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[G.R. No. 149380, July 03, 2002]

FEDERICO S. SANDOVAL II, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) AND AURORA ROSARIO A. ORETA, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

Was substituted service of summons validly effected on herein petitioner Federico S. Sandoval II in the election protest filed by herein respondent Aurora Rosario A. Oreta before the House of Representatives Electoral Tribunal (HRET)? This is the only issue for resolution in the instant *Petition for Certiorari with Prayer for Temporary Restraining Order and/or Preliminary Injunction* under Rule 65 of the *1997 Rules of Civil Procedure* assailing *HRET Resolutions Nos. 01-081* dated 12 July 2001 and *01-118* dated 9 August 2001.

Petitioner Sandoval and respondent Oreta were candidates for the lone congressional district of Malabon-Navotas during the 14 May 2001 national elections. The canvass of the election returns yielded ninety two thousand and sixty-two (92,062) votes for petitioner while respondent obtained seventy two thousand eight hundred sixty-two (72,862) votes,[1] or a difference of nineteen thousand two hundred (19,200) votes. On 22 May 2001 petitioner was proclaimed duly elected representative by the District Board of Canvassers of Malabon-Navotas. After taking his oath of office, he assumed the post at noon of 30 June 2001.[2]

On 1 June 2001 respondent Oreta filed with HRET an election protest against petitioner, docketed as HRET Case No. 01-027. The protest assailed the alleged electoral frauds and anomalies in one thousand three hundred eight (1,308) precincts of the Malabon-Navotas District.[3] On 4 June 2001 HRET issued the corresponding summons for service upon petitioner.[4] On 7 June 2001 HRET Process Server Pacifico Lim served the summons by substituted service upon a certain Gene Maga who signed the process server's copy of the summons and indicated thereon his position as "*maintenance*" along with the date and time of his receipt thereof as 7 June 2001 at 1:25 p.m.[5] The *pro-forma* affidavit of service executed by the process server a day after service of the summons stated -

> That on 6/7/01 I personally served the following documents
> to counsels and parties at their respective addresses.
> DOCUMENT – Summons
> HRET CASE NO. – 01-027
> PARTY/COUNSEL – Rep. Federico S. Sandoval
> ADDRESS – No. 992 M. Naval St., Navotas, M.M.

RECEIVED BY – Gene Maga
POSITION – Maintenance[6]

On 12 July 2001 HRET issued *Resolution No. 01-081* which took note of petitioner Sandoval's failure to file an answer to the election protest within ten (10) days from date of service of the summons on 7 June 2001 and entered in his behalf a general denial of the allegations set forth in the protest.[7] The HRET also ordered the parties to proceed to preliminary conference.[8] On 18 July 2001 the HRET ordered both petitioner and respondent to file their respective preliminary conference briefs.[9] Petitioner received the order on 20 July 2001 as shown by the rubber stamp bearing his name and his district office in Navotas and indicating the time and date of receipt as well as the person with corresponding position, i.e., administrative staff, who received the order.[10] Initially, on 1 August 2001, it was only respondent Oreta who filed the required preliminary conference brief.[11]

On 6 August 2001, instead of filing a preliminary conference brief, petitioner moved for reconsideration of *Resolution No. 01-081* and prayed for the admission of his answer with counter-protest.[12] He argued that the substituted service of summons upon him was improperly effected upon a maintenance man Gene Maga who was "*neither a regular employee nor responsible officer at [petitioner's] office.*"[13] In *Resolution No. 01-118*, the HRET denied reconsideration of the assailed resolution and admission of petitioner's answer with counter-protest.[14]

On 30 August 2001 petitioner Sandoval filed the instant petition with prayer for temporary restraining order and preliminary injunction questioning *Resolutions Nos. 01-081* and *01-118* and assailing the HRET's jurisdiction over his person. In due time, we denied the plea for injunctive writs.[15] Petitioner was constrained to file his preliminary conference brief *ad cautelam* and to attend the preliminary conference on 18 October 2001, which had been postponed several times upon his request.

On 29 October 2001 respondent Oreta filed her *Comment* to the instant petition. On 3 January 2002 the Office of the Solicitor General filed a *Manifestation and Motion In Lieu of Comment.* The Solicitor General found that the substituted service of summons upon petitioner was faulty and thus recommended favorable action on the petition. On 12 February 2002 HRET also submitted a *Manifestation and Motion In Lieu of Comment* manifesting that as a nominal party in the instant case it was not filing a "*separate comment*" from the Solicitor General's pleading.

We agree with the Solicitor General. Preliminarily, we note the established rule vesting jurisdiction in this Court over the instant petition for *certiorari*. While the Constitution provides that the HRET shall be the sole judge of all contests relating to the elections, returns and qualifications of members of Congress,[16] this regime however does not bar this Court from entertaining petitions where the threshold of legitimate review is breached. Indeed, it is well-settled that judicial guidance is appropriate where jurisdictional issues are involved or charges of grave abuse of discretion are presented in order that we may vindicate established claims of denial of due process or correct veritable abuses of discretion so grave or glaring that no less than the *Constitution* itself calls for remedial action.[17]

That this Court may very well inquire into jurisdictional issues concerning the HRET may be inferred from Sec. 1, Art. VIII, of the *Constitution* which has expanded judicial power to include the determination of "*whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*" Previously, we had taken cognizance of *certiorari* proceedings where the rules of procedure of the HRET, as in the instant case, were involved. *Garcia v. Ang Ping*[18] involved the requirement of cash deposit in addition to filing fees under Rule 32 of the *1998 HRET Rules*. In *Loyola v. HRET*[19] we explained the import of a general denial under Rule 27 of the *Revised Rules of the House of Representatives Electoral Tribunal. Lazatin v. HRET*[20] affirmed the power of the HRET to set its own prescriptive periods for filing election protests. We explored in *Arroyo v. HRET*[21] the suppletory applicability of the rules of evidence to the HRET rules to adjudge the correct number of votes for each of the two (2) competing congressional candidates.

The instant petition is intricately related to the election protest filed by respondent Oreta with the HRET where the integrity of the election proceedings in one thousand three hundred and eight (1,308) precincts of the Malabon-Navotas congressional district is attacked as having been grossly manipulated to distort the people's will. This is a serious charge which if true would taint the assumption of petitioner as congressman of this district. In view of the delicate nature and the gravity of the charge, the observance of the HRET Rules of Procedure, in conjunction with our own Rules of Court, must be taken seriously. Indubitably these rules affect not only the inherent fairness of the proceedings below, a matter of due process, but equally important, influence the speedy and orderly determination of the true will of the electorate, our democratic ideal.

The propriety of the substituted service of summons upon petitioner Sandoval is therefore no less pivotal, for upon it depends not simply the jurisdiction of the HRET over the person of petitioner but also the breadth of fairness of the proceedings therein, where the opportunity to be heard on the grave accusations against him and more significantly on his own counter-protest is properly withheld or compulsorily observed. Compliance with the rules on the service of summons is both a concern of jurisdiction as it is of due process.[22] Petitioner should have been given by public respondent a fair chance to defend the legitimacy of his lead of nineteen thousand two hundred (19,200) votes over respondent Oreta and dispel any cloud on his election.

The matter of serving summons is governed by the *1997 Rules of Civil Procedure* which applies suppletorily to the *Revised Rules of the House of Representatives Electoral Tribunal* through its Rule 80.[23] Sections 6 and 7 of Rule 14 of the *1997 Rules of Civil Procedure* provide -

> Sec. 6. *Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
>
> Sec. 7. *Substituted service.* - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and

> discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

It is well-established that summons upon a respondent or a defendant (i.e., petitioner herein) must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. If however efforts to find him personally would make prompt service impossible, service may be completed by substituted service, i.e., by leaving copies of the summons at his dwelling house or residence with some person of suitable age and discretion then residing therein or by leaving the copies at his office or regular place of business with some competent person in charge thereof.

Substituted service derogates the regular method of personal service. It is an extraordinary method since it seeks to bind the respondent or the defendant to the consequences of a suit even though notice of such action is served not upon him but upon another whom the law could only presume would notify him of the pending proceedings. As safeguard measures for this drastic manner of bringing in a person to answer for a claim, it is required that statutory restrictions for substituted service must be strictly, faithfully and fully observed.[24] In our jurisdiction, for service of summons to be valid, it is necessary first to establish the following circumstances, i.e., (a) impossibility of service of summons within a reasonable time, (b) efforts exerted to locate the petitioners and, (c) service upon a person of sufficient age and discretion residing therein or some competent person in charge of his office or regular place of business. It is also essential that the pertinent facts proving these circumstances be stated in the proof of service or officer's return itself and only under exceptional terms may they be proved by evidence *aliunde*.[25] Failure to comply with this rule renders absolutely void the substituted service along with the proceedings taken thereafter for lack of jurisdiction over the person of the defendant or the respondent.[26]

We find no merit in respondent Oreta's austere argument that personal service need not be exhausted before substituted service may be used since time in election protest cases is of the essence. Precisely, time in election protest cases is very critical so all efforts must be realized to serve the summons and a copy of the election protest by the means most likely to reach the protestee. No speedier method could achieve this purpose than by personal service thereof. As already stated, the preferential rule regarding service of summons found in the Rules of Court applies suppletorily to the R*evised Rules of the House of Representatives Electoral Tribunal.*[27] Hence, as regards the hierarchy in the service of summons, there ought to be no rational basis for distinguishing between regular court cases and election protest cases pending before the HRET.

In affirming the substituted service of summons and its jurisdiction over the person of petitioner Sandoval and rejecting admission of his answer with counter-protest, the HRET rationalized -

> Based on the records of the case, summons was received by a Gene Maga of the Maintenance, District Office on June 7, 2001 at 1:25 p.m. On July 27, 2001, an Affidavit of Service, attached to the Tribunal's receiving copy of the summons, was jointly executed by Process Server

> Pacifico Lim and Accounting Clerk Aurora Napolis. This Affidavit of Service states that Pacifico Lim found a certain Gene Maga at Protestee's district office who identified himself as a member of the staff of Protestee and thus, Pacifico Lim left the summons with him (Maga). This Affidavit likewise stated that after Pacifico Lim left the Tribunal premises to serve the summons to Protestee, Aurora Napolis talked to Primitivo P. Reyes, a congressional staff of Protestee's father, Rep. Vicente A. Sandoval, who came to the HRET and who assured that there was somebody at Protestee's district office who could receive the summons. On June 16, 2001 or on the 9th day from June 7, 2001, the Chief of Staff of Protestee at the House of Representatives inquired by telephone with the Office of the Secretary of the Tribunal as to the last day for Protestee to file his answer x x x x There was valid service of summons effected on Protestee. Pacifico Lim attested to the fact that he found Gene Maga at Protestee's district office during office hours, i.e., 1:25 p.m., who presented himself as Protestee's staff at said office. The tribunal finds no fault on the part of its process server in effecting substituted service through Gene Maga.[28]

We seriously disagree. In the first place, the conclusions relied upon by HRET are nowhere stated in the process server's affidavit of service. The record will show that the affidavit of service, which is dated 8 June 2001 and not 27 July 2001 as above-quoted, gives only barren details, such as the date of receipt and the position of the person receiving the summons. The HRET findings were instead based on the 27 July 2001 joint affidavit of Process Server Pacifico Lim and Accounting Clerk Aurora Napolis executed long after the summons was served on 7 June 2001. The joint affidavit is clearly not the officer's return referred to in the rules on substituted service of summons but a specie of evidence *aliunde* generally inadmissible to prove compliance with the requirements of substituted service unless under exceptional circumstances, which were nowhere in this case.

It is truly unfortunate that the purported substituted service of summons upon petitioner Sandoval was irregularly executed. Except for the time and place of service and the signature of the "maintenance" man who received the summons, there is absolutely nothing in the process server's affidavit of service indicating the impossibility of personal service of summons upon petitioner within a reasonable time. We can take judicial notice of the fact that petitioner is a very visible and active member of Congress such that to effect personal service upon him, all it would have taken the process server was a few hours more of a little extra work. Regrettably, the affidavit of service, indeed the entire record of this case, does not specify the efforts exerted to serve the summons personally upon petitioner. Upon this ground alone, the assailed service of summons should already fail miserably.

Moreover, we do not find in the record, much less in the affidavit of service executed by the process server, that the summons and a copy of the election protest were served on a competent person in charge of petitioner's office. It must be emphasized that Gene Maga, the recipient of the summons, was merely a "maintenance" man who offered his services not only to petitioner but to anyone who was so minded to hire his assistance. His occupation as a freelance service contractor, not as employee of petitioner Sandoval, is very clear not only from the assertion of petitioner in his motion for reconsideration of Resolution No. 01-081