



Republic of the Philippines
Supreme Court
Manila

SPECIAL EN BANC

HARLIN C. ABAYON,
Petitioner,

G.R. No. 222236

- versus -

**HOUSE OF REPRESENTATIVES
ELECTORAL TRIBUNAL
(HRET) AND RAUL A. DAZA,**
Respondents.

X -----X

HARLIN C. ABAYON,
Petitioner,

G.R. No. 223032

Present:

SERENO, C.J.,
CARPIO,*
VELASCO, JR.,**
LEONARDO-DE CASTRO,
BRION,
PERALTA,***
BERSAMIN,****
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,
JARDELEZA, and
CAGUIOA, JJ.

- versus -

**HOUSE OF REPRESENTATIVES
ELECTORAL TRIBUNAL
(HRET) AND RAUL A. DAZA,**
Respondent.

Promulgated:

May 3, 2016

[Signature]

X -----X

* No Part. Close relation to a party.
** No Part, HRET Chairman.
*** No Part, HRET Member.
**** No Part even as HRET Member.

DECISION

MENDOZA, J.:

These consolidated petitions for *certiorari* filed under Rule 65 of the Rules of Court seek to reverse and set aside the December 14, 2015¹ and January 21, 2016² Resolutions of the House of Representatives Electoral Tribunal (*HRET*) in HRET Case No. 13-023, dismissing the counter-protest of petitioner Harlin C. Abayon (*Abayon*); and the February 3, 2016 Decision³ and the March 7, 2016 Resolution⁴ of the HRET in the same case, which found private respondent Raul A. Daza (*Daza*) as the duly elected Representative of the First Legislative District of Northern Samar in the May 13, 2013 Elections.

The Antecedents

Abayon and Daza were contenders for the position of Representative in the First Legislative District of Northern Samar during the May 13, 2013 Elections. Out of the votes cast in the 332 clustered precincts in the First District of Northern Samar, Abayon emerged as the winner after obtaining the majority vote of 72,857. Daza placed second with a total of 72,805 votes. The difference was 52 votes. On May 17, 2013, the Provincial Board of Canvassers of Northern Samar proclaimed Abayon as the duly elected member of the House of Representatives for the said legislative district.⁵

On May 31, 2013, Daza filed his Election Protest⁶ challenging the elections results in 25 clustered precincts in the Municipalities of Biri, Capul, Catarman, Lavezares, San Isidro, and Victoria. In his protest, he bewailed that there was massive fraud, vote-buying, intimidation, employment of illegal and fraudulent devices and schemes before, during and after the elections benefitting Abayon and that terrorism was committed by the latter and his unidentified cohorts, agents and supporters.⁷

On August 1, 2013, Abayon filed his Verified Answer raising special and affirmative defenses as well as his Counter-Protest.⁸ He challenged the results in all 332 precincts alleging that the 72,805 votes obtained by Daza

¹ *Rollo* (G.R. No. 222236), pp. 33-35.

² *Id.* at 36-38.

³ Signed by Supreme Court Associate Justices Presbitero J. Velasco, Jr. (no part), Diosdado M. Peralta (dissented) and Lucas P. Bersamin (no part), Representatives Franklin P. Bautista, Joselito Andrew R. Mendoza, Ma. Theresa B. Bonoan, Wilfrido Mark M. Enverga, Jerry P. Treñas and Emerenciana A. de Jesus (dissented); *rollo* (G.R. No. 223032), pp. 61-79.

⁴ *Id.* at 101-107.

⁵ *Id.* 16.

⁶ *Id.* at 149-164.

⁷ *Id.* at 16-17.

⁸ *Id.* at 260-311.

were questionable in view of the frauds and anomalies committed by the latter and his supporters during the elections.⁹

In its Resolution No. 14-055,¹⁰ dated February 27, 2014, the HRET found both Daza's protest and Abayon's counter-protest to be sufficient in form and substance. From October 14, 2014, until October 15, 2014, revision proceedings were conducted on the 25 clustered precincts protested by Daza.¹¹ After the revision of ballots in the said precincts, the votes for Abayon increased by 28 and the votes for Daza increased by 14.¹²

In his Urgent Manifestation and Omnibus Motion,¹³ dated September 3, 2015, Daza moved for the withdrawal of his cause of action for the recount, revision and re-appreciation of the ballots in the clustered precincts in the municipalities of Biri, Capul and San Isidro. He likewise prayed that the validity and legitimacy of his separate and distinct cause of action for the annulment of election results in certain identified precincts on the ground of terrorism be upheld.¹⁴ In its Resolution No. 15-052, dated September 24, 2015, the HRET granted Daza's motion and directed the Hearing Commissioner to continue with the reception of Abayon's defense on the issue of terrorism and to hold in abeyance the proceedings relative to his counter-protest.¹⁵

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Thereafter, Daza filed an Urgent Manifestation and Motion,¹⁶ dated November 4, 2015, praying that Abayon's counter-protest be dismissed as a consequence of the withdrawal of his (Daza's) cause of action for the recount, revision and re-appreciation in the concerned clustered precincts.

In its Resolution No. 15-058, dated December 14, 2015, the HRET granted Daza's motion and dismissed Abayon's counter-protest. Abayon moved for reconsideration but his motion was denied by the HRET in its January 21, 2016 Resolution. Aggrieved, Abayon filed a Petition for *Certiorari*¹⁷ with prayer for the urgent issuance of a temporary restraining order (*TRO*) and/or a status *quo ante* order and/or Preliminary injunction before the Court, which was docketed as G.R. No. 222236.

⁹ Id. at 261.

¹⁰ Id. at 354-367.

¹¹ Id. at 19.

¹² Id. at 69.

¹³ Id. at 574-587.

¹⁴ Id. at 22-23.

¹⁵ *Rollo* (G.R. No. 222236), p. 14.

¹⁶ Id. at 287-290.

¹⁷ Id. at 7-28.

Meanwhile, the HRET proceeded with the reception of evidence with regard to the issue of terrorism on the remaining clustered precincts in the municipalities of Lavezares and Victoria. After the parties had submitted their memoranda, the HRET decided the election protest in Daza's favor and declared him as the winning candidate.

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In its February 3, 2016 Decision, the HRET annulled the election results in five (5) clustered precincts in the municipalities of Lavezares and Victoria because of the commission of massive terrorism. As a result of nullifying the election results in the said clustered precincts, the HRET deducted the votes received by the parties in the concerned clustered precincts and concluded that Daza obtained 72,436 votes and Abayon had 72,002 votes.

The HRET highlighted that Daza presented testimonial and documentary evidence showing that: (1) prior to the May 13, 2013 elections, the National Democratic Front-Eastern Visayas (*NDF-EV*) had already shown its animosity and hostility towards him and his then incumbent governor son through the posting on the NDF-EV website and in conspicuous places statements declaring them as enemies of the people of Northern Samar; (2) comic magazines vilifying them were distributed; (3) "pulong-pulong" were held in the concerned barangays where the NDF-EV exhorted the resident-attendees to vote against him and in favor of Abayon, threatening to comeback if the result were otherwise; (4) his supporters and/or fellow Liberal Party candidates were prohibited from campaigning for him, and also from mounting tarpaulins/posters and distributing sample ballots; (5) Abayon had meetings with NDF-EV officials, during which times, he gave them money and guns; and (6) NDF-EV armed partisans were deployed around the school premises in the concerned precincts on election day.

The HRET found that Daza had adduced convincing evidence to establish that fear was instilled in the minds of hundreds of resident-voters in the protested clustered precincts from the time they had attended the "pulong-pulong" up until the election day itself when armed partisans were deployed to the schools to ensure that the voters would not vote for him but for Abayon.

The HRET disregarded the certifications issued by the Provincial Election Supervisor Atty. Antonio G. Gulay Jr. that there was no failure of election in Northern Samar and by P/SSupt. Mario Abraham Gonzalez Lenaming, Officer-in-Charge of the Northern Samar Police Provincial

Office, that the conduct of the elections was generally peaceful despite the occurrence of two election-related incidents in the First District of Northern Samar. The HRET noted that the said government officials were not presented to testify and, even if the said certifications were admissible, it had no probative value in disputing the terroristic acts committed upon the voters in the assailed precincts.

The HRET ratiocinated that there was clear and convincing evidence to warrant the annulment of the elections in the concerned precincts because the terrorism affected more than 50% of the votes cast in the said precincts and it was impossible to distinguish the good votes from the bad.

Abayon moved for reconsideration, but his motion was denied by the HRET in its March 7, 2016 Resolution.

On March 9, 2016, Abayon filed before the Court this petition for *certiorari*¹⁸ and prohibition with prayer for the urgent issuance of TRO and/or a *status quo ante* order and/or preliminary injunction before the Court, which was docketed as G.R. No. 223032.

These present consolidated petitions raise the following:

ISSUES

1] Whether the HRET had jurisdiction to annul the elections in the contested precincts in the municipalities of Lavezares and Victoria;

2] Whether the HRET committed grave abuse of discretion in annulling the elections on the ground of terrorism; and

2] Whether the HRET committed grave abuse of discretion in dismissing the counter-protest filed by Abayon.

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Petitioner Abayon insists that the HRET erred when it dismissed his counter-protest as it was in violation of his right to due process. He states that the resolutions issued by the HRET dismissing his counter-protest did not state clearly and distinctly the facts and legal bases thereof. Abayon even asserts that the HRET admitted in its resolution that it merely adopted the facts and the law invoked by Daza in his urgent manifestation and motion.

¹⁸ *Rollo* (G.R. No. 223032), pp. 9-55.

He argues that the counter-protest could not be simply dismissed on the basis of Daza's withdrawal of his cause of action for the recount, revision and re-appreciation of the ballots in the clustered precincts in Biri, Capul and San Isidro; that a counter-protest is an independent, distinct, separate and alternative legal remedy which is exclusively available to a protestee in an election protest case; and that his counter-protest may be summarily dismissed only if the grounds under Rule 21¹⁹ of the 2011 HRET Rules of Procedure are present.

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Abayon asserts that the nullification of the election results in the concerned clustered precincts was not within the jurisdiction of the HRET. He explains that the annulment of election results on the ground of terrorism is akin to a declaration of failure of elections, which is under the exclusive jurisdiction of the Commission on Elections (*COMELEC*) *En Banc* pursuant to Section 4 of Republic Act (R.A.) No. 7166.²⁰

Further, Abayon argues that even if the HRET had jurisdiction to annul election results, it still committed grave abuse of discretion in this particular case for lack of legal and factual bases. He avers that there was no clear and convincing evidence to establish that terrorism affected more than 50% of the votes cast and that it was impossible to distinguish the good votes from the bad. Abayon heavily relies on the respective certifications issued by the *COMELEC* and the Philippine National Police (*PNP*) that the elections in Northern Samar were orderly and peaceful.

¹⁹ RULE 21. *Summary Dismissal of Election Contest.* – An election protest or petition for *quo warranto* may be summarily dismissed by the Tribunal without the necessity of requiring the protestee or respondent to answer if, inter alia:

- (1) The petition is insufficient in form and substance;
- (2) The petition is filed beyond the periods provided in Rules 16 and 17 of these Rules;
- (3) The filing fee is not paid within the periods provided for filing the protest or petition for *quo warranto*;
- (4) In case of a protest where a cash deposit is required, the cash deposit, or the first P150, 000.00 thereof, is not paid within ten (10) days after the filing of the protest; and
- (5) The petition or copies thereof and the annexes thereto filed with the Tribunal are not clearly legible.

For this purpose, the Secretary of the Tribunal shall, upon receipt of the petition, prepare a report and calendar the same for appropriate action by the Tribunal or the Executive Committee.

This rule shall, pro tanto, apply to counter-protests.

²⁰ Section 4. *Postponement, Failure of Election and Special Elections.* - The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting *en banc* by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

Also, Abayon laments that his right to due process was violated because the HRET did not exhibit the cold neutrality of an impartial judge in handling the present election protest. He points out that the HRET granted Daza's motion to present additional witnesses without him being granted the opportunity to be heard. Abayon also reiterates that his counter-protest was unceremoniously dismissed.

Position of Respondent Daza

In his Consolidated Comment,²¹ dated March 28, 2016, Daza countered that the petition (G.R. No. 222236) should be dismissed because it contained fatal violations of the Rules of Court. He cited the following infractions: (1) forum shopping; (2) the resolution dismissing Abayon's protest had become final and executory for his failure to file a motion for reconsideration thereof; and (3) the petition did not indicate in its caption the original case number before the HRET. Moreover, Daza contended that the petition was without merit because the HRET could continue or discontinue the revision proceedings *motu proprio*. In addition, he stated that the case had been mooted by the promulgation of the HRET decision declaring him as the winner in the last electoral process.

Further, Daza posited that the HRET had jurisdiction to annul the election results on the ground of terrorism. He questioned the present petition (G.R. No. 223032) as it raised factual issues, which was outside the province of a Rule 65 petition. He stressed that the Court could only exercise its *certiorari* jurisdiction in cases of grave abuse of discretion on the part of the HRET. Daza further stated that even if the Court were to review the factual findings of the HRET, it would still find clear and convincing evidence to justify the annulment of election results in the contested precincts. He asserted that the testimonies of the voters and residents of the concerned precincts were corroborated by P/SSupt. Isaias B. Tonog (*P/SSupt. Tonog*), then Provincial Director of Northern Samar; and Col. Roberto S. Capulong (*Col. Capulong*), Operations Officer of the 8th Division, Philippine Army in Catbalogan, Samar. Daza explained that the totality of his evidence clearly and convincingly showed that the NDF-EV, through violence, intimidation and threats conducted before and during elections, harassed voters in the contested precincts to vote for Abayon and threatened them should they not do so.

In its Consolidated Comment,²² dated March 28, 2016, the HRET, through the Office of the Solicitor General, averred that it had jurisdiction to annul election results. It highlighted Rule 16 of the 2011 HRET Rules

²¹ *Rollo* (G.R. No. 223032), pp. 848-886.

²² *Id.* at 889-909.

stating that the election or returns of a proclaimed House Representative may be assailed in an election protest if the election or returns were attended by specific acts or omission constituting electoral frauds, anomalies or irregularities, which necessarily included acts of terrorism to dissuade voters from casting their vote or to alter the results of the election.

The HRET faulted Abayon in claiming that the case was similar to a declaration of failure of elections which was under the jurisdiction of the COMELEC *En Banc*, pursuant to R.A. No. 7166. It reasoned that mere allegation of terrorism would not immediately convert the case to a nullification case because terrorism was an act resulting in either failure of elections or electoral fraud, anomaly, or irregularity, which can only be protested through an election protest. Moreover, the HRET claimed that it did not commit grave abuse of discretion as its decision in favor of Daza was supported by clear and convincing evidence. As such, it concluded that its decision should be sustained.

The HRET further stated that it did not commit grave abuse of discretion in dismissing Abayon's counter-protest because it had the prerogative to discontinue the revision proceedings. It likewise elucidated that Abayon was not deprived of due process when his counter-protest was dismissed because he was given his day in court.

The HRET underscored that Abayon did not move for reconsideration when his counter-protest was denied, hence, the resolution became final and executory.

Finally, the HRET posited that it did not violate Article VIII, Section 14 of the Constitution²³ because the assailed resolutions were merely interlocutory orders and, even if they were considered decisions or final orders, they sufficiently stated the facts and law upon which they were based as there was no proscription against the court's adoption of the narration of facts made in the briefs or memoranda of the parties.

The Court's Ruling

The petitions are impressed with merit.

The HRET Jurisdiction

Article VI, Section 17 of the Constitution clearly spells out HRET's jurisdiction, to wit:

²³ Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. x x x

The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the **sole judge of all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

[Emphasis Supplied]

Abayon argues that the annulment of the election results in the contested precincts was beyond the jurisdiction of the HRET as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives. He claims that under Section 4 of R.A. No. 7166,²⁴ only the COMELEC *En Banc* has jurisdiction to annul elections or declare a failure of elections. Daza, on the other hand, counters that the power of the HRET to annul election results, where terrorism, fraud or other irregularities are existent, differs from the power of the COMELEC to declare failure of elections or annul elections pursuant to the provisions of R.A. No. 7166.

Both Abayon and Daza do not contest the exclusive jurisdiction of the HRET to decide election protests filed against members of the House of Representatives. They, however, diverge as to the extent of its jurisdiction.

An Election Protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds or irregularities.²⁵ It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.²⁶

²⁴ Sec. 4. Postponement, Failure of Election and Special Elections. – The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6, and 7 of the Omnibus Election Code shall be decided by the Commission sitting *en banc* by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the succeeding regular election.

²⁵ *Torres-Gomez v. Codilla*, 684 Phil. 632, 646 (2012).

²⁶ *Id.*

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase “election, returns and qualifications” should be interpreted in its totality as referring to all matters affecting the validity of the contestee’s title.²⁷ Consequently, the annulment of election results is but a power concomitant to the HRET’s constitutional mandate to determine the validity of the contestee’s title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature.²⁸ Thus, the HRET, as the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, may annul election results if in its determination, fraud, terrorism or other electoral irregularities existed to warrant the annulment. Because in doing so, it is merely exercising its constitutional duty to ascertain who among the candidates received the majority of the valid votes cast.

To the Court’s mind, the HRET had jurisdiction to determine whether there was terrorism in the contested precincts. In the event that the HRET would conclude that terrorism indeed existed in the said precincts, then it could annul the election results in the said precincts to the extent of deducting the votes received by Daza and Abayon in order to remain faithful to its constitutional mandate to determine who among the candidates received the majority of the valid votes cast.

Moreover, the passage of R.A. No. 7166 cannot deprive the HRET of its incidental power to annul elections in the exercise of its sole and exclusive authority conferred by no less than the Constitution. It must be remembered that the COMELEC exercises quasi-judicial, quasi-legislative and administrative functions. In *Bedol v. COMELEC*,²⁹ the Court expounded, to wit:

²⁷ *Tagolino v. HRET*, 706 Phil. 534, 560 (2013).

²⁸ *Vilando v. HRET*, 671 Phil. 524, 534 (2011).

²⁹ 621 Phil. 498 (2009).

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial. **The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications.** Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. **Its administrative function refers to the enforcement and administration of election laws.** In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.

The quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.³⁰

[Emphases Supplied]

Thus, the COMELEC exercises its quasi-judicial function when it decides election contests not otherwise reserved to other electoral tribunals by the Constitution. The COMELEC, however, does not exercise its quasi-judicial functions when it declares a failure of elections pursuant to R.A. No. 7166. Rather, the COMELEC performs its administrative function when it exercises such power.

R.A. No. 7166 was enacted to empower the COMELEC to be most effective in the performance of its sacred duty of ensuring the conduct of honest and free elections.³¹ Further, a closer perusal of Section 6 of the Omnibus Election Code readily reveals that it is more in line with the COMELEC's administrative function of ensuring that elections are free, orderly, honest, peaceful, and credible, and not its quasi-judicial function to adjudicate election contests. The said provision reads:

Sec. 6. Failure of elections - If, on account of force majeure, violence, terrorism, fraud or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, **the Commission shall, on the basis of a verified petition by**

³⁰ Id. at 510.

³¹ *Loong v. COMELEC*, 326 Phil. 790, 806 (1996).

any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

[Emphasis Supplied]

In *Sambarani v. COMELEC*,³² the Court clarified the nature of the COMELEC's power to declare failure of elections, to wit:

Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." Indisputably, the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve its primordial objective of holding free, orderly, honest, peaceful and credible elections.

The functions of the COMELEC under the Constitution are essentially executive and administrative in nature. It is elementary in administrative law that "courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies." **The authority given to COMELEC to declare a failure of elections and to call for special elections falls under its administrative function.**³³

[Emphasis Supplied]

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function. *Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted.³⁴

³² 481Phil. 661 (2004).

³³ Id. at 669.

³⁴ *Alauya, Jr. v. COMELEC*, 443 Phil. 893, 902-905 (2003).

Hence, there is no overlap of jurisdiction because when the COMELEC declares a failure of elections on the ground of violence, intimidation, terrorism or other irregularities, it does so in its administrative capacity. In contrast, when electoral tribunals annul elections under the same grounds, they do so in the performance of their quasi-judicial functions.

*Annulment of elections only
warranted in exceptional
circumstances*

Abayon asserts that even if the HRET had jurisdiction to annul the elections in the concerned precincts, the latter nonetheless acted with grave abuse of discretion because the circumstances did not warrant the nullification of the results in the contested precincts. He explains that Daza failed to sufficiently establish that terrorism was so prevalent in the said clustered precincts that it had adversely affected the right of the majority of residents to vote and that made it impossible to differentiate the valid votes from the invalid ones.

It must be remembered that “[t]he power to declare a failure of elections should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law had been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of the voters have been prevented by violence, intimidation and threats from exercising their franchise.”³⁵ Consequently, a protestant alleging terrorism in an election protest must establish by clear and convincing evidence that the will of the majority has been muted by violence, intimidation or threats.

The Court agrees with the observation of HRET Member and esteemed colleague, Associate Justice Diosdado M. Peralta (*Justice Peralta*), that the circumstances in the case at bench did not warrant the nullification of the election in the concerned clustered precincts. The Court quotes the pertinent portions of his dissent in the HRET decision, to wit:

Protestant’s evidence is utterly weak, unclear and unconvincing. The Tribunal, in *Balindong v. Macarambon, Jr.*, declared that “[t]here should be clear and convincing evidence to nullify an election. It is the duty of the courts to sustain an election authorized by law if it has so conducted as to give substantially a free and fair expression of the popular will, and actual result thereof is clearly ascertained. When a person elected obtained a considerable plurality of votes over his adversary, and the evidence

³⁵ *Bator v. COMELEC*, 478 Phil. 795, 797 (2004).

offered to rebut such a result is neither solid nor decisive, it would be imprudent to quash the election, as that would be to oppose without reason the popular will solemnly expressed in suffrage.”
xxx

There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:

- (1) The illegality of the ballots must affect more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and
- (2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots. xxx

While protestant’s witnesses, Messrs. Crisanto G. Camposano, Alex B. Rimbao and Melquiades T. Bornillo, contended that they are residents and voters of Barangay Salvacion, Barangay Toog and Barangay Datag, respectively, and merely voted for protestee out of fear of the said armed partisans, not a single ballot or vote cast by said witnesses and/or other voters allegedly subjected to terroristic acts had been identified and the effect thereof, proven extensive or massive. Failing in this regard, the Tribunal cannot order the annulment of votes for protestee, as prayed for by protestant. The validity of the results of the elections in the protested clustered precincts must be upheld.

It is worthy to note that no evidence was presented which will directly point to protestee as the one responsible for the incidents which allegedly happened before and during the elections. Absent anything that would concretely and directly establish protestee as the one who had induced or actually perpetrated the commission of terroristic acts and demonstrate that those incidents were part of a scheme to frustrate the free expression of the will of the electorate, the alluded handing of material considerations, including guns, to the NDF-EV officials, and the garnering of votes higher than those of the protestant in the protested clustered precincts, do not *per se* make him responsible for the charges of terrorism.

Moreover, at the time of the alleged submission to the offices of the Provincial and Regional Directors, Philippine National Police (PNP), of intelligence reports regarding the commission of massive terroristic acts, Comelec Resolution No. 9583 xxx was already effective. Upon validation of intelligence reports, the logical step that should have been undertaken by the PNP, which is in accord with human experience, was to report also such terroristic acts to the Comelec in order to place under its immediate and direct control and supervision the political divisions, subdivision, unit or area affected by “serious armed threats” to ensure the holding of free, peaceful, honest, orderly and credible elections. However, **no evidence on reporting to the Comelec for said purpose was made to concretize protestant’s postulation of massive terrorism.** The

protestant himself did not even bother to report to the COMELEC the alleged terroristic acts in order to control or prevent such serious armed threats and to ensure the holding of free, peaceful, honest, orderly and credible elections. **Protestant also did not report the matter to the police** so that the alleged persons committing such terroristic acts would be arrested and the proper cases filed against them in court. It is thus highly doubtful that such terroristic acts, as protestant claimed, existed. Such actuation by protestant is simply not in accord with human experience.

Since public officers like those in the PNP are presumed to have regularly performed their official duties, given the foregoing intelligence reports, and the effectivity as well during the election period xxx of Comelec Resolution No. 9561-A xxx it is expected that they would have assigned their forces therein to protect not only the life and limb of the voters, but also their right to vote. In fact, in his post-election memorandum addressed to the Regional Director dated May 27, 2013, P/SSupt. Tonog, then Provincial Director, mentioned about the strict implementation of "PRO8 LOI 20/2012 "SAFE 2013 WARAY" through the Provincial Special Operations Task Group, Secure and Fair Elections 2013 (PSOTG-SAFE 2013)." Hence, it is incredible that there were as many as five (5) NPA armed partisan at the school premises for the purpose of overseeing that the voters in involved barangays would not be supporting protestant on the day of the elections. Such circumstance was not even reflected in the memorandum of P/SSupt. Tonog.³⁶

[Emphases Supplied]

It is on record that Daza presented several residents of the concerned precincts to illustrate how NDF-EV members terrorized the residents of the said precincts before and during the elections to ensure Daza's defeat to Abayon. The Court, nevertheless, observes that only three (3) witnesses testified that they voted for Abayon out of fear from the NDF-EV. The other witnesses merely described the alleged violence committed by the NFD-EV but did not expound whether the same had ultimately made other voters vote for Abayon.

Neither did the testimonies of P/SSupt. Tonog and Col. Capulong corroborate the fact that the alleged terrorism by the NDF-EV caused voters to vote for Abayon. These testimonies do not prove that voters in the concerned precincts indeed voted for Abayon out of fear of the NDF-EV. For one, Col. Capulong simply stated that the NDF-EV would want to see that politicians and candidates whom they call "enemies of the people" be defeated in the elections. Further, as noted by Justice Peralta, P/SSupt. Tonog's Post-Election Memorandum did not state that NDF-EV armed partisans were present in the course of the elections.

³⁶ *Rollo* (G.R. No. 223032), pp. 95-98.

Daza presented three (3) voters as witnesses to establish that they were coerced by NDF-EV armed partisan to vote for Abayon during the 2013 Elections. Their collective testimonies, however, fail to impress. *First*, their testimonies made no reference to Abayon's alleged participation in the purported terroristic acts committed by the NDF-EV. *Second*, Daza's witnesses alone are insufficient to prove that indeed terrorism occurred in the contested precincts and the same affected at least 50% of the votes cast therein. The testimonies of three (3) voters can hardly represent the majority that indeed their right to vote was stifled by violence. With the allegation of widespread terrorism, it would have been more prudent for Daza to present more voters who were coerced to vote for Abayon as a result of the NDF-EV's purported violence and intimidation.

Indubitably, the numbers mattered considering that both the COMELEC and the PNP issued certifications stating that no failure of elections occurred in Northern Samar and that the elections was generally peaceful and orderly. The unsubstantiated testimonies of Daza's witnesses falter when faced with official pronouncements of government agencies, which are presumed to be issued in the regular performance of their duties.

In *Tan v. COMELEC*,³⁷ the Court found wanting the testimony of a sole witness to substantiate the claim of terrorism which disenfranchised a majority of voters and gave more credence to official statements of government agencies, to wit:

We agree with the finding of the COMELEC *en banc* that the evidence relied upon by petitioners to support their charges of fraud and irregularities in the conduct of elections in the questioned municipalities consisted of affidavits prepared and executed by their own representatives; and that the other pieces of evidence submitted by petitioners were not credible and inadequate to substantiate petitioners' charges of fraud and irregularities in the conduct of elections. Mere affidavits are insufficient, more so, when they were executed by petitioners' poll watchers. The conclusion of respondent COMELEC is correct that although petitioners specifically alleged violence, terrorism, fraud, and other irregularities in the conduct of elections, they failed to substantiate or prove said allegations. **Had there been massive disenfranchisement, petitioners should have presented the affidavits of these disenfranchised voters, instead of only a single affidavit of one allegedly disenfranchised voter.**

We go along with the COMELEC *en banc* in giving more weight to the affidavits and certifications executed by the members of the Board of Election Inspectors and the PNP and military

³⁷ 537 Phil. 510 (2006).

authorities that the elections held were peaceful and orderly, under the presumption that their official duties had been regularly performed.³⁸

[Emphasis Supplied]

The testimonies of a minute portion of the registered voters in the said precincts should not be used as a tool to silence the voice of the majority expressed through their votes during elections. To do so would disenfranchise the will of the majority and reward a candidate not chosen by the people to be their representative. With such dire consequences, it is but expected that annulment of elections be judiciously exercised with utmost caution and resorted only in exceptional circumstances.

It is true that in *Vilando v. HRET*,³⁹ the Court recognized that the power granted to the HRET by the Constitution is full, clear and complete, which excludes the exercise of any authority by the Court that may restrict or curtail, or affect the same.⁴⁰ The Court, nevertheless, clarified in *Tagolino v. HRET*⁴¹ that the HRET's independence is not without limits as the Court retains *certiorari* jurisdiction over it if only to check whether it had gravely abused its discretion.⁴² As such, the Court will not hesitate to set aside the HRET's decision favoring Daza if it was tainted with grave abuse of discretion on its part.

In *Leus v. St. Scholastica's College Westgrove*,⁴³ the Court has ruled that a decision unsupported by sufficient evidence amount to grave abuse of discretion, to wit:

Nevertheless, while a *certiorari* proceeding does not strictly include an inquiry as to the correctness of the evaluation of evidence (that was the basis of the labor tribunals in determining their conclusion), the incorrectness of its evidentiary evaluation should not result in negating the requirement of substantial evidence. Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts. In particular, the CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence. **A decision that is not supported by substantial evidence is definitely a decision tainted with grave abuse of discretion.**

[Emphasis Supplied]

³⁸ Id. 539-540.

³⁹ 671 Phil. 524 (2011).

⁴⁰ Id. at 534.

⁴¹ 706 Phil. 534 (2013).

⁴² Id. at 561.

⁴³ G.R. No. 187226, January 28, 2015, 748 SCRA 378.

As discussed above, the decision of the HRET was clearly unsupported by clear and convincing evidence. Thus, the HRET committed grave abuse of discretion in annulling the elections in the contested precincts and disregarding the respective number of votes received by Abayon and Daza from the precincts, which led to its conclusion that Daza was the one elected by the majority of voters in the First Legislative District of Northern Samar to be their Representative in Congress. Hence, Abayon should be reinstated as the duly elected Representative of the said legislative district.

Moreover, Daza cannot claim that the issue had been mooted by his assumption to office because the same is premised on the fact that the HRET had correctly ruled Daza to be the duly elected representative. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.⁴⁴ In the present case, there is still a justiciable controversy—who between Daza and Abayon was truly chosen by the majority of voters of the First Legislative District of Northern Samar to be their representative.

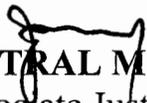
*Propriety of the
dismissal of Abayon's
counter-protest is now
moot*

With the Court's ruling that Abayon is the duly elected Representative of the First Legislative District of Northern Samar, the issue of dismissal of his counter-protest in G.R. No. 222236 is now moot and academic. A declaration on the propriety of the dismissal of Abayon's counter-protest has no practical value because to continue with his counter-protest would be a redundancy considering that the Court has upheld his election as the duly elected Representative of his constituents.

WHEREFORE, the February 3, 2016 Decision and the March 7, 2016 Resolution of the House of Representatives Electoral Tribunal are **REVERSED** and **SET ASIDE**. Petitioner Harlin C. Abayon is **DECLARED** to be the lawfully elected Representative of the First Legislative District of Northern Samar in the May 13, 2013 Elections.

This decision is **IMMEDIATELY EXECUTORY**.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁴⁴ *Deutsche Bank AG v. CA*, 683Phil. 80, 88 (2012).

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

(No Part)

ANTONIO T. CARPIO
Associate Justice

(No Part)

PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice

(No Part)

DIOSDADO M. PERALTA
Associate Justice

(No Part)

LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

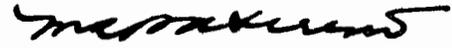

MARVIC M.V. F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

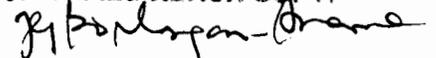
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT