

EN BANC

[G.R. No. 190067, March 09, 2010]

REPRESENTATIVE ALVIN S. SANDOVAL (LONE DISTRICT OF NAVOTAS-MALABON), PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, JOSEPHINE VERONIQUE R. LACSON-NOEL, AND HON. SPEAKER PROSPERO NOGRALES, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Decision^[1] of the House of Representatives Electoral Tribunal (HRET) dated September 24, 2009 and its Resolution^[2] dated November 12, 2009 be declared null and void *ab initio*.

The accurate narration of facts in the HRET Decision is not disputed by the parties. Pertinent portions thereof are reproduced hereunder:

On 19 May 2007, after the canvass of votes, as evidenced by the *Certificate of Canvass of Votes and Proclamation of the Winning Candidates for the Member of the House of Representatives*, the Board of Canvassers of the Legislative District of Malabon City-Navotas proclaimed protestee Sandoval [herein petitioner] the winning candidate for the Office of the Member of the House of Representatives with **Seventy-one Thousand Four Hundred Ninety (71,490)** votes as against protestant Lacson-Noel who obtained the second highest number of votes with **Seventy Thousand Three Hundred Thirty-One (70,331)** votes; or a winning margin of **One Thousand One Hundred Fifty-Nine (1,159)** votes. Per the Summary Statement of Votes, the distribution of all votes legally cast in the district is as follows:

SANDOVAL, Alvin-	71,490
S.	
LACSON-NOEL, Josephine	- 70,331
Veronique R.	
FRANCISCO, Maritoni Z.	- 35,634
CINCO, Roberto T.	- 412

Refusing to concede defeat, protestant Lacson-Noel filed the instant

Petition of Protest on 29 May 2007, and alleged in substance that "the results [of the election] do not reflect the true will of the voters as they are but products of various fraudulent and illegal acts, schemes and machinations employed by [protestee] Sandoval, his agents and supporters, with the connivance or conspiracy of the Board of Election Inspectors (BEIs), which defrauded and deprived [her] of lawful votes cast at the precinct level." Specifically, protestant Lacson-Noel assails the results of election in **623 precincts (441 from Malabon City and 182 from Navotas)** out of the 1,437 total number of precincts in the Lone Legislative District of Malabon City-Navotas on the following grounds:

- a. Misreading, miscounting and/or miscrediting of votes [in favor of protestee Sandoval and/or ballots intended for protestant Lacson-Noel were not counted in her favor] x x x.
- b. Misappreciation of ballots in violation of Section 211 of the Omnibus Election Code and case law [such as the non-counting of protestant Lacson-Noel's maiden surname "Lacson" in her favor] x x x.
- c. x x x written-by-One ballots, in pairs or in groups of ballots [were counted in favor of protestee].
- d. The use of either fake, spurious ballots or genuine but manufactured ballots to increase protestee Sandoval's votes. x x x.
- e. The use of manufactured election returns which are prepared x x x prior to the start of voting and/or counting.
- f. Manipulation, alteration and falsification of the votes and related data in the election returns and/or vote padding in favor of protestee Sandoval and vote-shaving from protestant Lacson-Noel's votes.

Protestant Lacson-Noel claims that she would have obtained a greater number of votes if not for the fraud and irregularities that marred the election. She posits that "[t]here is a need for a recount, revision and due appreciation of the ballots and examination or scrutiny of election documents in the [623] protested precincts," as the result thereof "will affect the presumptive results of the congressional elections in the Malabon City-Navotas Legislative District in a very substantial degree as to overcome protestee Sandoval's presumptive lead." Consequently, protestant Lacson-Noel prays that, after the revision and appreciation of ballots and due hearing, judgment be rendered annulling the proclamation of protestee Sandoval; and declaring her the duly elected Representative of the Lone Legislative District of Malabon City-Navotas.

On 25 June 2007, protestee Sandoval filed his Answer (with counter-

protest, motion for preliminary hearing on Affirmative Defenses and counter claim) wherein he specifically denied the material allegations of the protest regarding the number of contested precincts, grounds for protest, commission of frauds and irregularities, and the necessity of recount and revision, for being self-serving and unsupported by evidence. By way of *Special and Affirmative Defenses*, protestee Sandoval contends that it is protestant Lacson-Noel who is guilty of violating "election laws, rules and regulations x x x [committed to benefit her], and which, on the other hand, resulted to (sic) the loss of legal and valid votes in [his] favor." He narrates that during the crucial hours of voting, counting, recording of the votes cast and transmittal of the records of the votes cast, most of his poll watchers were unable to effectively keep an eye on the proceedings and secure his votes because the latter were supposedly prevented from entering the Navotas polling precincts unlike protestant Lacson-Noel's poll watchers who were readily accommodated. As a result of the illegal schemes and machinations employed by protestant Lacson-Noel and her supporters, protestee Sandoval maintains that protestant Lacson-Noel "was able to garner a substantial number of illegal and undeserved votes from the Municipality of Navotas." With respect to Malabon City, protestee Sandoval similarly claims that "massive fraud and illegal electoral practices were committed" all through the election process which tarnished the results of several identified precincts in Malabon City.

By way of counter-protest, protestee Sandoval questions the results of the voting in **1,006 precincts (393 from Malabon City and 613 from Navotas)** in Malabon City-Navotas on the allegation that, thereat, he was deprived of votes cast in his favor and where protestant Lacson-Noel was illegitimately benefited with votes meant for him. The bases for protestee Sandoval's counter-protest are: (1) the loss of legal votes in his favor; (2) the counting of illegal, marked and stray votes for him in favor of protestant Lacson-Noel; (3) the use of manufactured or falsified election returns to favor protestant Lacson-Noel; (4) the padding of election returns to increase the votes of protestant Lacson-Noel and to reduce his (protestee Sandoval's) votes; and (5) the commission of electoral fraud and irregularities by protestant Lacson-Noel and supporters in connivance with the Board of Election Inspectors (BEI).

On 29 June 2007, protestee Sandoval filed an *Ex Parte Motion to Withdraw Counterclaim* (for damages representing his attorney's fees and litigation expenses). This was granted by the Tribunal in its Resolution No. 07-074 dated 12 July 2007.

On 31 July 2007, after the issues were joined, the Tribunal ordered the City/Municipal Treasurers and Election Officers of Malabon City and Navotas to release to the duly authorized representatives of the Tribunal the following: (1) protested and counter-protested ballot boxes with their keys; (2) the lists of voters with voting records; (3) books of voters; and (4) other election documents and paraphernalia pertaining to the protested and counter-protested precincts.

The Tribunal set the preliminary conference of the instant election protest

case on 23 August 2007.

On 6 September 2007, the Tribunal issued the Preliminary Conference Order x x x.

x x x x

And as agreed to by the parties, the issues for resolution are (1) whether or not the recount, revision, and re-appreciation of ballots, including election documents, from the protested and counter-protested precincts will affect the results of the election in the Lone District of Malabon City-Navotas; and (2) whether or not protestant Lacson-Noel and protestee Sandoval each committed electoral frauds and irregularities to cause the nullification of the votes counted in their favor.

On 2 October 2007, the employees of the Tribunal were able to collect the ballot boxes and election documents and paraphernalias of **822 protested and counter-protested precincts** from the City Treasurer of Malabon City. On 11 December 2008, the ballot boxes from **613 protested and counter-protested precincts** in Navotas were collected from the custody of the Regional Trial Court (RTC), Branch 170 of Malabon City-Navotas, as the same had been previously transferred thereto in connection with an election protest concerning the position of Mayor in the Municipality of Navotas.

On 21 February 2008, the Tribunal ordered the revision of ballots from the protested and counter-protested precincts after finally collecting and taking custody of the concerned ballot boxes.

On 4 March 2008, both parties filed their respective motions to photocopy their objected and claimed ballots, as well as the Minutes of Voting. x x x.

On 11 March 2008, the revision of ballots from the **1,434 protested and/or counter-protested precincts** commenced and continued until terminated on 21 April 2008.

In the interregnum, however, protestee Sandoval moved to photocopy the *front* and *dorsal* portions of all ballots subject of the revision "for purposes of authentication and verification, x x x to check the signatures [of the BEI] appearing at the back of the ballots." He alleged that, "upon examination, of the ballots obtained from the protested precincts (sic) the ballot boxes of which have so far been opened, strong indications exist that the ballots retrieved are not genuine." In an *Order* dated 24 March 2008, the Tribunal partially granted protestee Sandoval's prayer, to wit:

WHEREFORE, protestee Sandoval's *Motion for the Photocopying of Both the Front and Dorsal Sides of Ballots* is partially GRANTED insofar as the ballots that are not yet revised and photocopied are concerned. With respect to the

ballots that were already revised and photocopied, protestee is DIRECTED to specify within five (5) days from receipt of the Order, the ballots containing questionable signatures of the BEI chairpersons, as recorded in the revision reports that should be photocopied on the dorsal sides.

x x x x

On 21 April 2008, upon conclusion of the revision of ballots, the physical count thereof yielded the following results: 70,530 ballots were counted for protestant Lacson-Noel, while 69,939 votes cast were for protestee Sandoval.

On 12 May 2008, or twenty-one (21) days after the termination of the revision of ballots, protestee Sandoval filed a *Motion for Technical Examination* of "ballots and election documents obtained from the ballot boxes from no less than twenty-eight (28) precincts in the City of Malabon" where manifest irregularities were noticed. Protestee Sandoval basically contends that the ballot boxes from the identified twenty-eight (28) precincts: (1) are missing padlocks and/or inner/outer metal seals; and (2) contain fake or spurious ballots. He reports that the examination of the contents of said ballot boxes revealed that there are substantial discrepancies between the number of votes cast and counted as against the number of ballots physically counted during revision.

On 22 May 2008, the Tribunal issued *Resolution No. 08-174* noting the protestee Sandoval's aforesated *Motion for Technical Examination*. In the same resolution, the Tribunal directed protestant Lacson-Noel to comment thereon within five (5) days from notice.

In the meantime, on 27 May 2008, protestant Lacson-Noel started presenting and marking her evidence before the designated hearing commissioner, Atty. Michael D. Villaret.

On 10 June 2008, protestant Lacson-Noel filed her opposition to protestee Sandoval's prayer for technical examination of specific ballots. She contends that the Tribunal is competent to determine the validity of contested ballots, including fake or spurious ones; and that it had already developed an expertise in verifying the claims of alleged tampering of ballots and in identifying valid from invalid ballots.

On 20 June 2008, in *Resolution No. 08-216*, the Tribunal denied protestee Sandoval's *Motion for Technical Examination* of ballots in twenty-eight (28) precincts on the ground that:

When the matters which the parties seek to be examined are those which are well within the judicial determination of the Tribunal without resorting to technical examination, the Tribunal itself, in the course of the appreciation of ballots and