

SPECIAL EN BANC

[G.R. No. 222236, May 03, 2016]

**HARLIN C. ABAYON, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) AND RAUL A.
DAZA, RESPONDENTS.**

[G.R. No. 223032]

**HARLIN C. ABAYON, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) AND RAUL A.
DAZA, RESPONDENT.**

DECISION

MENDOZA, J.:

These consolidated petitions for *certiorari* filed under Rule 65 of the Rules of Court seek to reverse and set aside the December 14, 2015^[1] and January 21, 2016^[2] Resolutions of the House of Representatives Electoral Tribunal (*HRET*) in HRET Case No. 13-023, dismissing the counter-protest of petitioner Harlin C. Abayon (*Abayon*); and the February 3, 2016 Decision^[3] and the March 7, 2016 Resolution^[4] of the HRET in the same case, which found private respondent Raul A. Daza (*Daza*) as the duly elected Representative of the First Legislative District of Northern Samar in the May 13, 2013 Elections.

The Antecedents

Abayon and Daza were contenders for the position of Representative in the First Legislative District of Northern Samar during the May 13, 2013 Elections. Out of the votes cast in the 332 clustered precincts in the First District of Northern Samar, Abayon emerged as the winner after obtaining the majority vote of 72,857. Daza placed second with a total of 72,805 votes. The difference was 52 votes. On May 17, 2013, the Provincial Board of Canvassers of Northern Samar proclaimed Abayon as the duly elected member of the House of Representatives for the said legislative district.^[5]

On May 31, 2013, Daza filed his Election Protest^[6] challenging the elections results in 25 clustered precincts in the Municipalities of Biri, Capul, Catarman, Lavezares, San Isidro, and Victoria. In his protest, he bewailed that there was massive fraud, vote-buying, intimidation, employment of illegal and fraudulent devices and schemes before, during and after the elections benefitting Abayon and that terrorism was committed by the latter and his unidentified cohorts, agents and supporters.^[7]

On August 1, 2013, Abayon filed his Verified Answer raising special and affirmative

defenses as well as his Counter-Protest.^[8] He challenged the results in all 332 precincts alleging that the 72,805 votes obtained by Daza were questionable in view of the frauds and anomalies committed by the latter and his supporters during the elections.^[9]

In its Resolution No. 14-055,^[10] dated February 27, 2014, the HRET found both Daza's protest and Abayon's counter-protest to be sufficient in form and substance. From October 14, 2014, until October 15, 2014, revision proceedings were conducted on the 25 clustered precincts protested by Daza.^[11] After the revision of ballots in the said precincts, the votes for Abayon increased by 28 and the votes for Daza increased by 14.^[12]

In his Urgent Manifestation and Omnibus Motion,^[13] dated September 3, 2015, Daza moved for the withdrawal of his cause of action for the recount, revision and re-appreciation of the ballots in the clustered precincts in the municipalities of Biri, Capul and San Isidro. He likewise prayed that the validity and legitimacy of his separate and distinct cause of action for the annulment of election results in certain identified precincts on the ground of terrorism be upheld.^[14] In its Resolution No. 15-052, dated September 24, 2015, the HRET granted Daza's motion and directed the Hearing Commissioner to continue with the reception of Abayon's defense on the issue of terrorism and to hold in abeyance the proceedings relative to his counter-protest.^[15]

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Thereafter, Daza filed an Urgent Manifestation and Motion,^[16] dated November 4, 2015, praying that Abayon's counter-protest be dismissed as a consequence of the withdrawal of his (Daza's) cause of action for the recount, revision and re-appreciation in the concerned clustered precincts.

In its Resolution No. 15-058, dated December 14, 2015, the HRET granted Daza's motion and dismissed Abayon's counter-protest. Abayon moved for reconsideration but his motion was denied by the HRET in its January 21, 2016 Resolution. Aggrieved, Abayon filed a Petition for *Certiorari*^[17] with prayer for the urgent issuance of a temporary restraining order (*TRO*) and/or a status *quo ante* order and/or Preliminary injunction before the Court, which was docketed as G.R. No. 222236.

Meanwhile, the HRET proceeded with the reception of evidence with regard to the issue of terrorism on the remaining clustered precincts in the municipalities of Lavezares and Victoria. After the parties had submitted their memoranda, the HRET decided the election protest in Daza's favor and declared him as the winning candidate.

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In its February 3, 2016 Decision, the HRET annulled the election results in five (5) clustered precincts in the municipalities of Lavezares and Victoria because of the commission of massive terrorism. As a result of nullifying the election results in the said clustered precincts, the HRET deducted the votes received by the parties in the

concerned clustered precincts and concluded that Daza obtained 72,436 votes and Abayon had 72,002 votes.

The HRET highlighted that Daza presented testimonial and documentary evidence showing that: (1) prior to the May 13, 2013 elections, the National Democratic Front-Eastern Visayas (NDF-EV) had already shown its animosity and hostility towards him and his then incumbent governor son through the posting on the NDF-EV website and in conspicuous places statements declaring them as enemies of the people of Northern Samar; (2) comic magazines vilifying them were distributed; (3) "pulong-pulong" were held in the concerned barangays where the NDF-EV exhorted the resident-attendees to vote against him and in favor of Abayon, threatening to comeback if the result were otherwise; (4) his supporters and/or fellow Liberal Party candidates were prohibited from campaigning for him, and also from mounting tarpaulins/posters and distributing sample ballots; (5) Abayon had meetings with NDF-EV officials, during which times, he gave them money and guns; and (6) NDF-EV armed partisans were deployed around the school premises in the concerned precincts on election day.

The HRET found that Daza had adduced convincing evidence to establish that fear was instilled in the minds of hundreds of resident-voters in the protested clustered precincts from the time they had attended the "pulong-pulong" up until the election day itself when armed partisans were deployed to the schools to ensure that the voters would not vote for him but for Abayon.

The HRET disregarded the certifications issued by the Provincial Election Supervisor Atty. Antonio G. Gulay Jr. that there was no failure of election in Northern Samar and by P/SSupt. Mario Abraham Gonzalez Lenaming, Officer-in-Charge of the Northern Samar Police Provincial Office, that the conduct of the elections was generally peaceful despite the occurrence of two election-related incidents in the First District of Northern Samar. The HRET noted that the said government officials were not presented to testify and, even if the said certifications were admissible, it had no probative value in disputing the terroristic acts committed upon the voters in the assailed precincts.

The HRET ratiocinated that there was clear and convincing evidence to warrant the annulment of the elections in the concerned precincts because the terrorism affected more than 50% of the votes cast in the said precincts and it was impossible to distinguish the good votes from the bad.

Abayon moved for reconsideration, but his motion was denied by the HRET in its March 7, 2016 Resolution.

On March 9, 2016, Abayon filed before the Court this petition for *certiorari*^[18] and prohibition with prayer for the urgent issuance of TRO and/or a status *quo ante* order and/or preliminary injunction before the Court, which was docketed as G.R. No. 223032.

These present consolidated petitions raise the following:

ISSUES

1] Whether the HRET had jurisdiction to annul the elections in the

contested precincts in the municipalities of Lavezares and Victoria;

2] Whether the HRET committed grave abuse of discretion in annulling the elections on the ground of terrorism; and

2] Whether the HRET committed grave abuse of discretion in dismissing the counter-protest filed by Abayon.

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Petitioner Abayon insists that the HRET erred when it dismissed his counter-protest as it was in violation of his right to due process. He states that the resolutions issued by the HRET dismissing his counter-protest did not state clearly and distinctly the facts and legal bases thereof. Abayon even asserts that the HRET admitted in its resolution that it merely adopted the facts and the law invoked by Daza in his urgent manifestation and motion.

He argues that the counter-protest could not be simply dismissed on the basis of Daza's withdrawal of his cause of action for the recount, revision and re-appreciation of the ballots in the clustered precincts in Biri, Capul and San Isidro; that a counter-protest is an independent, distinct, separate and alternative legal remedy which is exclusively available to a protestee in an election protest case; and that his counter-protest may be summarily dismissed only if the grounds under Rule 21^[19] of the 2011 HRET Rules of Procedure are present.

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Abayon asserts that the nullification of the election results in the concerned clustered precincts was not within the jurisdiction of the HRET. He explains that the annulment of election results on the ground of terrorism is akin to a declaration of failure of elections, which is under the exclusive jurisdiction of the Commission on Elections (COMELEC) *En Banc* pursuant to Section 4 of Republic Act (R.A.) No. 7166.
^[20]

Further, Abayon argues that even if the HRET had jurisdiction to annul election results, it still committed grave abuse of discretion in this particular case for lack of legal and factual bases. He avers that there was no clear and convincing evidence to establish that terrorism affected more than 50% of the votes cast and that it was impossible to distinguish the good votes from the bad. Abayon heavily relies on the respective certifications issued by the COMELEC and the Philippine National Police (PNP) that the elections in Northern Samar were orderly and peaceful.

Also, Abayon laments that his right to due process was violated because the HRET did not exhibit the cold neutrality of an impartial judge in handling the present election protest. He points out that the HRET granted Daza's motion to present additional witnesses without him being granted the opportunity to be heard. Abayon also reiterates that his counter-protest was unceremoniously dismissed.

Position of Respondent Daza

In his Consolidated Comment,^[21] dated March 28, 2016, Daza countered that the

petition (G.R. No. 222236) should be dismissed because it contained fatal violations of the Rules of Court. He cited the following infractions: (1) forum shopping; (2) the resolution dismissing Abayon's protest had become final and executory for his failure to file a motion for reconsideration thereof; and (3) the petition did not indicate in its caption the original case number before the HRET. Moreover, Daza contended that the petition was without merit because the HRET could continue or discontinue the revision proceedings *motu proprio*. In addition, he stated that the case had been mooted by the promulgation of the HRET decision declaring him as the winner in the last electoral process.

Further, Daza posited that the HRET had jurisdiction to annul the election results on the ground of terrorism. He questioned the present petition (G.R. No. 223032) as it raised factual issues, which was outside the province of a Rule 65 petition. He stressed that the Court could only exercise its *certiorari* jurisdiction in cases of grave abuse of discretion on the part of the HRET. Daza further stated that even if the Court were to review the factual findings of the HRET, it would still find clear and convincing evidence to justify the annulment of election results in the contested precincts. He asserted that the testimonies of the voters and residents of the concerned precincts were corroborated by P/SSupt. Isaias B. Tonog (*P/SSupt. Tonog*), then Provincial Director of Northern Samar; and Col. Roberto S. Capulong (*Col. Capulong*), Operations Officer of the 8th Division, Philippine Army in Catbalogan, Samar. Daza explained that the totality of his evidence clearly and convincingly showed that the NDF-EV, through violence, intimidation and threats conducted before and during elections, harassed voters in the contested precincts to vote for Abayon and threatened them should they not do so.

In its Consolidated Comment,^[22] dated March 28, 2016, the HRET, through the Office of the Solicitor General, averred that it had jurisdiction to annul election results. It highlighted Rule 16 of the 2011 HRET Rules stating that the election or returns of a proclaimed House Representative may be assailed in an election protest if the election or returns were attended by specific acts or omission constituting electoral frauds, anomalies or irregularities, which necessarily included acts of terrorism to dissuade voters from casting their vote or to alter the results of the election.

The HRET faulted Abayon in claiming that the case was similar to a declaration of failure of elections which was under the jurisdiction of the COMELEC *En Banc*, pursuant to R.A. No. 7166. It reasoned that mere allegation of terrorism would not immediately convert the case to a nullification case because terrorism was an act resulting in either failure of elections or electoral fraud, anomaly, or irregularity, which can only be protested through an election protest. Moreover, the HRET claimed that it did not commit grave abuse of discretion as its decision in favor of Daza was supported by clear and convincing evidence. As such, it concluded that its decision should be sustained.

The HRET further stated that it did not commit grave abuse of discretion in dismissing Abayon's counter-protest because it had the prerogative to discontinue the revision proceedings. It likewise elucidated that Abayon was not deprived of due process when his counter-protest was dismissed because he was given his day in court.