

## EN BANC

[ G.R. No. 203302, April 11, 2013 ]

### **MAYOR EMMANUEL L. MALIKSI, PETITIONER, VS. COMMISSION ON ELECTIONS AND HOMER T. SAQUILAYAN, RESPONDENTS.**

### **R E S O L U T I O N**

#### **BERSAMIN, J.:**

The Court hereby resolves the Extremely Urgent Motion for Reconsideration filed by petitioner Emmanuel L. Maliksi against the Court's decision promulgated on March 12, 2013, dismissing his petition for *certiorari* assailing the resolution dated September 14, 2012 of the Commission on Elections (COMELEC) *En Banc* that sustained the declaration of respondent Homer T. Saquilayan as the duly elected Mayor of Imus, Cavite.

For clarity, we briefly restate the factual antecedents.

During the 2010 Elections, the Municipal Board of Canvassers proclaimed Saquilayan the winner for the position of Mayor of Imus, Cavite. Maliksi, the candidate who garnered the second highest number of votes, brought an election protest in the Regional Trial Court (RTC) in Imus, Cavite alleging that there were irregularities in the counting of votes in 209 clustered precincts. Subsequently, the RTC held a revision of the votes, and, based on the results of the revision, declared Maliksi as the duly elected Mayor of Imus commanding Saquilayan to cease and desist from performing the functions of said office. Saquilayan appealed to the COMELEC. In the meanwhile, the RTC granted Maliksi's motion for execution pending appeal, and Maliksi was then installed as Mayor.

In resolving the appeal, the COMELEC First Division, without giving notice to the parties, decided to recount the ballots through the use of the printouts of the ballot images from the CF cards. Thus, it issued an order dated March 28, 2012 requiring Saquilayan to deposit the amount necessary to defray the expenses for the decryption and printing of the ballot images. Later, it issued another order dated April 17, 2012 for Saquilayan to augment his cash deposit.

On August 15, 2012, the First Division issued a resolution nullifying the RTC's decision and declaring Saquilayan as the duly elected Mayor.<sup>[1]</sup>

Maliksi filed a motion for reconsideration, alleging that he had been denied his right to due process because he had not been notified of the decryption proceedings. He argued that the resort to the printouts of the ballot images, which were secondary evidence, had been unwarranted because there was no proof that the integrity of the paper ballots had not been preserved.

On September 14, 2012, the COMELEC *En Banc* resolved to deny Maliksi's motion

for reconsideration.<sup>[2]</sup>

Maliksi then came to the Court *via* petition for *certiorari*, reiterating his objections to the decryption, printing, and examination of the ballot images without prior notice to him, and to the use of the printouts of the ballot images in the recount proceedings conducted by the First Division.

In the decision promulgated on March 12, 2013, the Court, by a vote of 8-7, dismissed Maliksi's petition for *certiorari*. The Court concluded that Maliksi had not been denied due process because: (a) he had received notices of the decryption, printing, and examination of the ballot images by the First Division — referring to the orders of the First Division directing Saquilayan to post and augment the cash deposits for the decryption and printing of the ballot images; and (b) he had been able to raise his objections to the decryption in his motion for reconsideration. The Court then pronounced that the First Division did not abuse its discretion in deciding to use the ballot images instead of the paper ballots, explaining that the printouts of the ballot images were not secondary images, but considered original documents with the same evidentiary value as the official ballots under the Rule on Electronic Evidence; and that the First Division's finding that the ballots and the ballot boxes had been tampered had been fully established by the large number of cases of double-shading discovered during the revision.

In his Extremely Urgent Motion for Reconsideration, Maliksi raises the following arguments, to wit:

I.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN DISMISSING THE INSTANT PETITION DESPITE A CLEAR VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW CONSIDERING THAT DECRYPTION, PRINTING AND EXAMINATION OF THE DIGITAL IMAGES OF THE BALLOTS, WHICH IS THE BASIS FOR THE ASSAILED 14 SEPTEMBER 2012 RESOLUTION OF THE PUBLIC RESPONDENT, WHICH IN TURN AFFIRMED THE 15 AUGUST 2012 RESOLUTION OF THE COMELEC FIRST DIVISION, WERE DONE INCONSPICUOUSLY UPON A *MOTU PROPRIO* DIRECTIVE OF THE COMELEC FIRST DIVISION SANS ANY NOTICE TO THE PETITIONER, AND FOR THE FIRST TIME ON APPEAL.

II.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN UPHOLDING THE COMELEC FIRST DIVISION'S RULING TO DISPENSE WITH THE PHYSICAL BALLOTS AND RESORT TO THEIR DIGITAL IMAGES NOTWITHSTANDING THE FACT THAT THE BALLOTS ARE THE BEST AND MOST CONCLUSIVE EVIDENCE OF THE VOTERS' WILL, AND THAT BALLOT IMAGES CAN BE RESORTED TO ONLY IF THE OFFICIAL BALLOTS ARE LOST OR THEIR INTEGRITY WAS COMPROMISED AS DETERMINED BY THE RECOUNT/REVISION COMMITTEE, CIRCUMSTANCES WHICH ARE WANTING IN THIS CASE, AND IN FACT THE INTEGRITY OF THE BALLOT BOXES AND ITS

CONTENTS WAS PRESERVED AND THE ISSUE OF TAMPERING WAS ONLY BELATEDLY RAISED BY THE PRIVATE RESPONDENT AFTER THE REVISION RESULTS SHOWED THAT HE LOST.

### III.

WITH ALL DUE RESPECT, IT IS THE HUMBLE SUBMISSION OF THE PETITIONER-MOVANT THAT THE 12 MARCH 2013 RESOLUTION ISSUED BY THE HONORABLE SUPREME COURT *EN BANC* IS NULL AND VOID *AB INITIO* AND THEREFORE OF NO FORCE AND EFFECT, FOR HAVING BEEN PROMULGATED DESPITE THE ABSENCE OF HONORABLE SUPREME COURT JUSTICE JOSE PORTUGAL PEREZ AT THE TIME OF THE DELIBERATION AND VOTING ON THE 12 MARCH 2013 *RESOLUTION* IN THE INSTANT CASE.<sup>[3]</sup>

Maliksi insists: (a) that he had the right to be notified of every incident of the proceedings and to be present at every stage thereof; (b) that he was deprived of such rights when he was not informed of the decryption, printing, and examination of the ballot images by the First Division; (c) that the March 28, 2012 and April 17, 2012 orders of the First Division did not sufficiently give him notice inasmuch as the orders did not state the date, time, and venue of the decryption and printing of the ballot images; and (d) that he was thus completely deprived of the opportunity to participate in the decryption proceedings.

Maliksi contends that the First Division's *motu proprio* directive for the decryption, printing, and examination of the ballot images was highly irregular. In this regard, he asserts: (a) that the decryption, printing, and examination should have taken place during the revision before the trial court and after the revision committee had determined that the integrity of the official ballots had not been preserved; (b) that the trial court did not make such determination; (c) that, in fact, Saquilayan did not allege or present any proof in the RTC to show that the ballots or the ballot boxes had been tampered, and had, in fact, actively participated in the revision proceedings; (d) that the First Division should not have entertained the allegation of ballot tampering belatedly raised on appeal; (e) that the First Division should have limited itself to reviewing the evidence on record; and (f) that the First Division did not even explain how it had arrived at the conclusion that the integrity of the ballots had not been preserved.

Maliksi submits that the decision promulgated on March 12, 2013 is null and void for having been promulgated despite the absence from the deliberations and lack of signature of Justice Jose Portugal Perez.

### **Ruling**

The Court grants Maliksi's Extremely Urgent Motion for Reconsideration, and reverses the decision promulgated on March 12, 2013 on the ground that the First Division of the COMELEC denied to him the right to due process by failing to give due notice on the decryption and printing of the ballot images. Consequently, the Court annuls the recount proceedings conducted by the First Division with the use of the printouts of the ballot images.

It bears stressing at the outset that the First Division should not have conducted the assailed recount proceedings because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed it to conduct a recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, are to be conducted by the COMELEC Divisions only in the exercise of their exclusive original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial and city officials.<sup>[4]</sup>

As we see it, the First Division arbitrarily arrogated unto itself the conduct of the recount proceedings, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC *En Banc* upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in *Alliance of Barangay Concerns (ABC) Party-List v. Commission on Elections*<sup>[5]</sup> to the effect that the "COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims."

Based on the pronouncement in *Alliance of Barangay Concerns (ABC) v. Commission on Elections*, the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties' right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them. Thus, the COMELEC *En Banc* should not have upheld the First Division's deviation from the regular procedure in the guise of speedily resolving the election protest, in view of its failure to provide the parties with notice of its proceedings and an opportunity to be heard, the most basic requirements of due process.

## **I. Due process requirements**

The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves.<sup>[6]</sup> In *Vinzons-Chato v. House of Representatives Electoral Tribunal*,<sup>[7]</sup> the Court held that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2(3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest."

That the two documents—the official ballot and its picture image—are considered "original documents" simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other.

**But this juridical reality does not authorize the courts, the COMELEC, and**

**the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters' will. In that regard, the picture images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.**

For instance, the aforesaid Section 6, Rule 15 of COMELEC Resolution No. 8804 (*In Re: Comelec Rules of Procedure on Disputes In An Automated Election System in Connection with the May 10, 2010 Elections*), as amended by COMELEC Resolution No. 9164, itself requires that "the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that (the ballots) cannot be recounted" before the printing of the image of the ballots should be made, to wit:

x x x x

(g) Only when the Recount Committee, through its chairman, determines that the integrity of the ballots has been preserved or that no signs of tampering of the ballots are present, will the recount proceed. In case there are signs that the ballots contained therein are tampered, compromised, wet or are otherwise in such a condition that it could not be recounted, the Recount Committee shall follow paragraph (l) of this rule.

x x x x

(l) In the event **the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted**, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties**. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (Emphases supplied.)

x x x x

Section 6, Rule 10 (Conduct of Revision) of the 2010 Rules of Procedure for Municipal Election Contests, which governs the proceedings in the Regional Trial Courts exercising original jurisdiction over election protests, provides:

x x x x