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[G.R. No. 248005, May 11, 2021]

FRANCIS N. TOLENTINO, PETITIONER, VS. SENATE ELECTORAL TRIBUNAL AND COMMISSION ON ELECTIONS, RESPONDENTS.

D E C I S I O N

LOPEZ, J., J.:

This is a Petition for *Certiorari*[1] under Rule 65, in relation to Rule 64, of the Rules of Court, seeking to reverse and/or set aside Resolution No. 16-141[2] dated February 21, 2019 and Resolution No. 16-143[3] dated May 6, 2019 rendered by the Senate Electoral Tribunal (*SET*) in "Francis N. Tolentino, *Protestant* v. Leila M. De Lima, *Protestee*," docketed as SET Case No. 001-16.

Briefly, the assailed Resolution No. 16-141 dated February 21, 2019 denied petitioner Senator Francis N. Tolentino's Motion for Return of Payments dated October 1, 2018. On the other hand, the impugned Resolution No. 16-143 dated May 6, 2019 denied petitioner's Motion for Reconsideration.

THE FACTS

During the May 9, 2016, National, Local and Autonomous Region of Muslim Mindanao (*ARMM*) Elections, the Commission on Elections (*COMELEC*) utilized a total of Ninety-Two Thousand Five Hundred Nine (92,509) Vote Counting Machines (*VCMs*) and their respective components and other paraphernalia. These election machines and equipment were procured by the COMELEC from Smartmatic-TIM under an Automated Election System (*AES*) contracts, which were in the nature of a lease with option to purchase (*OTP*). The terms of which expressly provide as follows:

> "6.9 **All Goods still in the possession of COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC** pursuant to its option to purchase under this Contract, **and the COMELEC shall pay the corresponding price** in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, **without prejudice to COMELEC requiring the protestant to shoulder such costs.**"[4]

On June 20, 2016, petitioner filed an election protest against Senator Leila M. De Lima, pertaining to the official results of the senatorial elections.

In Resolution No. 16-01[5] dated July 7, 2016, the SET, acting on petitioner's protest, directed the COMELEC "*to safeguard and preserve the integrity of all ballot boxes, their contents and keys, lists of voters with voting records, books of voters and other documents and materials or paraphernalia used or accomplished in*

connection with the 09 May 2016 elections for the office of Senator of the Philippines, as well as data storage devices containing electronic data evidencing the conduct and the results of election, which are in their keeping and custody, as the case may be; and to hold all such materials/documents subject to further orders and instructions of the Senate Electoral Tribunal."

In a letter[6] dated July 22, 2016, the COMELEC sought clarification on the coverage of the protection order under Resolution No. 16-01.

In response, the SET issued Resolution No. 16-06[7] dated August 15, 2016, modifying the protection order and excluded therefrom the hardware and suppletory components of the VCMs and Consolidated Canvassing System (*CCS*) laptops used during the elections, which do not contain any election data. Moreover, pursuant to Section 6.9 of the AES Contracts, the SET Executive Committee required the COMELEC to provide the amount to be paid by petitioner as retention costs of the VCMs and the CCS laptops pertaining to the latter's protest.

Thereafter, the SET issued Resolution No. 16-15[8] dated November 9, 2016 requiring petitioner to manifest to the Tribunal his intended course of action with respect to the retained equipment related to his election protest. In compliance therewith, petitioner submitted a Manifestation[9] dated November 18, 2016 requesting that forty-five (45) VCMs and six (6) CCS laptops be retained by the COMELEC. Subsequently, he filed a Motion[10] dated November 18, 2016, praying that an additional One Hundred Six (106) VCMs and their SD cards and other materials contained therein, be safeguarded and preserved by the COMELEC.

Acting thereon, the SET issued Resolution No. 16-17[11] dated November 22, 2016 directing the COMELEC to retain, safeguard and preserve the machines and equipment specified by petitioner in his Manifestation and Motion, both dated November 16, 2018, subject to the payment of petitioner of additional cash deposit to cover the cost of the said machines and equipment and required petitioner to deposit with the Tribunal, not later than November 29, 2016, the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36). Material portion of which reads:

> ACCORDINGLY, the Executive Committee of the Tribunal resolves to:
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> x x x x
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> b) Without prejudice to the Tribunal's ruling on Protestant Tolentino's failure to seasonably submit his Preliminary Conference Brief, **DIRECT the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops, the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's Manifestation and the one hundred six (106) Vote Counting Machines (VCMs) and their Secure Digital (SD) cards** enumerated in Protestant's Motion, **subject** to the payment by Protestant of additional cash deposit to **cover the costs of the said machines and equipment;** and c) REQUIRE Protestant Tolentino to deposit with the Tribunal not later 29 November 2016, the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36), representing the cost of the aforesaid machines and equipment, computed as follows:

6 CCS Laptops at P29,909.16 each	=	P179,454.96
45 VCMs at P20,770.40 each	=	P934,668.00
106 VCMs at P20,770.40 each	=	P2,201,662.40
TOTAL	=	**P3,315,785.36**

The Precautionary Order issued by the Tribunal is further modified accordingly.

SO ORDERED.[12]

On December 1, 2016, petitioner initially deposited with the SET the amount of One Million One Hundred Fourteen Thousand One Hundred Twenty-Two and 96/100 Pesos (P1,114,122.96), representing the cost of the forty-five (45) VCMs and six (6) CCS laptops.

In its Resolution No. 16-37[13] dated March 2, 2017, the SET acknowledged the above initial payment and required petitioner to deposit the remaining balance in the amount of Two Million Two Hundred One Thousand Six Hundred Sixty-Two and 40/100 Pesos (P2,201,662.40), representing the cost of retention by the COMELEC of the 106 VCMs, otherwise, his election protest will be dismissed. The SET also stated that any right, if any, of petitioner arising from his payment of the said amount shall be threshed out between him and the COMELEC, the pertinent portion of which is reproduced as follows:

IN VIEW OF THE FOREGOING, the Tribunal resolves to:

x x x x

d) REQUIRE protestant Tolentino to deposit with the Tribunal within fifteen (15) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty[-]Two and 40/100 Pesos (P2,201,662.40), **representing the cost of the retention** by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016. Any right, if any, of Protestant Tolentino arising from his payment of the said amount shall be threshed out between Protestant Tolentino and [the] COMELEC.

Upon failure of Protestant Tolentino to seasonably comply with this Resolution, the Tribunal may dismiss the instant electoral protest or take such other action as it may deem equitable under the premises.

SO ORDERED.[14]

Petitioner moved for reconsideration, but the same was denied by the SET in Resolution No. 16-49[15] dated May 25, 2017, which also reiterated the directive for petitioner to deposit the remaining balance of the retention cost of the election machines and equipment.

Thus, on June 13, 2018, petitioner paid the remaining balance.

On October 3, 2018, petitioner filed a Motion for the Return of Payments,[16] asserting that the payments made by him in the total amount of P3,315,785.36 should be returned because despite paying the purchase price of these election machines and equipment, he never enjoyed ownership rights over the same. He had no opportunity to possess them as these machines and equipment remained in the custody of the COMELEC. He cannot even access them without permission from the COMELEC.

Petitioner further contended that the purchase of the said machines and equipment was in furtherance of his election protest. Since free access to, use and enjoyment of the same, were denied, if not limited, forensic examinations of the hardware could not be done. Considering that these machines and equipment were not utilized and would no longer be of use in his election protest, the complete payment made by him did not bear its purpose.

In its Comment[17] dated October 31, 2018, the COMELEC mainly asserted that the payments made by petitioner were for the retention of the election paraphernalia in relation to his election protest and not for the payment of the election paraphernalia itself. If not for the election protest of petitioner, these election paraphernalia would have long been turned over by the COMELEC to Smartmatic-TIM prior to December 1, 2016, pursuant to their contract. Likewise, there was no contract of sale between petitioner and the COMELEC over these election machines and equipment, such that there could never be transfer of ownership over these items to petitioner.

In his Reply[18] dated November 19, 2018, petitioner argued that the subject election machines and equipment were never used in his election protest for reasons that are solely attributable to the COMELEC. He also posited that the amount of P3,315,785.36 as "retention cost" of the machines and equipment is too onerous and violative of his right to free access and due process. He also invoked the powers and discretion of the SET to invalidate Section 6.9 of the AES Contracts between the COMELEC and Smartmatic-TIM on the ground that it is illegal as it bestows upon the COMELEC the sole discretion to determine whether or not to require the protestant to shoulder the retention cost of the machines and equipment to be used in an election protest. Lastly, petitioner propounded that the COMELEC extended its option to purchase and eventually exercised the option through a Deed of Sale dated January 12, 2018. The exercise of the option to purchase supposedly debunked the necessity for the COMELEC to charge him with retention cost.

In a letter dated November 26, 2018, the SET sought clarification from the COMELEC if indeed the subject VCMs and CCS laptops were paid with government funds when the COMELEC exercised its option to purchase on January 12, 2018.

In response thereto, the COMELEC reiterated its position that the amount paid by petitioner, which he deposited with the SET, represents the cost of the retention and, thus, belongs to the government.

In Resolution No. 16-141[19] dated February 21, 2019, the SET denied petitioner's Motion for the Return of Payments, the dispositive portion of which reads:

> IN VIEW OF THE FOREGOING, the Tribunal resolves to:
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> a. DENY Protestant's Motion for the Return of Payments dated 1 October 2018, involving the amount of Three Million Three Hundred Fifteen

Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36) for lack of merit.

b. DIRECT the Secretary of the Tribunal to cause the immediate turn-over to the Commission on Elections the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36);

c. NOTE the COMMENT (on Protestant Francis N. Tolentino's Motion for the Return of Payments) dated 24 October 2018 filed by the Commission on Elections;

d. NOTE the REPLY (to [the] COMELEC's Comment dated October 31, 2018) dated 19 November 2018 filed by Protestant Tolentino; and

e. NOTE the MANIFESTATION of the Commission on Elections dated 29 January 2019.

SO ORDERED.

In arriving at such disposition, the SET opined that the power to interpret and pass upon the legality of Section 6.9 of the Contract of Lease with Option to Purchase between the COMELEC and Smartmatic-TIM rests with the regular courts. Hence, any decision or action which the Tribunal may take on these matters would be wanting of any legal basis. The SET also stressed that in Resolutions No. 16-37 and 16-53, it consistently resisted in ruling on any concerns relative to the disputed provision and emphasized that any issue relating to the ownership of the subject election machines and equipment should be properly addressed to the COMELEC. The SET also clarified that when it used the term "costs of the said machines and equipment" in its Resolution No. 16-1 7, it was referring to the cost which the COMELEC needed to pay Smartmatic-TIM under the option to purchase clause of the contract. Thus, when the disputed provision became effective on December 1, 2016, the retained machines and equipment were considered sold to the COMELEC, with the latter requiring the Protestant to shoulder the costs under the option to purchase. In addition, the SET ratiocinated that the alleged illegality and/or enforceability of the disputed provision cannot be a valid ground for the Tribunal to withhold the turnover of the amount deposited by petitioner to COMELEC. In any case, the petitioner is not without recourse, as he can still question the validity of the disputed provision by availing the proper remedies, even after the amount is released to the COMELEC.

Feeling aggrieved, petitioner filed a Motion for Reconsideration dated March 1, 2019, but failed to obtain a favorable relief, as the SET denied the same in its Resolution No. 16-143[20] dated May 6, 2019.

Undeterred by the setback, petitioner resorted to this present Petition for *Certiorari* anchored on this lone issue:

WHETHER OR NOT THE HONORABLE SET COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED X X X TO RELEASE THE AMOUNT OF THREE MILLION THREE HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED EIGHTY-FIVE AND 36/100 PESOS (PHP 3,315,785.36) TO THE COMELEC WITHOUT PREJUDICE TO THE FILING OF A CIVIL ACTION FOR THE RETURN THEREOF.[21]