

**P.E.T. Case No. 005 – (FERDINAND “Bongbong” R. MARCOS, JR.,
protestant, v. MARIA LEONOR “Leni Daang Matuwid” G. ROBREDO,
protestee.)**

Promulgated: February 16, 2024

x-----x

SEPARATE OPINION

GAERLAN, J.:

I concur in the result. The electoral protest at bar was properly dismissed for failure to prove substantial recovery in the pilot precincts volunteered by the Ferdinand “Bongbong” Marcos (protestant), in accordance with the clear import of Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules). I write this Separate Opinion in the hope of guiding future adjudications of this tribunal on the matter of the annulment of elections.

I.

Article VII, Section 4 of the Constitution empowers the Supreme Court to act as a tribunal that will resolve *all contests* relating to the positions of President and Vice-President, *viz.:*

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x x

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

It bears repeating that the present Constitution appointed and empowered this Court as the sole judge on matters relating to the election, returns, and qualifications of the two highest officers of the executive department of the Republic of the Philippines. Unlike its previous

Handwritten signature/initials

Handwritten mark

incarnations,¹ the grant of power to the present Presidential Electoral Tribunal flows directly from the text of the fundamental law; it is not a grant of authority from the legislature but a mandate imposed by the sovereign people through the basic law. Consequently, the adjudicative powers of this tribunal with respect to the election, returns, and qualifications of the President and Vice-President are plenary in scope and limited only by the Constitution itself and the rules that this tribunal may promulgate.

Article VII, Section 4 of the Constitution expressly vests two powers in the Supreme Court in its capacity as sole judge of presidential and vice-presidential contests. Corollary to the grant of power to adjudicate electoral contests involving the President and Vice-President, the Supreme Court was also given the authority to promulgate the rules for the exercise of said power. This grant of complimentary rulemaking authority must be read together with the primary grant of rulemaking power to the Supreme Court in Article VIII, Section 5(5) of the Constitution, which reads:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

On the basis of these constitutional postulations, I submit that the plenary power and authority of this tribunal as the **sole judge** of presidential and vice-presidential contests includes the power and authority to rule on causes of action for annulment of elections and to promulgate rules to govern such adjudications.

The remedy of annulment of elections has been recognized in Philippine law since 1918, when the case of *Garchitorena v. Crescini*² (*Garchitorena*) was decided. In sustaining the lower court's annulment of the election for governor of the old province of Ambos Camarines and proclamation of the protestant therein, this Court held:

¹ The Presidential Electoral Tribunal was first created in 1957 through Republic Act No. 1793; and later reorganized by Batas Pambansa Blg. 884 (1985).

² 39 Phil. 258 (1918).

x x x [B]ecause of the frauds mentioned in the decision of Judges Mina and Paredes, the entire vote in the municipalities of Minalabac, Sagnay, Bato, Iriga, and Lagonoy, were annulled. Judges Mina and Paredes, after discussion of the various frauds committed in said municipalities arrived at the same conclusion, to wit: that said frauds and irregularities were such as to absolutely defeat the honest expression of the desires of the voters of said municipalities. Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters of said precinct or municipality. A reading of the evidence adduced during the trial of the cause, in relation with the facts stated in connection there-with, in said municipalities, shows an unmistakable intention and design on the part not only of the election inspectors but of many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipalities. The presumption is that an election is honestly conducted, and the burden of proof to show it otherwise is on the party assailing the return. But when the return is clearly shown to be wilfully and corruptly false, the whole of it becomes worthless as proof. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the whole return must be rejected. It is impossible to make a list of all the frauds which will invalidate an election. Each case must rest upon its own evidence. The rule, however, is so well established that authorities need no longer be cited in its support, that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected, and those who are guilty of such frauds and irregularities should be punished to the very limit of the law.

The record of the frauds and irregularities committed in the said municipalities in which Judges Mina and Paredes annulled the entire vote, not only shows that legal voters were prevented from voting, but in some instances, legal ballots were tampered with and destroyed after they had been cast, to such an extent that no confidence can be placed in the return. The return in no sense discloses the expressed will of the voters. x x x³

Since then, this Court has consistently recognized the existence of annulment of elections as a remedy available to a losing candidate if it be alleged that an election is tainted with irregularities and frauds so numerous and so undeniably characteristic of an intention to defraud and defeat the true expression of the will of the electorate.⁴

In more recent cases, the Court gave greater definition to the remedy. *Macabago v. Commission on Elections*⁵ recognized that election protest, pre-

³ Id. at 260-262. Citations omitted.

⁴ See *Banaga, Jr. v. Commission on Elections*, 391 Phil. 596, 609 (2000); See also *Jardiel v. Commission on Elections*, 209 Phil. 534, 545 (1983); See also Concurring Opinion of Barredo, J. in *Badelles v. Cabili*, 136 Phil. 383, 403-404 (1969); See also *Capalla v. Tabiana*, 63 Phil. 95 (1936) and cases cited therein; See also *Garchitorena v. Crescini*, supra note 2.

⁵ 440 Phil. 683 (2002).

proclamation controversy, annulment of election, and failure of election are distinct and separate remedies.⁶ While failure of election and annulment of election are “denominated similarly” for purposes of statutory treatment under cases within the jurisdiction of the Commission on Elections (COMELEC),⁷ annulment of election actually contemplates a specific scenario where an election is held but “*the preparation and transmission, custody and canvass of the election returns*” or the counting of votes was “*marred fatally*” by force majeure, violence, terrorism, fraud or other analogous causes.⁸ *Tan v. COMELEC*⁹ held that in proceeding for annulment of election, the COMELEC may conduct a technical examination of election documents and compare and analyze voters’ signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean;¹⁰ however, the petition for annulment of election has to be verified and must make out a *prima facie* case for the annulment of the election in question.¹¹ Furthermore, such allegations must be supported by convincing evidence.¹² Finally, in *Abayon v. House of Representatives Electoral Tribunal*,¹³ the Court expounded on the nature of the remedy of annulment of elections, distinguished the same from failure of elections, and laid down guidelines in resolving cases of annulment of elections, *viz.*:

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. 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. 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

⁶ Id. at 692-696.

⁷ *Banaga, Jr. v. Commission on Elections*, supra note 4 at 609.

⁸ Id. at 607; *Soliva v. COMELEC*, 409 Phil. 381, 398-399 (2001).

⁹ 463 Phil. 212 (2003).

¹⁰ Id. at 237.

¹¹ *Dr. Mutilan v. Commission on Elections*, 548 Phil. 699, 710 (2007); *Pasandalan v. Commission on Elections*, 434 Phil. 161, 173 (2002).

¹² Id.

¹³ 785 Phil. 683 (2016).

ascertain who among the candidates received the majority of the valid votes cast.

x x x x

x x x [T]he 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.¹⁴

Furthermore, this Court's discussion in *Abayon* bears out the following guiding principles for determining the propriety of annulling an election:

1. The power to annul elections should be exercised with utmost care.¹⁵
2. Annulment of elections can only be resorted to 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.¹⁶
3. The tribunal cannot annul an election authorized by law if it was so conducted as to give substantially a free and fair expression of the popular will, and the actual result thereof is clearly ascertained.¹⁷
4. When a person elected obtained a considerable plurality of votes over his adversary, and the evidence 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.¹⁸

¹⁴ Id. at 700-704. Citations omitted.

¹⁵ Id. at 704.

¹⁶ Id.

¹⁷ Id. at 705, citing the dissenting opinion of Chief Justice (then Associate Justice) Diosdado M. Peralta in the HRET Decision.

¹⁸ Id.

5. There are two (2) indispensable requisites that must concur in order to justify the drastic action of nullifying the election:
 - a. 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
 - b. It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots.¹⁹
6. The allegation of matters in support of the extreme remedy of annulment of election must be established by clear and convincing evidence.²⁰
7. Such allegations must be supported by concrete proof. Mere abstract or mathematical speculation or postulations are not enough.²¹
8. If violence or terrorism is alleged, there must be actual reports of such incidents submitted to the COMELEC by law enforcement agencies or actually reported by the protestant to the proper authorities.²²

Ultimately, the fundamental guideline tribunals should use in proceedings for annulment of elections is a principle of restraint, as enunciated in the leading case of *Garchitorena*:

x x x Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts, and they should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which does actually and in fact defeat the true expression of the opinion of the voters x x x.²³

II.

While it is true that the 2010 PET Rules do not expressly mention the remedy of annulment of elections, I submit that such mere omission should not operate to bar the availment and adjudication of the remedy given its long existence in jurisprudence and the plenary power of this tribunal in adjudicating presidential and vice-presidential contests. While such omission is best addressed by an exercise of this tribunal's rulemaking power through

¹⁹ Id.

²⁰ Id. at 705.

²¹ Id. at 706.

²² Id.

²³ *Garchitorena v. Crescini*, supra note 2 at 261.

an amendment or revision of the 2010 PET Rules, I nevertheless submit that in the meantime, adjudications pertaining to the remedy of annulment of election be governed by the Rules of Court, decisions of the Supreme Court, and the decisions of this tribunal, in accordance with Rule 73 of the 2010 PET Rules.

Considering that distinct nature of annulment of elections, I submit that Rule 65 of the 2010 PET Rules pertaining to dismissal of *election protests* or *quo warranto petitions* does not apply thereto. As demonstrated above, annulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and quo warranto petitions. To reiterate, an election protest entails the revision, re-tabulation, and appreciation of the ballots; on the contrary, annulment of election entails a detailed investigation into the existence of the alleged fraud, terrorism, violence or other analogous causes which prevented the expression of the will of the electorate; or an expert technical examination of the electoral system. These are separate and distinct methods of investigation which require different rules; and are properly and optimally addressable through an exercise of this tribunal's rule-making power under the Constitution and Rule 74 of the 2010 PET Rules.


SAMUEL H. GAERLAN
Associate Justice