

G.R. No. 203302 - *MAYOR EMMANUEL L. MALIKSI, Petitioner, v. COMMISSION ON ELECTIONS and HOMER T. SAQUILAYAN, Respondents.*

Promulgated:

MARCH 12, 2013



x-----x

DISSENT

BERSAMIN, J.:

I DISSENT.

Petitioner Emmanuel L. Maliksi and respondent Homer T. Saquilayan vied for the position of Mayor of the Municipality of Imus, Cavite during the May 10, 2010 Elections. The Municipal Board of Canvassers (MBC) proclaimed Saquilayan as the winner garnering 48,181 votes, while Maliksi came in second with 39,682 votes. Maliksi filed an election protest in the Regional Trial Court (RTC) in Imus, Cavite, alleging discrepancies and irregularities in the counting of votes in 209 clustered precincts.

Based on the results of the revision, the RTC rendered its November 15, 2011 decision, declaring Maliksi as the duly-elected Mayor, thus:

x x x x

WHEREFORE, in view of all the foregoing, this Court finds the Election Protest filed by Emmanuel L. Maliksi meritorious. Accordingly, Emmanuel L. Maliksi is hereby **DECLARED** as the duly elected Mayor of the Municipality of Imus, Province of Cavite after having obtained the highest number of legal votes of **41,088** as against Protestant Homer T. Saquilayan's **40,423** votes or a winning margin of **665** votes in favor of the former.

Thus, the election and proclamation of Homer T. Saquilayan as Mayor of Imus, Cavite is hereby **ANNULLED** and **SET ASIDE** and he is **COMMANDED** to immediately **CEASE** and **DESIST** from performing the duties and functions of said office.

Finally, pursuant to Section 4, Rule 14 of A.M. 10-4-1-SC, the Clerk of Court is hereby **DIRECTED** to personally deliver the copy of the signed and promulgated decision on the counsels of the parties.

SO ORDERED.¹

Aggrieved, Saquilayan sought recourse from the Commission on Elections (COMELEC) by appeal (docketed as EAC (AE) No. A-22-2011).

In the meantime, Maliksi moved for execution pending appeal, and the RTC granted his motion. Thus, Maliksi was seated as Mayor, prompting Saquilayan to assail the grant of the motion *via* petition for *certiorari* in the COMELEC (docketed as SPR (AE) No. 106-2011).

After the parties filed their respective briefs in EAC (AE) No. A-22-2011, the COMELEC First Division issued an order dated March 28, 2012, requiring Saquilayan to deposit the amount necessary for the printing of the ballot images, thus:

x x x x

In as much as the printing of ballot image in the instant case would entail expense for supplies, honoraria, one-time fee for the use of the system in the decryption of the CF cards, and storage fee for the ballot boxes, it is hereby **RESOLVED** that the appellant be directed to deposit to the Cash Division of the Commission, the amount of One Hundred Nineteen Thousand Seven Hundred Fourteen Pesos (₱119,714.00)

WHEREFORE, appellant shall deposit the required amount within three days from receipt hereof.

The Division Clerk of the Commission is **DIRECTED** to immediately purchase the necessary supplies needed in the printing of ballot image, hence, is authorized [to] withdraw the amount above stated. She shall submit the liquidation report on the cash advance within thirty (30) days from termination of proceedings.

SO ORDERED.²

The First Division later issued another order dated April 17, 2012, requiring Saquilayan to augment his cash deposit.³

Finally, on August 15, 2012, the First Division issued a resolution nullifying the RTC's decision,⁴ to wit:

¹ *Rollo*, pp. 95-96

² *Id.* at 362.

³ *Id.* at 366.

⁴ *Id.* at 95-126.

X X X X

WHEREFORE, premises considered, the Commission **RESOLVED** as it hereby **RESOLVES**, to:

1. **NULLIFY** the pronouncement of the lower court that protestant-appellee **EMMANUEL L. MALIKSI** is the duly-elected Municipal Mayor of Imus, Cavite and **HEREBY DECLARES HOMER T. SAQUILAYAN** as the duly-elected Municipal Mayor of the above-mentioned municipality;

2. Further, the Law Department is hereby **DIRECTED**:

- i. To conduct an investigation as to who were responsible for the tampering of the ballot boxes for purposes of filing the appropriate information for violation of election laws; and
- ii. To conduct an investigation as to possible violation of election laws and Comelec Resolutions by herein protestant-appellee **EMMANUEL L. MALIKSI** as to how he was able to secure a photocopy of the official ballot which he attached in his Election Protest.

SO ORDERED.⁵

In its resolution, the First Division ratiocinated that:

X X X X

The Commission (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is apparent that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital image of the appealed ballots.

In appreciating the appealed ballots, the Commission used the following guidelines:

X X X X

Pursuant to this principle, to be able to determine fully the true will of the electorate, we scrutinized the appealed ballots by using its digital images since there is an allegation of ballot tampering.

X X X X

After counting and appreciation of the appealed clustered precincts by this Commission (First Division), protestant-appellee Maliksi got FORTY THOUSAND NINETY-TWO (40,092) votes while protestee-appellant Saquilayan got FORTY-EIGHT THOUSAND FIVE

⁵ Id. at 125.

HUNDRED TWENTY-ONE (48,521) or a difference of EIGHT THOUSAND FOUR HUNDRED TWENTY-NINE (8,429) votes.⁶

X X X X

Maliksi filed an omnibus motion,⁷ seeking, *inter alia*, the reconsideration of the First Division Resolution based on the following arguments, namely: (a) the decryption proceedings violated his right to due process and were null and void for being held without notice to the parties; and (b) ballot images were secondary evidence that could be resorted to only in the event that the ballots were unavailable, or when sufficient proof existed that tampering or substitution had taken place.

On September 14, 2012, the COMELEC *En Banc* issued a resolution, disposing as follows:

X X X X

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION of *Protestant-Appellee* EMMANUEL L. MALIKSI is hereby **DENIED** for lack of merit. Consequently, we are **AFFIRMING** the August 15, 2012 Resolution of the First Division **NULLIFYING** the November 15, 2011 Decision of the Regional Trial Court, Branch 22 of Imus, Cavite.

SO ORDERED.⁸

Maliksi brought this special civil action for *certiorari*, reiterating that: (a) his right to due process of law was violated when he was not notified of the decryption, printing and examination of the digital images of the ballots; and (b) the printouts of the picture images of the ballots were secondary evidence to be resorted to only when the ballots were not available, or when there was evidence that the integrity of the ballots had not been preserved.

I vote to grant the petition for *certiorari*.

I submit that the proceedings conducted by the First Division, the results of which became the basis of the questioned resolution, were void and ineffectual for being in abject violation of Maliksi's right to due process of law.

⁶ Id. at 102-124.

⁷ Id. at 76-92

⁸ Id. at 63.

The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves.⁹ In *Vinzons-Chato v. House of Representatives Electoral Tribunal*,¹⁰ the Court held that “the picture images of the ballots, as scanned and recorded by the PCOS, are likewise ‘official ballots’ that faithfully capture 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.”

That the two documents — the official ballot and its picture image — are considered “original documents” simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other.

But this juridical reality does not authorize the courts, the COMELEC, and the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters’ will. In that regard, the picture

⁹ 2010 *Rules of Procedure for Municipal Election Contests*, Rule 1, Section 3 (r) defines “electronic document” as follows:

x x x x

(r) Electronic document—refers to the record of information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally-signed documents and any printout or output, readable by sight or other means that accurately reflects the electronic document.

For purposes of these Rules, **an electronic document refers to either the picture image of the ballots** or the electronic copies of the electronic returns, the statements of votes, the certificates of canvass, the audit log, and other electronic data processed by the PCOS and consolidation machines.

x x x x

Likewise, COMELEC Resolution No. 8804 (*In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections*), Rule 2, Section 1(q) defines “electronic document” as follows:

x x x x

(q) Electronic document refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means which accurately reflects the electronic document.

For purposes of these Rules, **electronic documents refer to either the picture image of the ballots** and the electronic copies of the electronic returns, the statements of votes, the certificates of canvass, the audit log, and of the other electronic data relative to the processing done by the PCOS machines and the various consolidation machines.

x x x x

¹⁰ G.R. No. 199149, January 22, 2013.

images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.

For instance, Section 6, Rule 10 (*Conduct of Revision*) of the 2010 *Rules of Procedure for Municipal Election Contests*, which governs the proceedings in the Regional Trial Courts exercising original jurisdiction over election protests, provides:

(m) In the event that the revision committee **determines that the integrity of the ballots and the ballot box have not been preserved**, as when **proof of tampering or substitution** exists, it shall proceed to instruct the printing of the picture image of the ballots stored in the data storage device for the precinct. **The court 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. Only after this determination can the printed picture image be used for the recount.**

A similar procedure is found in the 2010 *Rules of the Presidential Electoral Tribunal*, to wit:

Rule 43. *Conduct of the revision.* – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

X X X X

(q) In the event that the RC **determines that the integrity of the ballots and the ballot box was not preserved**, as when there is **proof of tampering or substitution**, it shall proceed to instruct 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 may avail itself of the assistance of the COMELEC for the service of a non-partisan technical person who shall conduct the necessary authentication process to ensure that the data or images stored are genuine and not merely substitutes. It is only upon such determination that the printed picture image can be used for the revision of votes.**

X X X X

Also, the House of Representative Electoral Tribunal's *Guidelines on the Revision of Ballots* requires a preliminary hearing to be held for the purpose of determining whether 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, to wit:

Section 10. *Revision of Ballots*

X X X X

(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*).

X X X X

Section 6, Rule 15 of COMELEC Resolution No. 8804 (*In Re: Comelec Rules of Procedure on Disputes In An Automated Election System in Connection with the May 10, 2010 Elections*) itself requires that **“the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that (the ballots) cannot be recounted”** before the printing of the image of the ballots should be made, and that such printing should be done **“in the presence of the parties,”** to wit:

X X X X

(g) Only when the Recount Committee, through its chairman, determines that the integrity of the ballots has been preserved or that no signs of tampering of the ballots are present, will the recount proceed. In case there are signs that the ballots contained therein are tampered, compromised, wet or are otherwise in such a condition that it could not be recounted, the Recount Committee shall follow paragraph (l) of this rule.

X X X X

(l) In the event the Recount Committee **determines that the integrity of the ballots has been violated or has not been preserved**, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections in the presence of the parties. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (*As amended by COMELEC Resolution No. 9164, March 16, 2011*)

X X X X

All the foregoing rules on revision of ballots stipulate that the printing of the picture images of the ballots may be resorted to only after the proper Revision/Recount Committee has first determined that

the integrity of the ballots and the ballot box was not preserved. The foregoing rules further require that the decryption of the images stored in the CF cards and the printing of the decrypted images take place during the revision or recount proceedings, and that it is the Revision/Recount Committee that determines whether the ballots are unreliable.

There is a good reason for thus fixing where and by whom the decryption and the printing should be conducted. It is during the revision or recount conducted by the Revision/Recount Committee when the parties are allowed to be represented, with their representatives witnessing the proceedings and timely raising their objections in the course of the proceedings. Moreover, whenever the Revision/Recount Committee makes any determination that the ballots have been tampered and have become unreliable, the parties are immediately made aware of such determination.

Here, however, it was not the Revision/Recount Committee or the RTC exercising its original jurisdiction over the protest that made the finding that the ballots had been tampered, but the First Division in the exercise of its appellate jurisdiction. Maliksi was not immediately made aware of that crucial finding because the First Division did not even issue any written resolution stating its reasons for ordering the printing of the picture images.

The parties were formally notified that the First Division had found that the ballots had been tampered only when they received the resolution of August 15, 2012, whereby the First Division nullified the decision of the RTC and declared Saquilayan as the duly elected Mayor. Even so, the resolution of the First Division that effect was unusually mute about the factual bases for the finding of ballot box tampering, and did not also particularize how and why the First Division was concluding that the integrity of the ballots had been compromised. All that the First Division uttered as justification was a simple generality of the same being apparent from the allegations of ballot and ballot box tampering and upon inspection of the ballot boxes, *viz*:

X X X X

The Commission (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is **apparent** that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital image of the appealed ballots.¹¹ (Emphasis supplied)

X X X X

¹¹ *Rollo*, p. 102.

It was the COMELEC *En Banc*'s assailed resolution of September 14, 2012 that later on provided the explanation to justify the First Division's resort to the picture images of the ballots, by observing that the "unprecedented number of double-votes" exclusively affecting the position of Mayor and the votes for Saquilayan had led to the belief that the ballots had been tampered. However, that observation did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the First Division's proceedings.

The blatant disregard of Maliksi's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that Maliksi was able to file, after all, a motion for reconsideration. To be exact, the motion for reconsideration was actually directed against the entire resolution of the First Division, while Maliksi's claim of due process violation is directed only against the First Division's recount proceedings that resulted in the prejudicial result rendered against him. I note that the First Division did not issue any order directing the recount. Without the written order, Maliksi was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for *certiorari* in this Court. In that context, he had no real opportunity to assail the conduct of the recount proceedings.

I disagree that the service of the orders requiring Saquilayan to make the cash deposits for the printing of the picture images made Maliksi aware of the First Division's decision to print the picture images. The orders still did not meet the requirement of due process because they did not specifically inform Maliksi that the ballots had been found to be tampered. Nor did the orders offer the factual bases for the finding of tampering. Hence, to leave for Maliksi to surmise on the factual bases for finding the need to print the picture images still violated the principles of fair play, because the responsibility and the obligation to lay down the factual bases and to inform Maliksi as the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division.

As I see it, the First Division arbitrarily arrogated unto itself the conduct of the revision/recount proceedings and recounted the ballots, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC *En Banc* upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in *Alliance of Barangay Concerns (ABC) Party-List v.*

*Commission on Elections*¹² to the effect that the “COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims.”¹³

The COMELEC *En Banc* should not have upheld the deviation of the First Division. Based on the pronouncement in *Alliance of Barangay Concerns v. COMELEC*, the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties’ right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them.

*Mendoza v. Commission on Elections*¹⁴ is instructive on when notice to and the participation of the parties are required. In that case, after the revision of the ballots and after the election protest case was submitted for decision, the ballots and ballot boxes were transferred to the Senate Electoral Tribunal (SET) in connection with a protest case pending therein. The petitioner later learned that the COMELEC, with the permission of the SET, had meanwhile conducted proceedings within the SET’s premises. The petitioner claimed that his right to due process was violated because he was not given notice by the COMELEC that it would be conducting further proceedings within the SET premises. The Court held otherwise, however, and pointed out:

After consideration of the respondents’ Comments and the petitioner’s petition and Reply, we hold that the contested proceedings at the SET (“contested proceedings[’]”) are **no longer part of the adversarial aspects of the election contest that would require notice of hearing and the participation of the parties**. As the COMELEC stated in its Comment and without any contrary or disputing claim in the petitioner’s Reply:

“However, contrary to the claim of petitioner, public respondent in the appreciation of the contested ballots in EPC No. 2007-44 simultaneously with the SET in SET Case No. 001-07 is not conducting “further proceedings” requiring notice to the parties. There is no revision or correction of the ballots because EPC No. 2007-04 was already submitted for resolution. Public respondent, in coordinating with the SET, is simply resolving the submitted protest case before it. The parties necessarily take no part in said deliberation, which require utmost secrecy. Needless to state, the actual decision-making

¹² G.R. No. 199050, August 28, 2012.

¹³ *Rollo*, pp. 60-61.

¹⁴ G. R. No. 188308, October 15, 2009, 603 SCRA 692.

process is supposed to be conducted only by the designated members of the Second Division of the public respondent in strict confidentiality.”

In other words, what took place at the SET were the internal deliberations of the COMELEC, as a quasi-judicial body, in the course of appreciating the evidence presented and deciding the provincial election contest on the merits. These deliberations are no different from judicial deliberations which are considered confidential and privileged. We find it significant that the private respondent’s Comment fully supported the COMELEC’s position and disavowed any participation in the contested proceeding the petitioner complained about. The petitioner, on the other hand, has not shown that the private respondent was ever present in any proceeding at the SET relating to the provincial election contest.

To conclude, the rights to notice and to be heard are not material considerations in the COMELEC’s handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; **no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest.** In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.¹⁵ (Emphasis supplied.)

Here, the First Division denominated the proceedings it conducted as an “appreciation of ballots” like in *Mendoza*. Unlike in *Mendoza*, however, the proceedings conducted by the First Division were adversarial, in that the proceedings included the decryption and printing of the picture images of the ballots and the recount of the votes were to be based on the printouts of the picture images. The First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture image of the ballots. As such, the First Division was bound to notify the parties to enable them to participate in the proceedings.

We should not ignore that the parties’ participation during the revision/recount proceedings would not benefit only the parties. Such participation was as vital and significant for the COMELEC as well, for only by their participation would the COMELEC’s proceedings attain credibility as to the result. In this regard, the COMELEC was less than candid, and was even cavalier in its conduct of the decryption and printing of the picture images of the ballots and the recount proceedings. The COMELEC *En Banc* was merely content with listing

¹⁵ Id. at 716-717.

the guidelines that the First Division had followed in the appreciation of the ballots and the results of the recount. In short, there was vagueness as to what rule had been followed in the decryption and printing proceeding.

Moreover, I respectfully point out that the First Division should not conduct the proceedings now being assailed because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed the First Division to conduct the recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, are to be conducted by the COMELEC Divisions only in the exercise of their *exclusive original jurisdiction* over all election protests involving elective regional (the autonomous regions), provincial and city officials.¹⁶

On the other hand, we have Section 6 (l), Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, which clearly requires the parties' presence during the printing of the images of the ballots, thus:

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(l) In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties**. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (Emphasis supplied.)

X X X X

I write this dissent not to validate the victory of any of the parties in the 2010 Elections. That is not the concern of the Court as yet. I dissent only because the Court should not countenance a denial of the fundamental right to due process, which is a cornerstone of our legal system.¹⁷

I am mindful of the urgent need to speedily resolve this protest because the term of the Mayoralty position involved is about to end. Accordingly, I urge that we quickly remand this case to the COMELEC, instead of to the RTC, for the conduct of the decryption, printing and recount proceedings, with due notice to all the parties and opportunity for them to be

¹⁶ COMELEC Resolution No. 8804, Rule 6, Section 1.

¹⁷ *Pinlac v. Court of Appeals*, G.R. No. 91486, January 19, 2001, 349 SCRA 635.

present and to participate during such proceedings. Nothing less serves the ideal objective safeguarded by the Constitution.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the petition for *certiorari*, and to **REMAND** the protest to the Commission on Elections for the decryption of the picture images of the ballots after due authentication, for the printing of the decrypted ballot images, and for the conduct of the recount proceedings using the printouts of the ballot images, with notice to and in the presence of the parties or their representatives.



LUCAS P. BERSAMIN
Associate Justice