G.R. No. 217012: *Wigberto "Toby" R. Tañada, Jr. vs. House of Representatives Electoral Tribunal, Angelina "Helen"D. Tan, and Alvin John S. Tañada.*

Promulgated:
March 1, 2016

CONCURRING OPINION

PEREZ, *J.*

I register my vote with the majority for the dismissal of the instant petition. The House of Representatives Electoral Tribunal (HRET) did not commit grave abuse of discretion in disclaiming jurisdiction over the protest filed by herein petitioner Wigberto "Toby" R. Tañada, Jr. (Wigberto).

A perusal of the protest petitioner filed before the tribunal reveals that his claim of entitlement to office as Quezon province's Representative for its Third Legislative District is anchored on the postulation that the 7,038 votes cast for his political rival, private respondent John Alvin S. Tañada (John Alvin), an alleged nuisance candidate, should instead be credited in his favor.[1] These votes combined with the 80,698 already credited to petitioner exceeds private respondent Angelina Tan's tally of votes that totaled 84,782.

It is patent from petitioner's line of argument that the declaration of Alvin John as a nuisance candidate is a precondition before the relief he seeks can be granted. Unfortunately, the HRET lacks the authority to rule on whether or not Alvin John is indeed a nuisance candidate as Wigberto pegged him to be.

Under the 2015 Revised Rules of the HRET (HRET Rules), the electoral tribunal only has jurisdiction over two types of election contests: election protests and *quo warranto* cases.[2] An election protest is the proper remedy against acts or omissions constituting electoral frauds or anomalies in contested polling precincts, and for the revision of ballots.[3] On the other hand, the eligibility of the Member of the Lower House is impugned in a *quo warranto* case.[4] Evidently, the HRET Rules do not prescribe procedural guidelines on how the Certificate of Candidacy of a political aspirant can be cancelled on the ground that he or she is a nuisance candidate. Rather, this remedial vehicle is instituted in the Commission on Elections (COMELEC)

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1 Sec. 5, Rule 24 of the COMELEC Rules of Procedure
Section 5. Applicability of Rule 23. – x x x

If the person declared as a nuisance candidate and whose certificate of candidacy has been cancelled or denied due course does not have the same name and/or surname as a bona fide candidate for the same office, the votes cast for such nuisance candidate shall be deemed stray pursuant to Section 9 of Rule 23.

2 Rules 15-18 of the 2015 Revised Rules of the HRET.

3 Rule 17 of the 2015 Revised Rules of the HRET.

4 Rule 18 of the 2015 Revised Rules of the HRET.

Rules of Procedure, particularly Rule 24[5] thereof, by virtue of Sec. 69 of *Batas Pambansa Blg.* 881, otherwise known as the Omnibus Election Code.[6]

It is worth recalling in the case at bar that the COMELEC, in the exercise of its jurisdiction, has resolved that Alvin John is **not** a nuisance candidate, although he committed false material representations in his certificate of candidacy.[7] It was error, however, for petitioner to assume that the HRET may thereafter reverse the COMELEC's findings. The tribunal is not vested with appellate jurisdiction over the rulings of the COMELEC En Banc. As the Court held in *Codilla Sr. vs. Hon. De Venecia*,[8] the HRET cannot assume jurisdiction over a cancellation case involving Members of Lower House that had already been decided by the COMELEC and is under review by the Supreme Court.[9] I see no bar against applying the same restriction by analogy to proceedings against nuisance candidates wherein a final judgment has already been rendered by the polling commission, even more so in this case where Alvin John can never be deemed a "Member" of Congress over whom the HRET can exercise jurisdiction.

In *Reyes v. COMELEC*,[10] the Court made clear that the jurisdiction of the HRET, as circumscribed under Article VI, Section 17 of the Constitution,[11] is limited to the election, returns, and qualification of the **Members** of the House of Representatives. And to be considered a Member of the Lower House, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office. This remains to be the standing test of membership in Congress being applied by the Court.

To set the record straight, the dismissal of the petitions in G.R. Nos. 207199-200 on October 22, 2013 was never intended to modify, much less overturn, the doctrine laid down in *Reyes*. Noteworthy is that the dismissal

5 Entitled "*Proceedings Against Nuisance Candidates*"

6 **Section 69.** *Nuisance candidates.* - The Commission may motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

7 April 25, 2013 Resolution of the COMELEC En Banc in SPA 13-056 and SPA 13-057.

8 G.R. No. 150605, December 10, 2002.

9 Concurring Opinion of former Associate Justice Roberto A. Abad in *Reyes vs. COMELEC*, G.R. No. 207164, October 22, 2013.

10 G.R. No. 207164, June 25, 2013.

11 SECTION 17. 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.

was effected through a minute resolution, in contrast to the Decision in Reyes, which was the result of a deeper scrutiny of the issue regarding the HRET's jurisdiction. Moreover, the statement in our ruling in G.R. Nos. 207199-200 that proclamation alone vests the HRET with jurisdiction over election, returns, and qualification of the winning candidate is mere *obiter dictum*, for as the Court observed, all of the three requisites for private respondent Tan's membership in the Congress were present.[12] To dispel any lingering doubt, the Court has ruled in the recent case of *Timuay vs. COMELEC*[13] that "*once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of representatives, the jurisdiction of the [COMELEC] over election contests relating to his/her election, returns, and qualification ends, and the HRET's own jurisdiction begins*," in consonance with our ruling in *Reyes*.

Applying *Reyes*, it becomes indisputable that Alvin John cannot be considered a "Member" of Congress. Having garnered the least number of votes in a landslide defeat, he could have never been recognized as the winning candidate. Consequently, he could not have validly taken an oath of office, nor could he have discharged the functions pertaining to a district representative. As a non-member of Congress, the HRET could not therefore assume jurisdiction over the issues concerning his eligibility, *e.g.* the issue on whether or not he is a nuisance candidate.

In view of the foregoing considerations, I concur in the **DISMISSAL** the instant petition.

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12 Tan was validly proclaimed on May 16, 2013, she has already taken her oath, and she has assumed office by midday of June 30, 2013.

13 G.R. No. 207144, February 3, 2015.