner subject to the Comment/Objections of private respondent.

Lagdameo's winning margin increased from 242 to 265 votes after the revision and appreciation of ballots in 25% of the pilot protested precincts. [6] Nevertheless, HRET through the 1 December 2011 Resolution continued the revision proceedings to clear all doubts surrounding the victory of private respondent. Revision proceedings covered the remaining 174 clustered precincts from 18 January 2012 to 31 January 2012.

Petitioner Locsin continued her presentation of additional documentary exhibits. By *Resolution No. 12-061* dated 8 March 2012, the HRET admitted the exhibits subject to private respondent's Comment/Opposition filed on 27 February 2012.

Private respondent Lagdameo presented her evidence for the counter- protested precincts. By *Order* dated 27 April 2012, the HRET admitted all exhibits subject to the Comment/Opposition filed by petitioner on 24 April 2012.

After the parties filed their respective memoranda, the HRET promulgated on 17 September 2012 the assailed Decision<sup>7</sup> dismissing petitioner's election protest, the dispositive portion of which reads:

**WHEREFORE**, for failure to show a reasonable recovery of votes, this election protest is **DISMISSED** and the proclamation of protestee Monique Yazmin Maria Q. Lagdameo as the duly elected Representative of the First Legislative District of Makati City in the May 10, 2010 Automated National and Local Elections is **AFFIRMED**. [8]

The HRET discussed in detail the results of the recount and its appreciation of the contested ballots. [9] The results showed that Lagdameo's proclamation margin of 242 votes increased to 265 votes after revision proceedings in the 25% pilot protested clustered precincts. The margin rose to 335 votes after the revision and appreciation of ballots in the remaining precincts. [10] On the allegations of fraud and election irregularities, respondent tribunal found no compelling evidence that may cast doubt on the credibility of the results generated by the Precinct Count Optical Scan (PCOS) electronic system. [11]

The HRET also denied with finality petitioner's motion for reconsideration by *Resolution No. 12-209* dated 15 October 2012.<sup>[12]</sup>

On 16 November 2012, Locsin filed the present petition on the ground that public respondent HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction when:

1. it promulgated the assailed Decision on 17 September 2012 dismissing the election protest filed by the petitioner on the basis of the erroneous appreciation of the petitioner's contested and claimed ballots.
2. it issued the assailed *Resolution No. 12-209* dated 15 October 2012 denying with finality the motion for reconsideration filed by the petitioner despite the presence of substantial grounds for the reconsideration of the assailed 17 September 2012 Decision.
3. it resolved to admit the 2,455 ballots of the private respondent despite the valid, legitimate and substantial objections of the petitioner.
4. it resolved to deny the 471 claimed ballots of the petitioner despite the existence of bona fide and compelling grounds for their admission.<sup>[13]</sup>

Locsin alleged that the HRET committed grave abuse of discretion when it ignored the presence of 2,457 invalid, irregular, and rejectible ballots for Lagdameo and 663 bona fide claimed ballots for petitioner.<sup>[14]</sup> Specifically, only two of the 2,457 contested ballots were rejected by the HRET, and only 192 of the 663 ballots claimed by petitioner were admitted by the HRET.<sup>[15]</sup> Petitioner argued that a re-examination of the private respondent's ballots would show that markings were placed intentionally for identification, and the ballots should have been rejected. Those which contained shadings below the 50% threshold should have been rejected also.

In its Comment, public respondent argued that under the Constitution, the HRET alone shall have the authority to determine the form, manner, and conduct by which an election controversy is settled and decided with no further appeal.

For its part, private respondent Lagdameo argued that the HRET's rulings on the recount, revision and appreciation of objected and claimed ballots are in accord with law and evidence.<sup>[16]</sup>

The sole issue in the present petition is whether the HRET committed grave abuse of discretion in dismissing petitioner's election protest.

Article VI, Section 17 of the Constitution provides that the HRET shall be the "*sole judge* of all contests relating to the election, returns, and qualifications of their

respective members.”<sup>[17]</sup> As this Court held in *Lazatin v. House of Representatives Electoral Tribunal*<sup>[18]</sup>:

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.<sup>[19]</sup>

Thus, this Court's jurisdiction to review HRET's decisions and orders is exercised only upon showing that the HRET acted with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[20]</sup> Otherwise, this Court shall not interfere with the HRET's exercise of its discretion or jurisdiction.<sup>[21]</sup> "Grave abuse of discretion" has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.<sup>[22]</sup>

Time and again, this Court has held that mere abuse of discretion is not enough.<sup>[23]</sup> It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[24]</sup>

In the present case, we find no grave abuse of discretion on the part of public respondent HRET when it dismissed petitioner's election protest.

Public respondent HRET conducted a revision and appreciation of all the ballots from all the precincts. This was done despite the fact that results of initial revision proceedings in 25% of the precincts increased the winning margin of private respondent from 242 to 265 votes. Out of due diligence and to remove all doubts on the victory of private respondent, the HRET directed continuation of revision proceedings. This was done despite the dissent of three of its members, representatives Franklin P. Bautista, Rufus B. Rodriguez, and Joselito Andrew R. Mendoza. The three voted "for the dismissal of the instant election protest without further proceedings for lack of reasonable recovery of votes in the pilot protested clustered precincts."<sup>[25]</sup>

Thus, in reaching the assailed decision, the HRET took pains in reviewing the validity or invalidity of each contested ballot with prudence. This is evident from the decision's ballot enumeration specifying with concrete basis and clarity the reason for its denial or admittance.<sup>[26]</sup> The results, as well as the objections, claims, admissions, and rejections of ballots were explained sufficiently and addressed by

the HRET in its *Decision*.

In essence, this petition under Rule 65 seeks a re-examination by this Court of the contested ballots.

An inquiry as to the correctness of the evaluation of evidence is not within the ambit of the extraordinary remedy of *certiorari*.<sup>[27]</sup> “Where the court has jurisdiction over the subject matter, its orders upon all questions pertaining to the cause are orders within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari*.”<sup>[28]</sup> This rule applies to decisions by the HRET whose independence as a constitutional body has consistently been upheld by this Court.<sup>[29]</sup>

Well settled also is the rule that the Supreme Court is not a trier of facts, and factual issues are beyond its authority to review.<sup>[30]</sup>

In the absence of any showing of grave abuse of discretion by the HRET, there is no reason for this Court to annul respondent tribunal's decision or to substitute it with its own. As held by this Court in *Garcia vs. House of Representatives Electoral Tribunal*:<sup>[31]</sup>

[T]he Court has ruled that the power of the Electoral Commission ‘is beyond judicial interference except, in any event, upon a clear showing of arbitrary and improvident use of power as will constitute a denial of due process.’ The Court does not, to paraphrase it in *Co vs. HRET*,<sup>[32]</sup> venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action.<sup>[33]</sup>

Petitioner's bare assertions of grave abuse of discretion by public respondent were not substantiated. Neither was there arbitrariness or use of power as to constitute denial of due process. In fact, petitioner was given several opportunities to present its evidence and raise its arguments. These were considered by public respondent that discussed meticulously its factual and legal bases in reaching its decision.<sup>[34]</sup>

But still, to erase all lingering doubts, this Court looked into the contested ballots as summarized by Locsin in the petition.

## I. Objected Ballots

Petitioner alleges that the HRET acted with grave abuse of discretion in rejecting only two (2) out of the 2,457 Lagdameo-identified ballots which were contested timely by petitioner during the judicial recount and revision proceedings. Petitioner claims that these ballots were marked ballots (MB), spurious ballots (SB), and miscellaneous/stray ballots (MISC/STRAY) which should have been rejected. The petition included tables enumerating the contested ballots, ground for their rejection and findings, and organized by *barangay* and clustered precinct number.<sup>[35]</sup>