

## EN BANC

[ G.R. NO. 173310, March 07, 2007 ]

**ANUAR J. ABUBAKAR, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND NUR G. JAAFAR, RESPONDENTS.**

**G.R. NO. 173609**

**ANUAR J. ABUBAKAR, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND NUR G. JAAFAR, RESPONDENTS.**

**AZCUNA, J.:**

The petition in G.R. No. 173310 seeks to nullify Resolutions Nos. 06-047 and 06-053, dated June 8, 2006 and June 29, 2006, respectively, issued by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 04-017. Resolution No. 06-047 denied petitioner Anuar Abubakar's motion to conduct technical examination and to photocopy his ballots subject of the election protest filed by respondent Nur G. Jaafar against petitioner in connection with the May 10, 2004 congressional elections in the Province of Tawi-Tawi, Sulu. Resolution No. 06-053 denied petitioner's motion for reconsideration of Resolution No. 06-047.

On the other hand, the petition in G.R. No. 173609 seeks to nullify the Decision dated June 30, 2006 in the election protest declaring private respondent as the duly elected Representative of the Lone District of Tawi-Tawi Province in the May 10, 2004 elections and annulling petitioner's proclamation, and to nullify the Resolution dated August 3, 2006 which denied petitioner's motion for reconsideration of the Decision.

The facts are:

In the May 10, 2004 elections, Abubakar and Jaafar were among the candidates for Representative in the Lone District of Tawi-Tawi Province. On May 22, 2004, Abubakar was proclaimed winner garnering 37,720 votes against Jaafar's 35, 680 votes; thus, winning by a margin of 2,040 votes.

On June 1, 2004, Jaafar filed an election protest with the HRET impugning the election results in ten municipalities of Tawi-Tawi Province. Jaafar alleged that fraudulent and illegal acts were employed by Abubakar, his supporters, the Board of Election Inspectors and some military personnel by preventing his (Jaafar's) supporters from voting through the use of force, violence, intimidation, deceit, fraud, misrepresentation and other machinations such as asking the voters to simply affix their thumbprints on sheets of paper without giving them any ballot, and massive substitute voting and substitution of ballots with ready-made ballots in the name of Abubakar.

Abubakar filed an Answer with Counter Protest denying Jaafar's allegations, and counter protested the election results in 160 precincts in nine of the ten municipalities of Tawi-Tawi on the following grounds: illegal reading and counting of ballots; presence of multiple ballots prepared by either one and the same person or individual ballots accomplished by two persons; illegal reading and counting of fake, unauthorized or unofficial ballots containing the protestant's name; misreading and/or misappreciation of ballots in protestant's favor; illegally considering the votes cast for protestee as stray votes; and prevalent erroneous counting in the election returns of the protestee's votes as votes for protestant.

During the preliminary conference conducted on February 3, 2006, the following issues were agreed upon for resolution:

- (1) Mutual charges of election irregularities, fraudulent and illegal acts committed in favor of protestant or protestee, such as substitute or impostor voting, alteration or tampering of ballots and/or election returns, misreading or miscounting of votes, use of spurious ballots, use of genuine ballots but prepared by either one or the same person or by two persons;
- (2) Re-count and re-appreciation of the ballots contested;
- (3) Whether to dismiss the protest for lack of merit; and
- (4) Whether to dismiss the protest for insufficiency in form and substance and for lack of cause of action.<sup>[1]</sup>

On March 17, 2005, a preliminary hearing was conducted on the affirmative defenses raised by protestee, thus: (1) The petition fails to state a cause of action, and (2) the petition is insufficient in form and substance.

Acting on the affirmative defenses of protestee, HRET issued Resolution No. 05-120 dated April 14, 2005 denying the prayer for dismissal of the protest for lack of merit. Protestee's Motion for Reconsideration and Motion to Defer Revision Proceedings were denied by HRET in Resolution No. 05-131 dated April 28, 2005.

From November 15, 2004 to December 8, 2004, HRET, through its representatives, collected all ballot boxes of the involved precincts in the protest and counter-protest, and some election documents and paraphernalia from the municipalities of Tawi-Tawi Province. Upon their return to office, HRET's representatives reported that the concerned election officers in the municipalities failed to turn over the Election Day Computerized Voters Lists and Book of Voters and merely surrendered the Book of Application Forms for Registration of Voters for the 2004 elections.

HRET, thereafter, ordered the revision of ballots of the 409 single and clustered contested precincts. Thus, from April 26, 2005 to May 9, 2005, revision of ballots was conducted over the 251 precincts exclusively protested by Jaafar, the 148 counter protested precincts, and the ten precincts commonly protested by Jaafar and Abubakar.

On May 31, 2006, Abubakar filed a Motion (1) to Conduct Technical Examination and

(2) to Photocopy Protestee's Ballots.

In Resolution No. 06-047 dated June 8, 2006, HRET denied the motion. In support of its denial, HRET cited *Tanchangco v. Oreta* (HRET Case 92-017, April 28, 1994), where it was held:

Neither expert testimony nor technical examination of the questioned ballots is necessary for the Tribunal to properly pass on the validity of the objections and claims. The Tribunal in its evaluation and appreciation of the ballots, which are the best and conclusive evidence in respect to the claims of markings, spuriousness and other defects therein, may determine for itself which claims are duly established.<sup>[2]</sup>

HRET thus stated, "The Tribunal sees no need for the conduct of technical examination in this case, the ballots subject of this protest case having been each fully scrutinized by its members."

Moreover, HRET noted the report of the failure of the collection team, tasked to retrieve the ballot boxes and other election documents from the province of Tawi-tawi, to collect the Voters' Registration Records and Computerized Voters' Lists from the respective offices of the election officers concerned. Only the Application Forms of the Registrants in the May 2004 elections were turned over to them. Thus, HRET stated that even if granted, technical examination to be conducted by signature and handwriting experts would be useless in the absence of sufficient basis for comparison.

Abubakar's motion for reconsideration was denied by HRET in Resolution No. 06-053 dated June 29, 2006. HRET ruled thus:

The decision of the Tribunal to grant or deny a motion for technical examination as provided for under Rule 43 of the HRET Rules is discretionary depending on the circumstances obtaining in each case. For instance, in the case of *Mangotara v. Dimaporo*, HRET Case No. 01-041, the Tribunal granted the motion for technical examination because the Tribunal cannot evaluate the questioned ballots because there were no ballots but only election documents to consider. For this reason, the Tribunal found it necessary to permit protestant to engage an expert to assist him in the prosecution of his case. Thus, the Tribunal through its appreciation of all protested and counter-protested ballots, including those subject of the objections and claims by each party and even those not claimed or objected to, can ascertain the grounds invoked by the parties such as the genuineness of the ballots, identity or similarity of handwritings, and whether such ballots are spurious or tampered without the necessity of an expert or technical examination.

As regards the photocopying of ballots, the Tribunal, in almost all case, has allowed the photocopying of ballots and other election documents. However, in pursuit of its duty to preserve and safeguard the sanctity of the ballots at all times, the Tribunal has adopted stringent measures in allowing the photocopying of ballots and other election documents. Thus, it should be simultaneous with the revision proceedings.<sup>[3]</sup>

On June 30, 2006, HRET rendered its decision on the election protest, thus:

The plurality of votes belongs to protestant [Jaafar] who garnered 27,257 votes as against protestee [Abubakar] who obtained 25,705 votes.

Considering that the results of final count after revision and appreciation of the ballots show that the number of votes for protestant had overcome protestee's presumptive lead of two thousand and forty (2,040) votes as proclaimed, the Tribunal DECLARES protestant Nur G. Jaafar as the duly elected Representative of the Lone District of Tawi-Tawi Province in the May 10, 2004 elections and consequently, ANNULS the proclamation of protestee, Anuar J. Abubakar.<sup>[4]</sup>

On July 10, 2006, petitioner filed a motion for reconsideration of the Decision.

On July 18, 2006, Abubakar filed with this Court a petition for certiorari with urgent prayer for issuance of a writ of preliminary injunction, TRO or Status Quo Order on the interlocutory orders of HRET or Resolutions Nos. 06-047 and 06-053 denying petitioner's motion to conduct a technical examination and to photocopy his ballots. The petition was docketed as G.R. No. 173310.

In a Resolution dated August 3, 2006, HRET denied petitioner's Motion for Reconsideration of the Decision dated June 30, 2006.

On August 7, 2006, petitioner filed a petition for certiorari with urgent prayer for issuance of a writ of preliminary injunction, TRO or Status Quo Order against the HRET Decision declaring private respondent as the duly elected Representative of the Lone District of Tawi-Tawi Province. The petition was docketed as G.R. No. 173609.

In a Resolution dated September 12, 2006, the Court resolved to consolidate the two cases.

### **G.R. No. 173310**

The subject matter of the petition in G.R. No. 173310 is the interlocutory order of HRET or Resolution No. 06-047 denying petitioner's motion to conduct a technical examination and to photocopy his ballots, and Resolution No. 06-053, which denied his motion for reconsideration. Petitioner points out that the subject matter of this case is distinct and separate from his motion for reconsideration of the Decision of HRET dated June 30, 2006.

Although petitioner admits that the grant of the motion to conduct a technical examination is discretionary on the part of HRET, petitioner still insists that the HRET committed grave abuse of discretion in denying the twin motions, and that he was denied due process.

Petitioner prayed that this Court (1) immediately issue a writ of preliminary injunction, TRO or Status Quo Order enjoining HRET from resolving with finality his motion for reconsideration of the Decision dated June 30, 2006 annulling his proclamation and declaring private respondent Jaafar as the Representative of Tawi-tawi; (2) direct HRET not to do anything that would render this petition moot; (3) Nullify Resolutions Nos. 06-053 and 06-047; and (4) direct HRET to conduct a technical examination and allow petitioner to photocopy his ballots.