



**Republic of the Philippines
Supreme Court
Manila**

EN BANC

LIWAYWAY VINZONS-CHATO, **G.R. No. 199149**
Petitioner,

-versus-

**HOUSE OF REPRESENTATIVES
ELECTORAL TRIBUNAL and
ELMER E. PANOTES,**
Respondents.

X-----X
ELMER E. PANOTES,
Petitioner,

G.R. No. 201350

Present:

-versus-

**HOUSE OF REPRESENTATIVES
ELECTORAL TRIBUNAL and
LIWAYWAY VINZONS-CHATO,**
Respondents.

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

Promulgated:

JANUARY 22, 2013

X-----X

* No part.
** On leave.

DECISION

PERLAS -BERNABE, J.:

Before us are consolidated cases involving the use of the picture images of ballots as the equivalent of the original paper ballots for purposes of determining the true will of the electorate in the Second Legislative District of Camarines Norte in the May 10, 2010 elections, which was “the maiden run for full automation,”¹ as authorized by Republic Act (R.A.) No. 9369² amending R.A. No. 8436 that called for the adoption of an automated election system in national and local elections.

The Factual Antecedents

Liwayway Vinzons-Chato (Chato) renewed her bid in the May 10, 2010 elections as representative of the Second Legislative District of Camarines Norte, composed of the seven (7) Municipalities of Daet, Vinzons, Basud, Mercedes, Talisay, San Vicente, and San Lorenzo, with a total of 205 clustered precincts. She lost to Elmer E. Panotes (Panotes) who was proclaimed the winner on May 12, 2010 having garnered a total of 51,707 votes as against Chato's 47,822 votes, or a plurality of 3,885 votes,³ summarized in the petition⁴ as follows:

Municipality	No. of votes for Panotes	No. of votes for Chato
Daet	18,085	15,911
Vinzons	8,107	6,713
Basud	7,879	6,527
Mercedes	7,739	9,333
Talisay	5,015	4,190
San Vicente	2,359	2,453
San Lorenzo	2,520	2,695
TOTAL	51,707	47,822

¹ *Roque, Jr. v. Commission on Elections*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 151.

² AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES."

³ *Rollo* (G.R. No. 199149), p. 166. Stipulation of Facts, Preliminary Conference Order dated September 16, 2010.

⁴ *Id.* at 9-10.

On May 24, 2010, Chato filed an electoral protest before the House of Representatives Electoral Tribunal (HRET), which was docketed as HRET Case No. 10-040, assailing the results in all the 160 clustered precincts in four (4) municipalities, namely: Daet, Vinzons, Basud and Mercedes.⁵ No counter-protest was interposed by Panotes.

Pursuant to Rule 37 of the 2011 Rules of the HRET, Chato designated forty (40) pilot clustered precincts, equivalent to 25% of the total number of protested clustered precincts, in which revision of ballots shall be conducted. The initial revision of ballots, conducted on March 21 - 24, 2011, showed a substantial discrepancy between the votes of the parties per physical count *vis-a-vis* their votes per election returns in the following precincts of the Municipalities of Basud and Daet:⁶

Basud

Clustered Precinct No.	Votes for Chato			Votes for Panotes		
	Per Election Returns	Per Physical Count	Gain or -Loss	Per Election Returns	Per Physical Count	Gain or -Loss
6	166	183	17	268	164	-104
7	119	134	15	206	85	-121
8	70	81	11	239	133	-106
15	87	105	18	193	100	-93
19	148	191	43	239	138	-101
25	233	261	28	399	251	-148
27	263	287	24	366	214	-152

Daet

Clustered Precinct No.	Votes for Chato			Votes for Panotes		
	Per Election Returns	Per Physical Count	Gain or -Loss	Per Election Returns	Per Physical Count	Gain or -Loss
2	269	295	26	354	157	-197
7	243	275	32	363	2	-361
17	183	202	19	269	36	-233
23	281	318	37	440	334	-106
24	223	261	38	341	227	-114
25	202	229	27	391	343	-48
31	258	284	26	407	305	-102
32	243	267	24	521	511	-10
40	259	293	34	373	96	-277
41	226	260	34	348	54	-294

⁵ Id. at 10.
⁶ Id. at 64-65. See Resolution No. 11-321.

44	294	313	19	404	357	-47
56	287	309	22	399	320	-79
60	153	182	29	252	77	-175

On March 24, 2011, Panotes lost no time in moving⁷ for the suspension of the proceedings in the case, and praying that a preliminary hearing be set in order to determine first the integrity of the ballots and the ballot boxes used in the elections. He further urged that, should it be shown during such hearing that the ballots and ballot boxes were not preserved, the HRET should direct the printing of the picture images of the ballots of the questioned precincts stored in the data storage device for said precincts.

The motion was prompted by certain irregularities⁸ in the condition of the ballot boxes subject of the revision, which Panotes described as follows:

Outer condition:

- a. The top cover of the ballot box is loose and can be lifted, so the election documents – e.g. ballots, minutes of voting, election returns – can be taken out.
- b. In some ballot boxes, when the key was inserted into the padlock, the upper portion of the lock disconnected from its body, which means that the lock had been previously tampered with.
- c. In the municipalities where Petitioner (Panotes) was able to seal the ballot boxes with packing tape, this tape seal was broken/cut/sliced, which means that the ballot boxes had been opened prior to the initial revision.
- d. Some of the self-locking security seal was not properly attached.

Inner condition:

- a. The contents of the ballot box – e.g. ballots and the documents – were in total disarray, which means that it was tampered with.
- b. Some of the Minutes of Voting and Election Returns were MISSING and only the ballots were found inside the ballot box.
- c. The ballots were unnecessarily folded and/or crumpled in the clustered precincts where the votes of (Panotes) were substantially reduced.

⁷ *Rollo* (G.R. No. 201350), pp. 116-119.
⁸ Id. at 14-15. Petition.

Consequently, in its Resolution⁹ No. 11-208, the HRET directed the copying of the picture image files of ballots relative to the protest, which was scheduled to commence on April 25, 2011 and everyday thereafter until completion.¹⁰ Chato, however, moved¹¹ for the cancellation of the decryption and copying of ballot images arguing *inter alia* that there was no legal basis therefor and that the HRET had not issued any guidelines governing the exercise thereof.

Notwithstanding, the decryption and copying proceeded as scheduled.

Chato then filed an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images in the Instant Case¹² reiterating the lack of legal basis for the decryption and copying of ballot images inasmuch as no preliminary hearing had been conducted showing that the integrity of the ballots and ballot boxes was not preserved. She cited Section 10(d) of the HRET Guidelines on the Revision of Ballots, which reads:

(d) When it has been shown, in a preliminary hearing set by the parties or by the Tribunal, that the integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved, as when there is proof of tampering or substitutions, the Tribunal shall direct the printing of the picture images of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal shall provide a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or image stored is genuine and not a substitute. It is only upon such determination that the printed picture image can be used for the revision, (*as amended per Resolution of February 10, 2011*).

Moreover, Chato alleged that the ballot images were taken from polluted Compact Flash (CF) cards. Atty. Anne A. Romero-Cortez (Atty. Cortez), the Camarines Norte Provincial Elections Supervisor, was said to have admitted during canvassing proceedings that the CF cards for the Municipalities of Labo, Vinzons and Basud were defective and had to be replaced. The pertinent portion of the Transcript of Stenographic Notes (TSN) taken during the canvassing proceedings for President and Vice-President held on June 2, 2010 is reproduced hereunder:

REP. VINZONS-CHATO:

Yes, I requested the presence of the other two members because the information that I gathered would be that there was a time log of about six hours where you would stop the canvassing, and the information that

⁹ Id. at 128-130.

¹⁰ Id. at 131-132.

¹¹ Id. at 133-138.

¹² *Rollo* (G.R. No. 199149), pp. 53-63.

we got from our lawyers there was that there were certain cards that had no memory and had to be reconfigured from some precincts, and that, in the meantime, you stopped the canvassing and resumed after six hours.

ATTY. ROMERO-CORTEZ: This is what happened. Because of the municipalities of Labo, Vinzons, and Basud, there were CF cards that had to be replaced because they were defective.

REP. VINZONS-CHATO: But, that was after the voting had closed, right? The voting had closed and those cards were defective and you had to replace them.

ATTY. ROMERO-CORTEZ: To my recollection, Your Honor, that was during May 10.¹³

Panotes, on the other hand, stressed in his Opposition¹⁴ to the foregoing motion that the decryption and copying of the ballot images was at the behest of the HRET itself, acting through Atty. Marie Grace T. Javier-Ibay, who formally requested on February 10, 2011 the copying of the picture image files of ballots and election returns in 13 election protests pending before it. Should he then decide to use the decrypted and copied ballot images, there is nothing in the HRET rules that prohibit the same.

With respect to the allegation that certain defective CF cards were replaced, Panotes argued¹⁵ that it was during the election day, May 10, 2010, that the CF cards were found to be not working so they had to be re-configured. Consequently, the voting in some precincts in the Municipalities of Labo, Vinzons and Basud started late, but the voting period was extended accordingly. For this reason, the canvassing before the Provincial Board of Canvassers was halted in order to wait for the transmission of the results from the Municipal Board of Canvassers, which could not be done until each and every clustered precinct was duly accounted for.

The case was subsequently set for preliminary hearing on May 27, 2011 in order to determine the integrity of the CF cards used in the questioned elections.¹⁶ In said hearing, Chato presented the following witnesses: (1) Oscar Villafuerte, Vice-Chairman of the Provincial Board of Canvassers of Camarines Norte; (2) Reynaldo Mago, a media practitioner;

¹³ Id. at 273. As quoted in Resolution No. 11-281.

¹⁴ *Rollo* (G.R. No. 201350), pp. 151-153.

¹⁵ Id. at 158.

¹⁶ Id. at 173-175.

and (3) Angel Abria, an Information Technology (IT) expert.¹⁷

On June 8, 2011, the HRET issued the assailed Resolution¹⁸ No. 11-321 denying Chato's Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images in the Instant Case on the ground that she failed to show proof that the CF cards used in the twenty (20) precincts in the Municipalities of Basud and Daet with substantial variances were not preserved or were violated. The Tribunal stressed that, since Atty. Cortez was not presented in court to clarify the matter of the alleged replacement of CF cards, it remained unclear whether the replacement was done before or after the elections, and which precincts were involved. Moreover, the testimonies of the witnesses that were actually presented were found to be irrelevant and immaterial.

Significantly, the HRET declared that, although the actual ballots used in the May 10, 2010 elections are the best evidence of the will of the voters, the picture images of the ballots are regarded as the equivalent of the original, citing Rule 4 of the Rules on Electronic Evidence, which reads:

Sec. 1. *Original of an electronic document.* – An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

Sec. 2. *Copies as equivalent of the originals.* – When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

- (a) a genuine question is raised as to the authenticity of the original; or
- (b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original.

Aggrieved, Chato filed a Motion for Reconsideration¹⁹, which was denied in the Resolution²⁰ No. 11-487 dated September 15, 2011. The HRET categorically held that:

x x x (T)he votes determined after the revision in the **20 precincts in Basud and Daet, which yielded reversal of votes**, cannot be relied upon, as they do not reflect the true will of the electorate. Hence, the Tribunal has to rely on what is reflected in the election returns and/or statement of votes

¹⁷ *Rollo* (G.R. No. 199149), p. 67. See Resolution No. 11-321.

¹⁸ Id. at 64-69.

¹⁹ Id. at 70-89.

²⁰ Id. at 91-104.

by precinct the same being the best evidence of the results of the election in said precincts in lieu of the altered ballots.

The Issues

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In this petition for *certiorari* and prohibition with prayer for a temporary restraining order and/or writ of prohibitory injunction, Chato claims that the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Resolution No. 11-321 dated June 8, 2011 and Resolution No. 11-487 dated September 15, 2011. Her petition is anchored on the following grounds:

I.

THE HON. PUBLIC RESPONDENT HRET IN RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) REGARDED THE PICTURE IMAGES OF THE BALLOTS AS THE EQUIVALENT OF THE ORIGINAL, AND USED THE PICTURE IMAGES OF THE BALLOTS IN ITS SUBSEQUENT RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – DESPITE THE FACT THAT UNDER REPUBLIC ACT NO. 9369 THE PICTURE IMAGES OF THE BALLOTS ARE NOT THE “OFFICIAL BALLOTS” SINCE THE AUTOMATED ELECTION SYSTEM (AES) USED DURING THE MAY 2010 ELECTIONS WAS PAPER BASED.

II.

THE HON. PUBLIC RESPONDENT HRET IN RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) REGARDED THE PICTURE IMAGES OF THE BALLOTS AS THE EQUIVALENT OF THE ORIGINAL, AND USED THE PICTURE IMAGES OF THE BALLOTS IN ITS SUBSEQUENT RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – EVEN IF THE PICTURE IMAGES OF THE BALLOTS CANNOT BE REGARDED AS THE EQUIVALENT OF THE ORIGINAL PAPER BALLOTS UNDER THE RULES ON ELECTRONIC EVIDENCE. IN THE FIRST PLACE, THE RULES ON ELECTRONIC EVIDENCE DO NOT EVEN APPLY TO THE PICTURE IMAGES OF THE BALLOTS.

III.

THE HON. PUBLIC RESPONDENT HRET IN RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) REGARDED THE PICTURE IMAGES OF THE BALLOTS AS THE EQUIVALENT OF THE ORIGINAL, AND USED THE PICTURE IMAGES OF THE BALLOTS IN ITS SUBSEQUENT RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – EVEN IF UNDER THE ELECTRONIC COMMERCE ACT OF 2000, THE PICTURE IMAGES OF THE PAPER BALLOTS ARE NOT THE EQUIVALENT OF THE ORIGINAL PAPER BALLOTS.

IV.

THE HON. PUBLIC RESPONDENT HRET IN RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) REGARDED THE PICTURE IMAGES OF THE BALLOTS AS THE EQUIVALENT OF THE ORIGINAL, AND USED THE PICTURE IMAGES OF THE BALLOTS IN ITS SUBSEQUENT RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – EVEN IF PETITIONER HAS SHOWN BY SUBSTANTIAL EVIDENCE THAT THE CF CARDS USED IN THE MAY 2010 ELECTIONS WERE NOT PRESERVED OR WERE VIOLATED.

V.

THE HON. PUBLIC RESPONDENT HRET IN RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) REGARDED THE PICTURE IMAGES OF THE BALLOTS AS THE EQUIVALENT OF THE ORIGINAL, AND USED THE PICTURE IMAGES OF THE BALLOTS IN ITS SUBSEQUENT RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – EVEN IF THERE IS NO LEGAL BASIS FOR THE HONORABLE TRIBUNAL TO CONSIDER THE PICTURE IMAGE OF THE BALLOTS AS EVIDENCE, SINCE SUCH PICTURE IMAGES ARE NOT EVEN RECOGNIZED AND THEIR APPRECIATION ARE NOT PROVIDED FOR, UNDER THE OMNIBUS ELECTION CODE.

VI.

THE HON. PUBLIC RESPONDENT HRET ISSUED RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) DESPITE THE PENDENCY OF THE COMELEC INVESTIGATION ON THE MAIN CF CARD FOR CLUSTERED PRECINCT 44 OF THE MUNICIPALITY OF DAET.

VII.

THE HON. PUBLIC RESPONDENT HRET ISSUED RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) BASED ON VILLAFUERTE VS. JACOB (15 HRET REPORT 754), WHICH IS ONLY AN HRET CASE WHICH HAS NO PRECEDENTIAL VALUE.

VIII.

THE HON. PUBLIC RESPONDENT HRET ISSUED RESOLUTION NO. 11-321 (DATED 08 JUNE 2011) AND RESOLUTION NO. 11-487 (DATED 15 SEPTEMBER 2011) – IN CONTRAVENTION OF CASE LAW THAT THERE SHOULD BE A FULL BLOWN TRIAL CONCERNING THE INTEGRITY OF THE BALLOTS.²¹

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After the initial revision of the pilot protested clustered precincts,

²¹

Id. at 20-21.

Chato moved,²² as early as March 24, 2011, for the revision of ballots in all of the protested clustered precincts arguing that the results of the revision of twenty-five percent (25%) of said precincts indicate a reasonable recovery of votes in her favor. On May 12, 2011, she filed a second motion²³ reiterating her prayer for the continuance of the revision. The HRET denied the motion “until the Tribunal shall have determined the merit or legitimacy of the protest, relative to the revised forty (40) pilot protested clustered precincts.”²⁴ For the same reason, the HRET denied two (2) other similar motions²⁵ filed by Chato.

However, on March 22, 2012, the HRET issued the assailed Resolution²⁶ No. 12-079 directing the continuation of the revision of ballots in the remaining seventy-five percent (75%) protested clustered precincts, or a total of 120 precincts. Expectedly, Panotes moved²⁷ for reconsideration of Resolution No. 12-079, which was denied in the Order²⁸ dated April 10, 2012 for lack of merit. The HRET further warned that any attempt on the part of the revisors to delay the revision proceedings or to destroy the integrity of the ballots and other election documents involved, including but not limited to, marking or tearing of ballots shall be sufficient ground(s) for immediate disqualification.

Panotes is now before Us *via* the instant petition for certiorari and prohibition alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the HRET in issuing Resolution No. 12-079 and Order dated April 10, 2012 considering that –

1.THE HONORABLE TRIBUNAL ALREADY CATEGORICALLY RULED IN ITS OWN RESOLUTION NO. 11-487 THAT THE VOTES DETERMINED IN THE REVISION CANNOT BE RELIED UPON SINCE THEY ARE THE PRODUCT OF ALTERED BALLOTS;

2.THE ISSUES RESOLVED IN RESOLUTION NO. 11-487 DATED SEPTEMBER 8, 2011 AND THOSE IN RESOLUTION NO. 12-079 DATED MARCH 22, 2012 ARE INTERRELATED;

3.PURSUANT TO THE RULING OF THIS MOST HONORABLE COURT IN THE CASE OF VARIAS VS. COMELEC (G.R. NO. 189078 FEBRUARY 11, 2010), THE RESULTS OF THE REVISION OF QUESTIONABLE BALLOTS CANNOT PREVAIL OVER ELECTION

²² *Rollo* (G.R. No. 201350), pp. 124-127. Urgent Motion to Continue Revision to Include All Ballots in Protested Precincts.

²³ *Id.* at 161-164. Motion to Reiterate the Continuation of Revision (and to Schedule the Continuation of Revision on 24 May 2011 or at the Soonest Possible Date).

²⁴ *Id.* at 171-172. Order dated May 16, 2011.

²⁵ *Id.* at 178-184. Motion for Continuation of Revision Proceedings dated June 1, 2011; *id.* at 340-346. Motion for Revision (of Protested Ballots Not Covered by the Pilot Precincts) dated December 13, 2011.

²⁶ *Id.* at 70-73.

²⁷ *Id.* at 74-91. Motion for Reconsideration of Resolution No. 12-079; *id.* at 92-97. Supplemental Motion for Reconsideration of Resolution No. 12-079.

²⁸ *Id.* at 98-103.

RETURNS;

4.THE PICTURE IMAGE OF THE BALLOTS MAY BE USED AS PROOF OF THE INTEGRITY OF THE PAPER BALLOTS;

5.RESOLUTION NO. 12-079 HAS NO LEGAL AND FACTUAL BASES TO STAND ON BECAUSE PRIVATE RESPONDENT FAILED TO ESTABLISH THE MERIT OR LEGITIMARY [*sic*] OF HER PROTEST CONSIDERING THAT SHE FAILED TO MAKE A REASONABLE RECOVERY OR MUCH LESS, ANY RECOVERY AT ALL;

6.RESOLUTION NO. 12-079 IS CONTRADICTORY TO THE FINDINGS OF THE PUBLIC RESPONDENT HRET IN ITS RESOLUTION NO. 11-487;

7.THE PENDENCY OF THE PETITION FOR CERTIORARI FILED BY PRIVATE RESPONDENT BEFORE THE SUPREME COURT IS A PRELIMINARY MATTER THAT MUST BE RESOLVED FIRST BEFORE THE HONORABLE TRIBUNAL MAY ORDER THE REVISION OF THE REMAINING 75% OF THE PROTESTED PRECINCTS;

8.THE RELIABILITY OF THE COMPACT FLASH CARDS HAS NOT BEEN SHOWN TO BE QUESTIONABLE;

9.THE RESULT OF THE RECOUNT CANNOT BE USED TO OVERTURN THE RESULTS AS REFLECTED IN THE ELECTION RETURNS BECAUSE THE BALLOTS IN EP CASE NO. 10-040 HAVE BEEN TAMPERED.²⁹

The Ruling of the Court

“It is hornbook principle that our jurisdiction to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal;” otherwise, we shall not interfere with the electoral tribunal’s exercise of its discretion or jurisdiction. “Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, or the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.”³⁰

The acts complained of in these cases pertain to the HRET’s exercise of its discretion, an exercise which we find to be well within the bounds of its authority and, therefore, beyond our power to restrict or curtail.

²⁹ Id. at 28-30.

³⁰ *Dueñas, Jr. v. HRET*, G.R. No. 191550, May 4, 2010, 620 SCRA 78, 80.

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Chato assails in this petition the following issuances of the HRET: (1) **Resolution No. 11-321** dated June 8, 2011 denying her Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images in the Instant Case; and (2) **Resolution No. 11-487** dated September 15, 2011 denying her Motion for Reconsideration of Resolution No. 11-321.

The crucial issue posed by Chato is whether or not the picture images of the ballots may be considered as the “official ballots” or the equivalent of the original paper ballots which the voters filled out. She maintains that, since the automated election system (AES) used during the May 10, 2010 elections was paper-based,³¹ the “official ballot” is only the paper ballot that was printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* pursuant to Section 15 of R.A. No. 8436, as amended by R.A. No. 9369, which reads in part as follows:

Sec.15. *Official Ballot.* – x x x

x x x x

With respect to a paper-based election system, the official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contact the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizen's arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.

x x x x

Section 2 (3) of R.A. No. 9369 defines “official ballot” **where AES is utilized** as the “paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form.”

An automated election system, or AES, is a system using appropriate technology which has been demonstrated in the voting, counting, consolidating, canvassing, and transmission of election result, and other electoral process.³² There are two types of AES identified under R.A. No. 9369: (1) paper-based election system; and (2) direct recording electronic election system. A *paper-based election system*, such as the one adopted during the May 10, 2010 elections, is the type of AES that “use paper

³¹ Citing *Roque, Jr. v. COMELEC*, supra note 1, at 139, which categorically pointed out that the PCOS is a paper-based technology.

³² R.A. No. 9369, Sec. 2 (1).

ballots, records and counts votes, tabulates, consolidates/canvasses and transmits electronically the results of the vote count.”³³ On the other hand, *direct recording electronic election system* “uses electronic ballots, records, votes by means of a ballot display provided with mechanical or electro-optical component that can be activated by the voter, processes data by means of computer programs, record voting data and ballot images, and transmits voting results electronically.”³⁴

As earlier stated, the May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously,³⁵ meaning, in just one pass.³⁶ As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.³⁷

We agree, therefore, with both the HRET and Panotes that the picture images of the ballots, as scanned and recorded by the PCOS, are likewise “official ballots” that faithfully captures in electronic form the votes cast by the voter, as defined by Section 2 (3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.

It bears stressing that the digital images of the ballots captured by the PCOS machine are stored in an **encrypted format** in the CF cards.³⁸ “**Encryption** is the process of encoding messages (or information) in such a way that eavesdroppers or hackers cannot read it, but that authorized parties can. In an encryption scheme, the message or information (referred to as plaintext) is encrypted using an encryption algorithm, turning it into an unreadable ciphertext. This is usually done with the use of an encryption key, which specifies how the message is to be encoded. Any adversary that can see the ciphertext, should not be able to determine anything about the original message. An authorized party, however, is able to decode the ciphertext using a **decryption** algorithm, that usually requires a secret decryption key, that adversaries do not have access to.”³⁹

³³ R.A. No. 9369, Sec. 2 (7).

³⁴ R.A. No. 9369, Sec. 2 (8).

³⁵ Automation Scenario, May 10, 2010 National and Local Elections, <[www.comelec.gov.ph/...Elections/ .../2010_au...](http://www.comelec.gov.ph/...Elections/.../2010_au...)> visited January 16, 2013.

³⁶ *Roque, Jr. v. COMELEC*, supra note 1, at 133.

³⁷ Id. at 130-131.

³⁸ *Rollo* (G.R. No. 199149), p. 143. Comment to the Petition.

³⁹ *Wikipedia, The Free Encyclopedia*, <<http://en.wikipedia.org/wiki/Encryption>> visited January 11, 2013.

Despite this security feature, however, the possibility of tampering or substitution of the CF cards did not escape the HRET, which provided in its Guidelines on the Revision of Ballots that:

Sec. 11. *Printing of the picture images of the ballots in lieu of photocopying.* – Unless it has been shown, in a preliminary hearing set by the parties or motu proprio, that the integrity of any of the Compact Flash (CF) Cards used in the May 10, 2010 elections was not preserved or the same was violated, as when there is proof of tampering or substitution, the Tribunal, in lieu of photocopying of ballots upon any motion of any of the parties, shall direct the printing of the picture image of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal shall provide a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or image stored is genuine and not a substitute.

Accordingly, the HRET set the instant case for preliminary hearing on May 27, 2011, and directed Chato, the protestant, to present testimonial and/or documentary evidence to show proof that the integrity of the CF cards used in the May 10, 2010 elections was not preserved or was violated.⁴⁰

However, in the assailed Resolution No. 11-321, the HRET found Chato's evidence insufficient. The testimonies of the witnesses she presented were declared irrelevant and immaterial as they did not refer to the CF cards used in the 20 precincts in the Municipalities of Basud and Daet with substantial variances. Pertinent portions of the transcripts of stenographic notes during the May 27, 2011 preliminary hearing are quoted hereunder:⁴¹

REYNANTE B. MAGO:

Q: Do you have any knowledge regarding the municipalities of Basud and Daet?

A: Wala po kasi hindi naman yung ang aking bet [*sic*, should have been “beat”, a journalistic jargon for the reporter's official place of assignment]

Q: Wala kang nalalaman regarding the municipalities of Basud and Daet?

A: Wala po.

Q: Are you sure?

A: Sure na sure po kasi hindi ko naman po yun bet [*sic*] noong mga panahon na yun. Wala po akong direct na knowledge o participation regarding that during the time of election period.

⁴⁰ Rollo (G.R. No. 201350), pp. 173-175. Resolution No. 11-281.

⁴¹ Rollo (G.R. No. 199149), pp. 128-130. Comment to the Petition.

PROVINCIAL PROSECUTOR OSCAR J. VILAFUERTE:

Q: Before proceeding with your testimony, I would ask if you have any knowledge about the election regarding the municipalities of Basud and Daet?

A: Well, as the Vice-Chairman of the Provincial Board of Canvassers, Your Honor, in the last May 10, 2010 elections, yes.

Q: Regarding the last CF cards?

A: No. We are just limited to the reception of the election results.

Q: So, with regard to the CF cards in the municipalities of Basud and Daet, you do not have any knowledge at all?

A: Personally, no, because it does not affect us, Your Honor.

MR. ANGEL S. AVERIA, JR.:

Q: Will you be testifying regarding CF cards involving the municipalities of Daet and Basud?

A: Not specific to those municipalities.

Q: Sa Daet, wala?

A: Wala.

Q: Sa Basud, wala?

A: Wala ho. The reports I wrote for CENPEG is on a national scale.

To substitute our own judgment to the findings of the HRET will doubtless constitute an intrusion into its domain and a curtailment of its power to act of its own accord on its evaluation of the evidentiary weight⁴² of testimonies presented before it. Thus, for failure of Chato to discharge her burden of proving that the integrity of the questioned CF cards had not been preserved, no further protestations to the use of the picture images of the ballots as stored in the CF cards should be entertained.

Moreover, after having participated and presented her evidence at the May 27, 2011 preliminary hearing, Chato cannot now be heard to complain that the proceedings therein did not amount to a full blown trial on the merits required in the case of *Tolentino v. COMELEC*⁴³ for weighing the integrity of ballots.

⁴² *Dueñas, Jr. v. HRET*, G.R. No. 185401, July 21, 2009, 593 SCRA 316, 339.

⁴³ G.R. Nos. 187958, 187961, and 187962, April 7, 2010, 617 SCRA 575.

Her allegation with respect to the pendency of the COMELEC investigation on the main CF card for Clustered Precinct 44 of the Municipality of Daet, which was previously ordered by the HRET itself when the election officer submitted only the back-up CF card that did not, however, contain picture images of the ballots,⁴⁴ could not in the least bit affect the resolution of this case. As correctly pointed out by the HRET, the same concerns only one (1) precinct out of the 20 precincts with substantial variances.⁴⁵ At any rate, the following explanation⁴⁶ proffered by the HRET should put the issue to rest, *viz*:

x x x [O]n November 2, 2011, John Rex C. Laudiangco of the COMELEC Law Department, filed *Comelec's Compliance with Manifestation and Motion to Admit the Attached Fact-Finding Investigation Report* explaining the delay in the conduct of the investigation which was duly conducted on October 7, 2011, and submitting therewith a comprehensive Fact-Finding Investigation Report on the said investigation which was docketed in the Law Department as Case No. FF.INV. (LD) 11-46 entitled "*In the Matter of Investigation on What Happened to the Main CF (Compact Flash) card for Clustered Precinct No. 44 for the Municipality of Daet, Camarines Norte.*"

In sum, the investigation revealed that the main CF Card for CP No. 44 of the Municipality of Daet could possibly be located inside the ballot box of the Municipal Board of Canvassers (MBOC) of Daet, Camarines Norte (serial no. CE-07-166991), after having been allegedly submitted in an improvised envelope, by the Board of Election Inspectors (BEI) of said CP 44 to the MBOC. It was, therefore, recommended that said ballot box be opened to retrieve the said CF card.

Accordingly, in her January 6, 2012 letter to public respondent, Atty. Anne A. Romero-Cortez submitted certain documents relative to the opening of the ballot box of the MBOC of Daet, Camarines Norte (serial no. CE-07-166991) so the main CF Card for CP 44 of Daet may be retrieved and its custody turned over to the Election Records and Statistics Department (ERSD), COMELEC.

Likewise, in her January 6, 2012 letter to public respondent, ERSD Director Ester L. Villaflor-Roxas requested that a representative from public respondent be present on the day to witness the verification and backing-up of the contents of the main CF card for CP No. 44 of Daet, Camarines Norte.

Verily, the case of the alleged missing CF Card for Clustered Precinct No. 44 is no mystery at all.

G.R. No. 201350

In the main, Panotes ascribes grave abuse of discretion on the part of

⁴⁴ *Rollo* (G.R. No. 199149), p. 40. Petition.

⁴⁵ *Rollo* (G.R. No. 201350), p. 461. Comment to the Petition.

⁴⁶ *Id.* at 461-463.

the HRET in ordering the continuation of the revision of ballots in the remaining 75% of the protested clustered precincts despite having previously ruled that the votes determined after the revision in the 20 precincts in the Municipalities of Basud and Daet, which yielded reversal of votes, cannot be relied upon, as they do not reflect the true will of the electorate.

The Constitution mandates that the HRET “shall be the sole judge of all contests relating to the election, returns and qualifications” of its members. By employing the word “sole”, the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is intended to be its own – full, complete and unimpaired.⁴⁷ The Tribunal, thus, unequivocally asserted its exclusive control in Rule 7 of the 2011 HRET Rules, as follows:

Rule 7. *Exclusive Control of Functions.* – The Tribunal shall have exclusive control, direction, and supervision of all matters pertaining to its own functions and operation.

There can be no challenge, therefore, to such exclusive control absent any clear showing, as in this case, of arbitrary and improvident use by the Tribunal of its power that constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy therefor.⁴⁸

Contrary to Panotes' posturing, there existed legal and factual bases for the revision of the remaining 75% of the protested clustered precincts. Rule 37 of the 2011 HRET Rules clearly provides that, after post-revision determination of the merit or legitimacy of the protest, the Tribunal may proceed with the revision of the ballots in the remaining contested precincts, thus:

Rule 37. *Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision.* – Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, the Protestant, in case the protest involves more than 50% of the total number of precincts in the district, shall be required to state and designate in writing within a fixed period at most twenty five (25%) percent of the total number of precincts involved in the protest which said party deems as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by him; and the revision of the ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall begin with such pilot precincts designated. Otherwise, the revision of ballots or the examination, verification and re-tabulation of

⁴⁷ Supra note 42, at 336.

⁴⁸ *Vilando v. House of Representatives Electoral Tribunal*, G.R. Nos. 192147 & 192149, August 23, 2011, 656 SCRA 17, 32.

election returns and/or reception of evidence shall begin with all the protested precincts. The revision of ballots or the examination, verification and re-tabulation of election returns in the counter-protested precincts shall not be commenced until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, which reception shall not exceed ten (10) days, the merit or legitimacy of the protest, relative to the pilot protested precincts. Based on the results of such post-revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or proceed with the revision of the ballots or the examination, verification and re-tabulation of election returns in the remaining contested precincts.

Panotes argues that Chato had not made a reasonable recovery in the initial revision of ballots in the 25% pilot protested clustered precincts and, as such, the HRET should have dismissed the protest in accordance with the aforequoted provision instead of ordering further the revision of the remaining 75% of the protested clustered precincts.

It should be pointed out, however, that the provision in question is couched in the permissive term "may" instead of the mandatory word "shall." Therefore, it is merely directory, and the HRET is not without authority to opt to proceed with the revision of ballots in the remaining contested precincts even if there was no reasonable recovery made by the protestant in the initial revision.

In the assailed Resolution⁴⁹ No. 12-079, the HRET justified its action by its need "to re-examine what appears to be a peculiar design to impede the will of the electorate," and that a revision of all the protested clustered precincts will allow it "to see the whole picture of the controversy." Thus said the HRET:

The evidence as presented by the parties involving the twenty-five percent (25%) pilot protested clustered precincts is still insufficient to justify an indubitable conclusion. There are still material issues that should be taken into account. The substantial increase in the number of ballots for protestant and the substantial decrease in the number of ballots for protestee after comparing the election returns with the physical counts of the ballots are *prima facie* findings that should not be trivialized. Also, the reliability of the compact flash cards including its admissibility was raised by the protestant as an area of concern which needs precise and definitive ruling by the Tribunal. A complete disavowal of the constitutional duty will be debased if the Tribunal is not going to see the whole picture of the controversy. After all, the revision proceedings will not unduly toll the precious time of the Tribunal. All of the ballot boxes involved in this protest are already in the custody of the Tribunal and will not require sizeable manpower to revise it.

⁴⁹

Rollo (G.R. No. 201350), pp. 70-73.


At the risk of unduly encroaching on the exclusive prerogative of the HRET as the sole judge of election contests involving its members, we cannot substitute our own judgment for that of the HRET on the issues of whether the evidence presented during the initial revision could affect the officially proclaimed results and whether the continuation of the revision proceedings could lead to a determination of the true will of the electorate.⁵⁰

In any case, as pointed out by the HRET, the revision proceedings for the remaining 75% protested clustered precincts had already been conducted from May 2-9, 2012 thereby rendering the issue moot and academic.

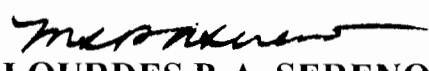
Having, thus, established the futility of Panotes' case, we need not belabor the other issues raised in this petition.

WHEREFORE, the petitions are hereby **DISMISSED** for lack of merit.

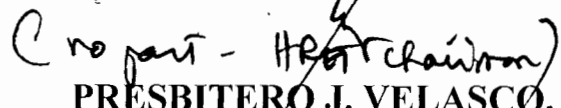
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice

⁵⁰ Supra note 42, at 338.

no part, member of HRT

DIOSDADO M. PERALTA
Associate Justice

I take no part, being a member of HRT

LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo

MARIANO C. DEL CASTILLO
Associate Justice

Roberto A. Abad

ROBERTO A. ABAD
Associate Justice

Martin S. Villarama, Jr.

MARTIN S. VILLARAMA, JR.
Associate Justice

Jose Portugal Perez

JOSE PORTUGAL PEREZ
Associate Justice

Jose Catral Mendoza

JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes

BIENVENIDO L. REYES
Associate Justice

Marvic Mario Victor F. Leonen

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

I 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

MARIA LOURDES P. A. SERENO
Chief Justice