

EN BANC

[G.R. No. 158359, March 23, 2004]

**ABDULLAH D. DIMAPORO, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL AND ABDULLAH S.
MANGOTARA, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Before the Court is a petition brought by Congressman Abdullah D. Dimaporo (Dimaporo), as petitioner, seeking to nullify the twin *Resolutions*^[1] of the House of Representatives Electoral Tribunal (HRET) which denied his *Motion for Technical Evaluation of the Thumbmarks and Signatures Affixed in the Voters Registration Records and Voting Records*^[2] and *Motion for Reconsideration of Resolution No. 03-408 Denying the Motion for Technical Examination of Voting Records*.^[3]

A brief factual background is in order.

On July 20, 2001, Dimaporo was proclaimed a Member of the House of Representatives, representing the 2nd Legislative District of Lanao del Norte.

Pursuant to the 1998 Rules of the HRET (HRET Rules),^[4] congressional candidate Abdullah S. Mangotara (Mangotara) filed on July 30, 2001 a *Petition of Protest (Ad Cautelam)*,^[5] seeking, among others, the technical examination of the signatures and thumbmarks appearing on the Voters Registration Records (VRRs)/Book of Voters and the List of Voters with Voting Records in all the protested precincts of the municipality of Sultan Naga Dimaporo (SND). Mangotara alleged that the massive substitution of voters and other electoral irregularities perpetrated by Dimaporo's supporters will be uncovered and proven by the revision of ballots and the comparison between the signatures and thumbmarks appearing in the VRRs/Book of Voters and those appearing in the List of Voters with Voting Records used on election day or those affixed at the back of the VRRs. From this and other premises, he concluded that he is the duly-elected representative of the 2nd District of Lanao del Norte.

On October 10, 2001, Dimaporo filed an *Answer with Counter-Protest*^[6] impugning all the ballots and votes counted in favor of Mangotara in all precincts of all the 15 municipalities of Lanao del Norte, except SND. He alleged that irregularities and electoral frauds, consisting of massive substitute voting, *i.e.*, persons other than the registered voters voted in favor of Mangotara, were committed in the counter-protested precincts. Moreover, pairs or groups of ballots written by only one person were counted in favor of Mangotara. Accordingly, Dimaporo prayed for, among others, the technical examination of the signatures and thumbmarks of the voters who allegedly voted in the questioned precincts.

Before revision proceedings were conducted, Mangotara filed an *Urgent Motion for Technical Examination*^[7] dated May 3, 2002, praying for the technical examination of the signatures and thumbmarks appearing on the Registration Records/Book of Voters and List of Voters with Voting Records in all the precincts of SND. According to him, the fire that gutted all the ballot boxes used in SND made the revision of ballots in the said municipality physically impossible. Hence, technical examination was the only means by which the HRET can determine Mangotara's claim of massive substitute voting. Mangotara also argued that the Commission on Elections (Comelec) had started retrieving the election records needed for the forthcoming *Sangguniang Kabataan* (SK) elections. There was no assurance that the integrity of these records will be preserved. Thus, there was an urgent need for technical examination of the election records. Moreover, Mangotara averred that the results of the technical examination are determinative of the final resolution of the election protest in view of the fact that Dimaporo's presumptive lead over him was only 5,487 votes.

Dimaporo filed an Opposition to the Motion for Technical Examination on May 24, 2002.

Noting that "the Tribunal cannot evaluate the questioned ballots because there are no ballots but only election documents to consider," the HRET granted Mangotara's motion and permitted the latter "to engage an expert to assist him in the prosecution of his case." ^[8] Accordingly, the National Bureau of Investigation conducted the technical examination of the signatures and thumbmarks of the voters of SND affixed in their VRRs and other voting records.

After the completion of the revision of ballots, Dimaporo filed on November 11, 2002 a *Motion for Technical Examination of the Thumbmarks and Signatures Affixed in the Voters Registration Records and Voting Records*^[9] of: (a) 198 revised pilot counter-protested precincts; (b) 47 pilot counter-protested precincts; and (c) 36 precincts of the municipality of Tangcal (Tangcal). The motion was filed allegedly in order to substantiate Dimaporo's claims that pairs or groups of ballots were written by only one person and that there was massive substitute voting in the counter-protested precincts. Dimaporo further alleged that, upon opening 47 ballot boxes of the 47 counter-protested precincts, it was discovered that the boxes did not contain any ballot. Hence, no revision could be made. Likewise, the ballots for 36 precincts of Tangcal could no longer be revised because the ballot boxes had been burned. Citing these circumstances as akin to those mentioned by Mangotara in his motion, Dimaporo moved that his request for technical examination be granted.

The HRET denied Dimaporo's motion in its assailed *Resolution No. 03-408*.^[10] The Tribunal declared that Dimaporo's allegations that pairs or groups of ballots were written by only one person and that substitute voting took place in the first and second groups of precincts are matters which are "well within the judicial determination of the Tribunal and which may be determined without resort to technical examination."^[11] As regards the 36 precincts of Tangcal, the HRET found it physically impossible to conduct a technical examination of the signatures and thumbmarks of voters as found in the VRRs and Book of Voters due to the destruction of the pertinent election documents. In its questioned *Resolution No. 03-166*,^[12] the Tribunal denied Dimaporo's *Motion for Reconsideration of Resolution No. 03-408 Denying the Motion for Technical Examination of Voting Records*.^[13]

Hence, Dimaporo filed the instant *Petition for Certiorari and/or Mandamus with Prayer for the Issuance of a Writ of Preliminary Injunction on June 8, 2003*.^[14]

Dimaporo claims that the HRET deprived him of equal protection when the latter denied his motion for technical examination even as it had previously granted Mangotara's similar motion. According to him, his motion should have been granted because there is no valid distinction between the counter-protested precincts and the precincts in SND subject of Mangotara's motion since, in both instances, the ballots were no longer available for revision. He also asserts that the denial of his motion deprived him of procedural due process or the right to present scientific evidence to show the massive substitute voting committed in the counter-protested precincts.

On July 21, 2003, Mangotara filed his *Comment*^[15] averring that the petition is an obvious dilatory tactic to render the election protest moot and academic by the expiration of the term involved. He points out that there are substantial differences between his own motion for technical examination and that of petitioner. For instance, in SND, all the ballot boxes were destroyed by fire, whereas those of the 47 counter-protested precincts were not. In fact, except for the ballots themselves, the election documents and other paraphernalia remained intact. Another difference is that Mangotara specifically contested^[16] the election results in SND on the ground of substitution of voters, whereas massive substitute voting was allegedly a mere general averment in Dimaporo's counter-protest. Moreover, Mangotara moved for technical examination even before the revision proceedings, whereas Dimaporo's motion was anchored on Rule 42^[17] of the HRET Rules and was filed only after the revision of ballots. As regards the counter-protested precincts of Tangcal, Mangotara avers that destruction of the ballot boxes is not among the grounds for technical examination under Rule 42 of the HRET Rules, the provision cited by Dimaporo. Mangotara further claims that the former cannot ask for technical examination under Rule 42 of the HRET Rules in order to substantiate allegations of substitute voting because this was not cited as a ground for objection in the course of the revision of ballots. Rule 42 of the HRET Rules provides that the party moving for technical examination must specify the objections made in the course of the revision of ballots which the movant intends to substantiate with the results of the technical examination. Furthermore, Dimaporo was not deprived of his right to present evidence because the questioned *Resolution* No. 03-408 itself states that all election documents "are still subject to the scrutiny of the Tribunal during the appreciation of evidence." Hence, at the appropriate time and in accordance with HRET Rules, Dimaporo will be given an opportunity to present his evidence.

The Solicitor General filed a *Comment*^[18] on July 29, 2003 arguing that there is a distinction between the motions filed by Mangotara and Dimaporo. Whereas Mangotara's motion was filed before the completion of the reviefore the completion of the reviro was filed after the revision of ballots. The HRET acted within the confines of its discretion. Hence, there is no need for this Court to exercise its extraordinary power of *certiorari*.

Dimaporo filed a *Consolidated Reply to the Comments of the Public and Private Respondent*^[19] on August 12, 2003. Thereafter, the parties filed their respective *Memoranda*^[20] as required by the Court.

We are not prepared to conclude that the assailed Resolutions of the HRET offend the equal protection clause. Equal protection simply means that all persons and things similarly situated must be treated alike both as to the rights conferred and the liabilities imposed.^[21] It follows that the existence of a valid and substantial distinction justifies divergent treatment.

It should be mentioned that Dimaporo does not question the HRET Rules but only the Tribunal's exercise or implementation thereof as manifested in the questioned *Resolutions*. According to him, since the ballot boxes subject of his petition and that of Mangotara were both unavailable for revision, his motion, like Mangotara's, should be granted.

This argument is rather simplistic. Purposely or not, it fails to take into account the distinctions extant in Mangotara's protest *vis-à-vis* Dimaporo's counter-protest which validate the grant of Mangotara's motion and the denial of Dimaporo's.

First. The election results in SND were the sole subjects of Mangotara's protest. The opposite is true with regard to Dimaporo's counter-protest as he contested the election results in all municipalities but SND.

Significantly, the results of the technical examination of the election records of SND are determinative of the final outcome of the election protest against Dimaporo. The same cannot be said of the precincts subject of Dimaporo's motion.

The election results show that Mangotara won over Dimaporo in 10 out of 15 municipalities of Lanao del Norte. Dimaporo prevailed only in five (5) municipalities, including SND. His winning margin in four (4) of these municipalities was small, but in SND, Dimaporo obtained 22,358 votes as opposed to Mangotara's 477 votes. This means that Dimaporo won by a margin of 21,881 votes over Mangotara in SND. Further, the election results show that Mangotara was credited with zero (0) vote in 73 out of 130 precincts of the said municipality. That Dimaporo won the elections by a margin of 5,487 votes establishes the fact that the results of the election in SND handed the victory to him.^[22]

The technical examination of the election records of SND and the consequent determination of the true will of the electorate therein, therefore, serves the interest not only of the parties but also of the constituency of the 2nd District of Lanao del Norte.

Second. Mangotara filed a motion for technical examination before the start of the revision proceedings on the ground that the destruction of the ballot boxes of all precincts of SND rendered revision physically impossible. The urgency of technical examination was due to the impending SK elections and the resultant need for the Comelec to retrieve the election records of the municipality.

On the other hand, Dimaporo filed a motion for technical examination *after* the revision of ballots. No circumstance of necessity or urgency was averred in the motion.

Third. The HRET was informed — and it is not disputed — that the ballot boxes and other election documents pertaining to Tangcal were totally gutted by fire making technical examination an impossibility.^[23]