

THIRD DIVISION

[G.R. No. 123037, March 21, 1997]

TEODORO Q. PEÑA, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ALFREDO E. ABUEG, JR., RESPONDENTS.

DECISION

TORRES, JR., J.:

Assailed herein is the October 12, 1995 Resolution^[1] of the House of Representatives Electoral Tribunal (HRET) dismissing the Petition Ad Cautelam of the Petitioner Teodoro Q. Peña in HRET Case No. 95-014. Petitioner questioned the election of the private respondent Alfredo E. Abueg, Jr. as Member of the House of Representatives representing the Second District of the province of Palawan.

Petitioner and the private respondent were contenders for the said Congressional Office in the May 8, 1995 elections. On May 12, 1995, upon canvassing the votes cast, the Provincial Board of Canvassers of Palawan proclaimed the private respondent as the winner.

On May 22, 1995, the instant petition was filed with the HRET, wherein the petitioner, as protestant, averred that:

“7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioner’s known supporters through systematic deletion of names from the lists of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestant’s ballots and other irregularities.

8. According to the Statement of Votes by Precinct/Municipality/City, the protestee allegedly obtained 52,967 votes, while the protestant allegedly obtained 46,023 votes, or a difference of 6,944 votes. A copy of said document is attached hereto as Annex ‘B’.

9. Had the massive fraud, widespread intimidation and terrorism and other serious irregularities not been committed, the result of the elections for Member of the House of Representatives would have been different and the protestant would have garnered the highest number of

votes for the Office Member of the House of Representatives in the Second District of Palawan, which was the true expression of the will of the voters of the Province of Palawan.

10. The proclamation by the members of the Provincial Board of Canvassers of Palawan that the protestee was allegedly the duly elected Member of the House of Representatives for the Second District of Palawan is contrary to law and to the true expression of the will of the voters of the Province of Palawan.”^[2]

Private respondent-Protestee Abueg filed an Answer With Affirmative Defense, Counterclaim and Counter-Protest^[3] on June 5, 1995, to which Peña filed a Reply on June 23, 1995. Subsequent to the filing of his Answer, Abueg filed a Motion to Dismiss^[4] the Petition on June 22, 1995, averring that the HRET has not acquired jurisdiction over the petition, the same being insufficient in form and substance. In essence, the motion to dismiss anchors its challenge on the fact that the petition failed to allege the precincts where the massive fraud and disenfranchisement of voters occurred, nor did it point out how many votes would be gained by the protestant as a result of the same.

Petitioner filed an Opposition to the Motion to Dismiss^[5] on July 10, 1995, attaching thereto a Summary of Contested Precincts, naming 700 precincts where election irregularities allegedly occurred.

In its Resolution of October 12, 1995, the respondent HRET ruled that although it had jurisdiction over the petition, as the sole judge of all contests relating to the election, returns and qualifications of the members of the House of Representatives, the said petition, however, fails to state a cause of action, and is therefore, insufficient in form and substance, meriting its dismissal.

The HRET states pertinently:

“There are 743 precincts in the second congressional district of Palawan which is comprised of Puerto Princesa City and the municipalities of Aborlan, Balabac, Bataraza, Brooke’s Point, Narra, Quezon, and Marcos (Ordinance appended to the 1973 Constitution). The Protestant failed to specify which are the 700 precincts, out of the said 743 precincts, that are included in his protest; he even failed to allege the municipalities where the protested precincts are located. Worse, the body of the Petition does not even mention the 700 precincts. Reference to them is made only in the Prayer. These omissions prevent Protestee from being apprised of the issues which he has to meet and make it virtually impossible for the Tribunal to determine which ballot boxes have to be collected.

The Supreme Court, in *Fernando vs. Pastor M. Endencia*, Judge of First Instance of Bulacan, et. al. (No. 46099, 66 Phil 148, 150, August 30, 1938) observed that, ‘while the election law does not say so directly, it is clearly inferred from its relevant provisions that where the grounds of contest are that legal votes were rejected and illegal votes received, the motion of protest should state in what precincts such irregularities

occurred. xxx The specification in the motion of protest of the election precinct or precincts where the alleged irregularities occurred, is required in order to apprise the contestee of the issues which he has to meet. xxx'

In its more recent resolution in Grand Alliance for Democracy (GAD) vs. COMELEC (G.R. No. 78302, May 26, 1987, 150 SCRA 665), the Supreme Court held that the petition therein 'could have been dismissed outright as deficient in form and substance, being couched in general terms only, without precise indication of the time, place and manner of the commission of the alleged irregularities.' xxx

Similarly, this Tribunal, in dismissing an election protest, observed that the protest, in general language, "impugns, contests and protests the illegal, improper and fraudulent electoral practices, acts and deeds" of the protestee and "impugns and contests all the election returns in the lone district of Catanduanes." The tribunal held that this scattershot allegation is not allowed in election contests and that "it is necessary to make a precise indication of the precincts protested and a specification of the claimed offenses to have been committed by the parties." (Alberto vs. Tapia, HRET Case No. 37, January 23, 1989)

While Protestant has attached as Annex "A" to his Opposition to the Motion to Dismiss, filed on 10 July 1995, a Summary of contested Precincts, the defects in his Protest were not cured thereby as the Summary was submitted only after the Motion to Dismiss had been filed. The Opposition and the attached Summary do not amend the original Petition. There is not even a prayer in the Opposition suggesting such amendment.

Moreover, in a Resolution promulgated on 17 June 1995, the Commission on Elections en banc (COMELEC) dismissed herein Petitioner's Petition (SPA Case No. 95-258) to declare a failure of elections in the second district of Palawan. Copy of said Resolution was sent to Petitioner Peña's Petition Ad Cautelam was thus converted into a regular protest (not Ad Cautelam) effective upon the finality of the official COMELEC resolution, thereby providing him an opportunity to amend it to cure the defects cited above, Protestant took no positive and affirmative steps for that purpose.

Protestant alleges in his Opposition that Protestee has likewise failed to specify the 47 precincts he contests in his Counter-Protest. This omission merely renders Protestee's Counter-Protest defective for insufficiency in form and substance and for failure to state a cause of action. It does not cure the fatal defects in Protestant's Petition.

WHEREFORE, for failure of the petition (Protest) to state a cause of action because it is fatally insufficient in form and substance, the Tribunal Resolved to GRANT Protestee's Motion to Dismiss and to DISMISS, as it hereby DISMISSES, the instant Petition of Protest. As a logical consequence thereof and also for the same reason, Protestee's Counter-Protest is DISMISSED.