

EN BANC

[G.R. No. 144491, February 06, 2001]

**JAIME T. TORRES, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL AND NINFA GARIN,
RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Assailed in this special civil action for *certiorari* is the July 13, 2000 Resolution^[1] of the House of Representatives Electoral Tribunal dismissing the election protest of herein petitioner Jaime T. Torres in HRET Case No. 98-017; and the August 3, 2000 Resolution thereof denying petitioner's motion for reconsideration. Petitioner Torres questioned the election of private respondent Ninfa S. Garin as Member of the House of Representatives representing the First Legislative District of Iloilo.

Petitioner Jaime T. Torres and private respondent Ninfa S. Garin were among the candidates for the said Congressional seat in the May 11, 1998 elections. On May 17, 1998, upon canvassing the votes cast, the Provincial Board of Canvassers of Iloilo proclaimed the private respondent as the winner, with Sixty Thousand Eight Hundred Fifty One (60,851) votes, over petitioner's Fifty Nine Thousand Four Hundred Forty Seven (59,447) votes, or a margin of One Thousand Four Hundred Four (1,404) votes.

Petitioner seasonably filed an election protest before the Tribunal questioning the results of the elections in all the precincts of the seven (7) municipalities of the First Legislative District of Iloilo.^[2] He claimed, in essence, that a number of votes cast in his favor were invalidated and not counted, while a number of invalid votes were counted in private respondent's favor.

In her Answer with Counter Protest, private respondent denied the allegations in the protest. She counter-protested the results of the elections in all the 158 precincts of Miag-ao and 126 precincts of Tigbauan. She claimed that it was petitioner who had committed various election frauds, anomalies and irregularities particularly in the precincts of Miag-ao and Tigbauan.

In the preliminary conference held on August 6, 1998, the parties agreed and stipulated, among other things, that the issues involved are: (1) revision, recount and appreciation of ballots; and (2) election irregularities, fraud, etc. as alleged in the counter-protest. The parties likewise designated their respective pilot precincts in accordance with Rule 68 of the 1998 House of Representatives Electoral Tribunal Rules - 185 for the petitioner and 67 for the private respondent, 15 of which were commonly protested or a total of 237 precincts.^[3] During revision, however, a total of 5 precincts were deducted from the original lists of pilot precincts submitted by the parties. It turned out that there were only 232 ballot boxes belonging to the

pilot precincts - 182 for the petitioner and 65 for the private respondent, 15 of which were commonly protested.^[4]

Based on the Election Returns (ERs), Tally Boards (TBs) (when ERs are missing or unreadable), or from the Statement of Votes (SOVs) (when both ER and TB are not available), the respective votes of the parties, prior to revision, were 17,023 for the petitioner and 22,087 for the private respondent in the pilot protested and counter-protested precincts, broken down as follows:

Data before revision	Protestant	Protestee
Data from ER	15,847	21,004
Data from TB	1,010	980
Data from SOV (Precinct No.78A/78A1, Tigbauan)	166	103
Total	17,023	22,087

However, the revision of ballots from February 9 to February 16, 1999 yielded a total of 16,945 votes for petitioner and a total of 20,357 votes for private respondent. The Tribunal noted that petitioner's votes decreased by 78 votes, while private respondent's votes went down by about 1,730 votes after physical count of votes in the pilot protested and counter-protested precincts. As a result, private respondent's proclamation lead of 1,404 votes was obliterated after only the physical count of the ballots in the 25% pilot precincts.

In a "Manifestation" and "Supplemental Manifestation" filed on February 22, 1999, private respondent contended, among other things, that the revision results in the 23 Miag-ao precincts could only be due to ballot switching or substitution at the post-counting stage. According to her, the valid ballots as initially cast in her favor by the voters were replaced by fake ballots containing no Cong./Rep. vote, in numbers approximating the number of the replaced valid Garin votes and that petitioner's complete political control of these precincts had emboldened him to tamper with the results of the elections in these precincts by changing and/or stealing the votes officially cast and credited in favor of the Protestee.

In his "Comments on Protestee's Manifestation and Supplemental Manifestation" filed on March 22, 1999, petitioner attributed the decrease in the number of votes for the private respondent during revision to irregularities committed by the boards of election inspectors during the precinct level counting of votes. He bolstered this allegation by claiming that the self-locking metal seals used to close the outer and inner covers of the ballot boxes at the time of revision have the same and identical serial numbers as those allocated to the BEIs, thus implying that the ballot boxes were not tampered with at the post-counting stage.

The Tribunal conducted full-blown hearings and admitted all documentary exhibits offered by both parties for whatever evidentiary purpose they may serve. Thereafter, private respondent filed her Memorandum on October 21, 1999, while petitioner filed his on October 25, 1999. Both were noted by the Tribunal in its Resolution No. 99-248, dated November 18, 1999.

On April 17, 2000, a *Resolution* was issued by the Tribunal requiring the parties to show cause why the protest and counter-protest, respectively should not be dismissed on account of the following findings of the Tribunal:

"..., there is no doubt the official ballots cast in the 23 precincts of Miag-ao have been tampered with and that the authentic ballots, now missing have been replaced by fake ones. Moreover, as observed by the Protestee, the Tribunal has confirmed that the number of fake ballots in each of the 23 precincts more or less correspond to the number of missing votes for the Protestee as reflected in the election returns.

Consequently, the votes determined after the revision in said 23 precincts cannot be relied upon as they do not reflect the true will of the electorate. Thus, in determining the number of votes for the Protestee in the aforesaid 23 precincts, the 289 ballots for the Protestee during physical count were appreciated by the Tribunal and it accordingly ruled on the admissibility or validity of the same. As regards the missing votes, inasmuch as there is no basis to rule on their admissibility, the Tribunal had to rely on what was reflected on the election returns, the same being the best evidence of the results of the election in the said precincts, in the absence of the genuine ballots. Thus, the missing votes were added back to Protestee's votes after revision/appreciation.

The votes of the parties in the other protested and counter-protested pilot precincts were likewise determined after a careful scrutiny of the ballots involved therein. The result shows that Protestant obtained 17,0043 votes, while Protestee garnered 22,309 votes in the pilot protested precincts. Adding these figures to the votes in the contested non-pilot and uncontested precincts, the total votes in the First District of Iloilo will be 59,428 for the Protestant and 60,803 for the Protestee or a margin of 1,375 votes."^[5]

On April 28, 2000, private respondent filed her "Compliance (With Show Cause Resolution) With Prayer for Dismissal of the Case", while on May 2, 2000, petitioner filed his "Justifications/Reasons Why the Election Protest Should Not Be Dismissed." Both pleadings were noted by the Tribunal in Resolution No. 00-59 dated May 11, 2000."^[6]

In its assailed decision, the Tribunal dismissed the election protest and counter-protest without further proceedings.

Thus, the present recourse on the following grounds:

- I. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RESORTING TO VOTES REFLECTED IN ELECTION RETURNS AS THE VOTES TO BE CREDITED TO PRIVATE RESPONDENT IN 23 PRECINCTS OF MIAG-AO, ILOILO, INSTEAD OF THE PHYSICAL COUNT OF THE BALLOTS FOUND INSIDE THE BALLOT BOXES DURING REVISION;

- II. PUBLIC RESPONDENT'S FAILURE TO INVALIDATE NUMEROUS BALLOTS OF PROTESTEE, EITHER IN PAIRS OR IN GROUPS, CONTESTED AS WRITTEN BY ONE (1) PERSON CONSTITUTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
- III. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT INVALIDATING NUMEROUS INDIVIDUAL BALLOTS OF PRIVATE RESPONDENT CONTESTED AS WRITTEN BY TWO (2) PERSONS;
- IV. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT INVALIDATING NUMEROUS BALLOTS OF THE RESPONDENT CONTESTED AS MARKED BALLOTS DUE TO THE PRESENCE OF IDENTIFYING AND DISTINGUISHING MARKS ON THE FACE OF THE CONTESTED BALLOTS; and
- V. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT ADJUDICATING IN FAVOR OF PETITIONER NUMEROUS STRAY BALLOTS CLAIMED BY PETITIONER.^[7]

It is the petitioner's view that: (1) resort to the votes reflected in the election returns in 23 precincts of Miag-ao as basis of the votes to be credited to private respondent is improper and unwarranted and that the physical count of the ballots should prevail over the votes appearing in the election returns; (2) that the ballots contested as (a) written by one person; (b) written by two persons; (c) marked ballots should have been invalidated against private respondent; and that finally, all the stray ballots claimed by petitioner should be included in his total votes. Consequently, petitioner contends that the election protest should have been allowed to proceed with respect to the remaining 75% unrevised protested precincts in view of the decrease of the number of valid ballots for the private respondent wherein the latter's presumptive lead of 1,404 votes of over the petitioner had been overcome and surpassed.

The petition is devoid of merit.

First of all, the Tribunal found that the discrepancy in the number of votes reflected on the ballots vis-à-vis the election returns and tally boards that appeared after revision, wherein private respondent's votes suffered a substantial decrease is attributable to ballot switching and/or substitution during the post-counting stage. The theory of petitioner that there was misappreciation or misreading committed by the boards of election inspectors during the precinct level counting of votes was negated by the overwhelming and indubitable evidence presented by private respondent before the Tribunal and confirmed by the latter's own examination of the ballots. The Tribunal ratiocinated thus:

"The Tribunal, however, is not convinced that the integrity of the ballot boxes was duly maintained at the post counting stage. To start with, the Report on Revision Results, duly signed by both parties' revisors, shows that there were ballot boxes particularly in the questioned precincts of

Miag-ao which either have no self-locking metal seals, have tampered metal seals, or whose padlocks cannot be opened by their respective keys and have to be forcibly opened by designated HRET personnel during the revision. Thus, it cannot be conclusively stated, as claimed by the Protestant, that the ballot boxes at the time that they were opened for revision purposes were in the same condition as when they were closed by the BEIs after the completion of the proceedings.

Because Protestee's allegation that the valid votes cast in her favor were substituted with fake stray ballots during the post-counting stage, it is imperative to resolve at this point whether there were indeed fake ballots and whether these were placed inside the ballot boxes to replace the votes of Protestee.

At the onset, it is significant to lay down the basis in claiming whether a ballot is genuine or fake. As elaborated by Protestee's witness, Mr. Teofilo Ferrer of the COMELEC, the characteristics of the 1998 official ballot, are as follows:

- 1) The material is white paper with watermarks;
- 2) The design of the watermark consists of a ballot box design with a balance composed of a sword and a scale and quill pen measuring two and a half by 3 inches (2 ½ x 3") spread all over the ballot paper with figures 1998 in between the ballot box design;
- 3) The ballot contains fluorescent pigments of red, yellow and blue randomly scattered on the paper. Some pigments are visible to the naked eye and some are invisible but can be seen through the use of an ultraviolet light.

As differentiated from the 1998 official ballot, the watermark of the 1995 official ballot contains the seal of the COMELEC which is a circle with the ballot box design and the name "Commission on Elections" and "Republic of the Philippines" surrounding it. It has the year 1995 printed in between the design. Instead of pigments, colored fibers of red, yellow and blue which appear as strands of hair were used as one of the security marks of the 1995 ballot.

The foregoing explanations are significant in the light of the findings that cropped up from an examination of the alleged fake ballots.

It will be noted that Protestee's revisors recorded their comments and observations in the Revision Report with respect to the nature of some ballots that underwent revision particularly those of Miag-ao. The said revisors noted that most of the stray ballots: 1) either do not bear watermarks or colored pigments or bear the 1995 instead of the 1998 watermarks; 2) are of different material than the 1998 official ballots; or 3) bear signatures at the back which are different from the original signatures of the BEI.