P.E.T. Case No. 005 (*Ferdinand "Bongbong" R. Marcos, Jr., Protestant,* v. *Maria Leonor "Leni Daang Matuwid" G. Robredo, Protestee*).

Promulgated:

February 16, 2021

SEPARATE OPINION

PERALTA, *C.J.*:

I concur in the result. Similar to the observation of Associate Justice Samuel H. Gaerlan, I believe that Rule 65 of A.M. No. 10-4-29-SC, or the *2010 Rules of the Presidential Electoral Tribunal* (*PET Rules*), should not apply to the dismissal of election contests based on annulment of election results.

I

We may seek guidance from the landmark case of *Abayon v. HRET*.[1]

Abayon is noteworthy for confirming the jurisdiction of electoral tribunals to annul election results and for setting the standard to justify an actual annulment of election results. In order to fully appreciate the nuances of such pronouncements, however, a brief rundown of the relevant facts of *Abayon* is necessary.

Abayon had its roots in an election protest filed before the House of Representatives Electoral Tribunal (*HRET*) involving the legislative seat for the First District of Northern Samar.[2] The election protest in *Abayon*, like the one in the case at bench, also included a cause of action for the annulment of election results.[3] The election protest in *Abayon* anchored such cause on allegations of, among others, terrorism in certain identified precincts.[4]

After reception of evidence, the HRET issued a decision favoring the protestant and annulling the election results in five (5) clustered precincts in

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1 785 Phil. 683 (2016).
2 *Id.* at 690.
3 *Id.* at 691.
4 *Id.*

Northern Samar.[5] By reason of the annulment of election results, the votes received by the protestant and protestee in the concerned clustered precincts were deducted from their original votes.[6] This then led to the protestant obtaining a plurality victory over the protestee.

Aggrieved, the protestee elevated by petition for *certiorari* the HRET decision to the Supreme Court. In her petition, protestee primarily questioned the jurisdiction of the HRE T to order any annulment of election results—contending that the same exclusively belonged to the Commission on Elections (*COMELEC*), pursuant to its power to declare failure of elections under the Omnibus Election Code.

The Supreme Court ruled against the protestee on the issue of jurisdiction of the HRET. According to the Court, the HRET has jurisdiction to order the annulment of election results as the same is but a mere concomitant of its constitutional mandate to decide election contests involving members of the House of Representatives, thus:

> 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. It aims to determine who between them has actually obtained the majority of the legal votes cast and, therefore, entitled to hold the office.
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> x x x 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.
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> **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.**
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> **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, tbe 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.**[7]

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5 *Id.* at 693

6 *Id.*

7 *Id.* at 700. (Emphasis supplied, citations omitted)

The Court also held that the jurisdiction of the HRET to annul election results is different and distinguishable from the COMELEC's power to declare failure of elections.[8] Hence:

> 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.[9]

Be that as it may, the Supreme Court ultimately set aside the decision of the HRET. The Court found that the evidence presented by the protestant were actually insufficient to satisfy an annulment of the election results in the five (5) clustered precincts in Northern Samar. In this regard, the Court laid down the *Abayon standard*—two (2) indispensable requisites that must be proven to justify the annulment of election results. These requisites are: *"(1) that the illegality of the ballots must affect more than 50 % of the votes cast on the specific precinct or precincts to be annulled, or in case of the entire municipality, more than 50 % of its total precincts and the votes cast therein, and (2) that it is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots."*[10]

Applying the standard, the Court then said of the protestant's evidence:

> It is on record that [protestant] 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 [protestant's] defeat to [protestee]. The Court, nevertheless, observes that only three (3) witnesses testified that they voted for [protestee] 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 [protestee].
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> Neither did the testimonies of P/SSupt. Tonog and Col. Capulong corroborate the fact that the alleged terrorism by the NDF-EV caused

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8 *Id.*

9 *Id.* at 703-704.

10 *Id.* at 705. The *Abayon* standard, as well as the ruling of the Court as to the sufficiency of the protestant's evidence, were directly lifted from the dissenting opinion of the undersigned in HRET Case No. 13-023.

> voters to vote for [protestee]. These testimonies do not prove that voters in the concerned precincts indeed voted for [protestee] 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.
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> [Protestant] presented three (3) voters as witnesses to establish that they were coerced by NDF-EV armed partisan to vote for [protestee] during the 2013 Elections. Their collective testimonies, however, fail to impress. *First*, their testimonies made no reference to [protestee's] alleged participation in the purported terroristic acts committed by the NDF-EV. *Second*, [Protestant'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 [protestant] to present more voters who were coerced to vote for [protestee] as a result of the NDFEV's purported violence and intimidation.
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> 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 [Protestant's] witnesses falter when faced with official pronouncements of government agencies, which are presumed to be issued in the regular performance of their duties.[11]

II

What can be implicitly derived from the case of *Abayon* is that the remedy of annulment of election results is different from the typical election protests that are dependent on the revision and recount of votes. By establishing a unique standard applicable only to cases seeking the annulment of election results, *Abayon* effectively recognized such cases as an election remedy totally separable from ordinary election protests.

The rationale behind such conclusion is immediately discernable from a comparison of the nature of ordinary election protests, on one hand, and of annulment of election results, on the other. As astutely observed by Justice Gaerlan:

> "x x x annulment of elections is a distinct electoral remedy that merits differentiated treatment from electoral protests and *quo warranto* petitions. x x x **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**

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11 *Id.* at 707-708.

> **expression of the will of the electorate; or an expert technical examination of the electoral system.**" [12]

A look at the current PET Rules, however, would clearly reveal that it is not equipped to address the extraordinary demands of election contests seeking the annulment of election results. Hence, I find that Rule 65 of the said Rules cannot be used to justify the dismissal of protestant's plea for the annulment of election results in Lanao del Sur, Maguindanao and Basilan.

Indeed, this case has brought to the fore the need for the Tribunal to formulate new rules specific to the remedy of annulment of election results. Yet, the absence of a specific rule should not dissuade the Tribunal from taking cognizance and giving due course to contests praying for the annulment of election results. Again, I echo Justice Gaerlan's recommendation that, in the interim, the Tribunal may make use of the Rules of Court and the decisions of the Supreme Court and this Tribunal in order to facilitate the resolution and disposition of cases for annulment of election results.[13]

In parting, I wish to say that this Tribunal should be guided by the spirit of liberalism in handling election contests of whatever kind. Election contests, unlike an ordinary action, is imbued with public interest, since it involves not only the adjudication of private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate as to who shall discharge the prerogatives of a particular public office.[14] Hence, dispositions of election contests should, as much as possible, not be made to rest on technical reasons.

IN VIEW WHEREOF, and subject to the foregoing discussions, I join in the result.

DIOSDADO M. PERALTA
Chief Justice

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12 Separate Opinion of Justice Gaerlan, page 7. (Emphasis supplied)
13 *Id.* at 6-7.
14 *Violago, Sr. v. Commission on Elections, et al.*, 674 Phil. 305, 314 (2011).