

## EN BANC

[ G. R. No. 195191, March 20, 2012 ]

**CONGRESSWOMAN LUCY MARIE TORRES-GOMEZ PETITIONER,  
VS. EUFROCINO C. CODILLA, JR. AND HON. HOUSE OF  
REPRESENTATIVES ELECTORAL TRIBUNAL RESPONDENTS.**

### DECISION

**SERENO, J.:**

This is a Petition for Certiorari under Rule 65 of the Rules of Court, with application for Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction. The Petition seeks to annul and set aside Resolution No. 10-482 of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-009 (EP) entitled "Eufrocino C. Codilla, Jr. v. Lucy Marie Torres-Gomez (Fourth District, Leyte)," which denied the Motion for Reconsideration filed by petitioner.

**Statement of the Facts and the Case**

On 30 November 2009, Richard I. Gomez (Gomez) filed his Certificate of Candidacy for representative of the Fourth Legislative District of Leyte under the Liberal Party of the Philippines. On even date, private respondent Codilla Jr. filed his Certificate of Candidacy for the same position under Lakas Kampi CMD.

On 6 December 2009, Buenaventura O. Juntilla (Juntilla), a registered voter of Leyte, filed a Verified Petition for Gomez's disqualification with the Commission on Elections (COMELEC) First Division on the ground that Gomez lacked the residency requirement for a Member of the House of Representatives.

In a Resolution dated 17 February 2010, the COMELEC First Division granted Juntilla's Petition and disqualified Gomez. On 20 February 2010, the latter filed a Motion for Reconsideration with the COMELEC *En Banc*, which dismissed it on 4 May 2010, six days before the May 2010 national, and local elections. The dispositive portion of the COMELEC's Resolution<sup>1</sup> is worded as follows:

WHEREFORE, premises considered, the motion for reconsideration filed by the Respondent is DISMISSED for lack of merit. The Resolution of the Commission (First Division) is hereby AFFIRMED.

SO ORDERED.<sup>[2]</sup>

On the same date, Gomez filed a Manifestation with the COMELEC *En Banc*, alleging that, without necessarily admitting the allegations raised by Juntilla, he was accepting the aforementioned Resolution with finality, in order to enable his substitute to facilitate the filing of the necessary documents for substitution.

On 5 May 2010, petitioner Lucy Marie Torres-Gomez filed her Certificate of Candidacy as substitute for the position of representative of the Fourth Congressional District for the Province of Leyte vice Gomez, her husband.

On 6 May 2010, Juntilla filed a Counter-Manifestation with the COMELEC *En Banc*. At the same time, he wrote a letter to Atty. Ferdinand T. Rafanan, Director of the Law Department of the COMELEC, alleging the invalidity of the proposed substitution of Gomez by petitioner.

On 8 May 2010, the COMELEC *En Banc* issued Resolution No. 8890, which approved and adopted the recommendation of its Law Department to allow petitioner as a substitute candidate for Gomez for representative of the Fourth Legislative District of Leyte.

On 9 May 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration of the above COMELEC Resolution No. 8890. Pending resolution of his motion, the national and local elections were conducted as scheduled.

After the casting, counting and canvassing of votes in the said elections, petitioner emerged as the winner with 101,250 votes or a margin of 24,701 votes over private respondent Codilla, who obtained 76,549 votes.

On 11 May 2010, Codilla filed an Urgent Ex-Parte Motion to Suspend the Proclamation of Substitute Candidate Lucy Marie T. Gomez (vice Richard I. Gomez) as the Winning Candidate of the May 10, 2010 Elections for the Fourth Congressional District of Leyte.

On the same date, Juntilla filed an Extremely Urgent Motion to resolve the pending Motion for Reconsideration filed on 9 May 2010 relative to Resolution No. 8890 and to immediately order the Provincial Board of Canvassers of the Province of Leyte to suspend the proclamation of petitioner as a Member of the House of Representatives, Fourth District, Province of Leyte.

On 12 May 2010, petitioner was proclaimed the winning candidate for the congressional seat of the Fourth District of Leyte.

Accordingly, on 21 May 2010, private respondent Codilla filed a Petition with public respondent HRET against petitioner docketed as HRET Case No. 10-009 (Election Protest).

On 2 July 2010, petitioner filed her Verified Answer to Codilla's Election Protest questioning the alleged lack of the required Verification and praying for its dismissal.

On 8 July 2010, Codilla filed a Reply to petitioner's Verified Answer.

In an Order issued by public respondent HRET, the instant case was set for preliminary conference on 2 September 2010.

On 1 September 2010, unsatisfied with the Order of the HRET, petitioner filed an Urgent Manifestation and Motion, persistent in her position that Codilla's Election Protest should be dismissed based on the grounds raised in her Verified Answer. She

also prayed for the deferment of the preliminary conference until after the resolution of the said motion.

On 9 September 2010, the HRET issued the assailed Resolution No. 10-282<sup>[3]</sup> resolving the Urgent Manifestation and Motion filed by petitioner, the dispositive portion of which provides:

The Tribunal **NOTES** the *Urgent Manifestation and Motion* filed on September 1, 2010 by the protestee; **REITERATES** its ruling in Resolution No. 10-160 dated July 29, 2010 that the protest cannot be considered insufficient in form, considering that the examination of the original copy of the protest filed before the Tribunal had revealed the existence of the required verification; and **DENIES** the respondent's motion for deferment of the preliminary conference scheduled on September 2, 2010.<sup>[4]</sup>

Accordingly, on 30 September 2010, petitioner filed with public respondent HRET a Motion for Reconsideration of the above Resolution No. 10-282.

On 22 November 2010, public respondent HRET issued Resolution No. 10-482<sup>[5]</sup> denying petitioner's Motion for Reconsideration, ruling as follows:

WHEREFORE, the Tribunal **DENIES** the instant motion for reconsideration as regards the issues pertaining to absence/defect of the verification and propriety of the election protest; and **DIRECTS** the protestant to have his verification properly notarized.<sup>[6]</sup>

Thereafter, petitioner filed the instant Petition for Certiorari<sup>[7]</sup> dated 7 February 2011. The Petition raises the following grounds:

A.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO DISMISS THE ELECTION PROTEST DESPITE AN ADMITTEDLY DEFECTIVE VERIFICATION.

B.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN Y ALLOWED THE PROTESTANT TO RAISE ISSUES ON QUALIFICATION OF CANDIDATES IN AN ELECTION PROTEST.<sup>[8]</sup>

Petitioner claims that there was a material defect in the Verification of the Election Protest, a requirement explicitly provided for in Rule 16 of the 2004 Rules of the

House of Representatives Electoral Tribunal (HREF Rules).<sup>[9]</sup> The verification being a mandatory requirement, the failure to comply therewith is a fatal defect that affects the very jurisdiction of the HRET.

On the second issue, petitioner claims that what is in question in the Election Protest is her qualification as a Member of the House of Representatives, and not the number of votes cast. Her qualification is allegedly not a proper ground for an election protest, in which the issues should be the appreciation of ballots and the correctness and number of votes of each candidate.

On 15 February 2011 this Court required respondents to file their comment on the Petition. Thereafter, Codilla filed his Comment/Opposition dated 28 April 2011. In his Comment, he argues that there was no grave abuse of discretion on the part of the HREF in issuing the assailed Resolutions. He clarifies that the Election Protest that he filed contained a validly executed Verification and Certification of Non-Forum Shopping (Verification).<sup>[10]</sup> However, the defect that petitioner points to is the portion of the jurat of the Verification, which states:

Subscribed and sworn to before me this\_\_ day of May 2010 at \_\_\_\_\_. Affiant personally and exhibited to me his (1) License ID Card with Card No. 1103-80-002135 issued by LTO on January 16, 2009 (2) Philippine Passport No. XX4793730 issued on "October 20, 2009 valid until October 19, 2014, he, being the same person herein who executed the foregoing document thereof.<sup>[11]</sup>

The date "May 21 2009" was stamped on the first blank in "\_\_ day of May 2010." "May 21 2010" was written with a pen over the stamped date "May 21 2009" and countersigned by the notary public. Codilla claims that the date of the Verification was a mere innocuous mistake or oversight, which did not warrant a finding that the Verification was defective; much less, fatally defective. He claims he should not be faulted for any alleged oversight that may have been committed by the notary public. Further, the same argument holds true with respect to the absence of the Mandatory Continuing Legal Education (MCLE) Compliance Number of the notary public, as well as the overdue Professional Tax Receipt (PTR) indicated in the notarial stamp. In any case, the insufficiency of the Verification was not fatal to the jurisdiction of the HRET.

With respect to the second issue, Codilla argues that the issues in the Election Protest do not pertain to petitioner's qualification, but to the casting and counting of votes. He claims that his Election Protest contests the declaration by the Board of Canvassers that the 101,250 votes should be counted in favor of petitioner and be credited to him as these should have instead been declared as stray votes.

Thereafter, public respondent HRET filed its Comment<sup>[12]</sup> on the Petition dated 5 May 2011. In its Comment, the HRET claims that it did not commit grave abuse of discretion when it took cognizance of Codilla's Election Protest despite an alleged absence/defect in the verification. After all, an unverified petition differs from one which contains a defective verification, such as in this case. A defective verification is merely a formal defect which does not affect the jurisdiction of the tribunal. In any case, the summary dismissal of an Election Protest, as well as the allowance of its amendments in matters of form, is sanctioned by the HRET Rules.