

## EN BANC

**[ G.R. No. 189034, January 11, 2010 ]**

**CELESTINO A. MARTINEZ III, PETITIONER, VS. HOUSE OF  
REPRESENTATIVES ELECTORAL TRIBUNAL AND BENHUR L.  
SALIMBANGON, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

This petition for certiorari under Rule 65 seeks to nullify the Decision<sup>[1]</sup> dated May 28, 2009 of the House of Representatives Electoral Tribunal in HRET Case No. 07-035 dismissing the election protest and declaring private respondent as the duly elected Representative of the Fourth Legislative District of Cebu, and the Resolution<sup>[2]</sup> dated July 30, 2009 denying petitioner's motion for reconsideration thereof.

#### The Facts

In the May 14, 2007 elections, petitioner Martinez and private respondent Salimbangon were among the candidates for Representative in the Fourth Legislative District of Cebu Province. On March 29, 2007, Edilito C. Martinez, a resident of Barangay Tambongon, Daan-Bantayan, Cebu, filed his certificate of candidacy for the same position.

On April 3, 2007, Martinez filed a petition to declare Edilito C. Martinez a nuisance candidate.<sup>[3]</sup> However, the Commission on Elections Second Division issued its Resolution declaring Edilito C. Martinez a nuisance candidate only on June 12, 2007 or almost one (1) month after the elections.

On July 9, 2007, Salimbangon was proclaimed winner in the congressional elections for the Fourth Legislative District of Cebu on the basis of official results showing that he garnered sixty-seven thousand two hundred seventy-seven (67,277) votes as against Martinez who garnered sixty-seven thousand one hundred seventy-three (67,173) votes, or a difference of one hundred four (104) votes.

Martinez filed an Election Protest Ad Cautelam on July 18, 2007 and on July 26, 2007, the HRET granted his motion to convert the same into a Regular Protest of all one thousand one hundred twenty-nine (1,129) precincts of the Fourth Legislative District of Cebu.

The election protest is based on three hundred (300) ballots more or less with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative which the Board of Election Inspectors (BEI) did not count for Martinez on the ground that there was another congressional candidate (Edilito C. Martinez) who had the same

surname. Martinez further alleged that he lost several thousand votes as a result of incorrect appreciation of ballots not counted in his favor while clearly marked ballots, groups of ballots which appeared to have been prepared by one (1) person, individual ballots which appeared to have been prepared by two (2) or more persons, and fake and unofficial ballots were read and counted in favor of Salimbangon. He also claimed that the votes reflected in the election returns were unlawfully increased in favor of Salimbangon while votes in his favor were unlawfully decreased.<sup>[4]</sup>

Salimbangon filed his Answer with Counter-Protest stating that the Minutes of Voting (MOV) inside the ballot boxes in all the protested precincts contain no recorded objections regarding straying of votes claimed by Martinez, and that it was very seldom, if at all, that there were ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative. He counter-protested 954 precincts on grounds of coercion/intimidation and duress; massive vote-buying; "*lansadera*"; misreading/miscounting/misappreciation of votes; and other electoral anomalies and irregularities.

During the revision, ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative were not counted and temporarily classified as stray. These comprise majority of the 9,831 stray ballots claimed by Martinez.<sup>[5]</sup>

### **HRET Ruling**

In its Decision dated May 28, 2009, the HRET resolved each of the claims and objections respectively raised by protestant and protestee applying the rules for appreciation of ballots. The Tribunal recognized as most crucial the issue of whether or not ballots with only "MARTINEZ" or "C. MARTINEZ" written on the line for Representative should be counted in favor of Martinez. Thus, the election protest "will rise or fall on how the Tribunal [appreciates said] ballots."<sup>[6]</sup>

Ruling on the issue, the HRET sustained the BEI in considering the ballots as stray in accordance with Sec. 211 (1) of the Omnibus Election Code which provides:

"Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid, **if there is no other candidate with the same first name or surname for the same office.**"<sup>[7]</sup>  
[EMPHASIS SUPPLIED.]

Since the name of Edilito C. Martinez was still included in the official list of candidates on election day (May 14, 2007), the HRET held that five thousand four hundred one (5,401) ballots with "MARTINEZ" or "C. MARTINEZ" only written on the line for Representative were properly denied on the ground that there was no way of determining the real intention of the voter. These ballots were included in the 7,544 ballots denied as votes for Martinez in 961 precincts.<sup>[8]</sup>

Commiserating with Martinez on the delayed resolution of SPA Case No. 07-133

(PES), the HRET stated:

"We sympathize to (*sic*) the protestant that he is the victim of the inaction of the Comelec in failing to decide the petition to disqualify Edilito C. Martinez as nuisance candidate on or before the May 14, 2007 elections. After all, it appears that the latter did not even lift a finger to oppose the petition for his declaration as nuisance candidate and that per its decision rendered only twenty-nine (29) days after the May 14, 2007 elections, Edilito C. Martinez was indeed a nuisance candidate.

"As it is, the delay committed by the Comelec in deciding the petition to disqualify Edilito C. Martinez as nuisance candidate on or before May 14, 2007 election did not only cause injustice to herein protestant but worst, had resulted to (*sic*) the disenfranchisement of five thousand four hundred one (5,401) electorates whose votes could have changed the number of votes garnered by the parties herein if not changed altogether the outcome of the election itself."<sup>[9]</sup>

The final overall results of recount and appreciation of ballots, election documents and other evidence in the entire 1,129 precincts as determined by the HRET are as follows :<sup>[10]</sup>

#### **Overall Fourth District of Cebu Votes**

	PROTESTANT	PROTESTEE
1] Votes per physical count* in 961 precincts where there was ballot appreciation	57,758	57,132
2] Votes in 12 precincts** without ballots found during revision (based on election returns)	998	660
3] Votes <u>per election returns</u> in 156 precincts in which several spurious ballots were placed after elections, counting and/or canvassing of votes	9,937	7,815
	68,693	65,607
Less: Objected ballots rejected***	4,333	860
Add: Claimed ballots admitted***	2,287	2,348
Unclaimed ballots admitted***	8	11
Restored Ballots		2

<b>Total Votes in the Contested Precincts After Appreciation of Evidence</b>	66,655	67,108
<b>PLURALITY OF PROTESTEE'S VOTES</b>		453

\* Taken from Revision Reports

\*\* Namely Precinct Nos. 51A, Daan-Bantayan, 40A, 56A, 79A, all of Bantayan, 15C, 19D, 66B/67A, 88A, 105A, all of Bogo, 40A/41A, 70A/71A, all of Medellin, 30A, Sta. Fe.

\*\*\* During appreciation of ballots in 961 precincts.

On the basis of the foregoing, the HRET dismissed the election protest, affirmed the proclamation of Salimbangon and declared him to be the duly elected Representative of the Fourth Legislative District of Cebu, having won by a plurality margin of **453** votes.

Martinez moved for reconsideration of the Decision, but the HRET denied it by Resolution dated July 30, 2009.<sup>[11]</sup>

### **The Petition**

Petitioner alleges that the HRET gravely abused its discretion when it failed to credit the "MARTINEZ" or "C. MARTINEZ" votes in his favor despite the finality of the COMELEC resolution declaring Edilito C. Martinez a nuisance candidate. Petitioner argues that the Decision disenfranchised 5,401 voters when it ruled that said votes cannot be counted as votes for him since "there is no way of determining the real intention of the voter", in utter disregard of the mandate of Art. VIII, Sec. 14 of the Constitution. He maintains that there is no clear and good reason to justify the rejection of those 5,401 ballots, and points out that at the time private respondent was proclaimed by the Board of Canvassers, only 104 votes separated private respondent from him (private respondent was credited with 67,277 votes as against 67,173 votes of petitioner, while nuisance candidate Edilito C. Martinez got a measly 363 votes.)<sup>[12]</sup>

Petitioner further alleges that the HRET invalidated ballots for him without stating the legal and factual bases therefor, and on grounds other than the objections raised by private respondent. He contends that the HRET erred in concluding that the ruling in *Bautista v. Commission on Elections*<sup>[13]</sup> cannot be applied in view of circumstances which supposedly distinguish the present case from *Bautista*. Finally, petitioner cites the dissenting opinion of the Honorable Associate Justice Antonio Eduardo B. Nachura who disagreed with the majority ruling and posited that the final declaration by COMELEC that Edilito C. Martinez was a nuisance candidate and the cancellation of his certificate of candidacy should be deemed effective as of the day of the election.<sup>[14]</sup>

In his Comment, private respondent assails the apparent desire of petitioner for this Court to review the physical appreciation of ballots conducted by the HRET when he assigned as issues the alleged erroneous invalidation by the HRET of petitioner's ballots which were ruled as written by two (2) persons, and when he even appreciated ballots that were declared by the HRET as marked ballots. Private respondent details the mostly post-election anomalies and irregularities, particularly in Bogo City, perpetrated by the petitioner as found by the HRET such as tampering of election returns and statement of votes and vote padding/tampering.

As to the "MARTINEZ" and "C. MARTINEZ" ballots, private respondent asserts that the HRET correctly refused to credit petitioner with these votes, stressing that there were admittedly three (3) candidates for the position of Representative for the Fourth Legislative District of Cebu as of May 14, 2007. Not a single voter in the district knew of any nuisance congressional candidate on election day. Private respondent argues that it would be illogical and most unfair to count the said ballots in favor of petitioner as it is erroneous to base the voter's intent on the supervening circumstance which was inexistent on the date the ballot was accomplished and cast. The HRET likewise did not err in holding that the *Bautista* ruling is inapplicable, there being no announced declaration yet of one (1) of the candidates as nuisance candidate when the voters cast their ballots on election day.

### **The Issues**

What then is the legal effect of declaring a nuisance candidate as such in a final judgment *after* the elections? Should ballots containing only the similar surname of two (2) candidates be considered as stray votes or counted in favor of the *bona fide* candidate?

### **Our Ruling**

The Court finds the petition meritorious.

Section 69 of the Omnibus Election Code provides:

"Section 69. **Nuisance candidates.** -- The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate."

Republic Act No. 6646, otherwise known as "The Electoral Reforms Law of 1987" provides in Section 5 thereof: