



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

**RICARDO L. PENSON, HANS
CHRISTIAN M. SEÑERES, RIZALITO
L. DAVID, AND BALDOMERO C.
FALCONE,**

Petitioners,

**GLENN A. CHONG, MELCHOR G.
MAGDAMO, NELSON J. CELIS,
WENDELL A. UNLAYAO AND
VOLUNTEERS AGAINST CRIME
AND CORRUPTION (VACC)
REPRESENTED BY MARTIN B.
DIÑO,**

Petitioners-Intervenors,

- versus -

G.R. No. 211636

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M. V.,
GAERLAN,
ROSARIO,
LOPEZ, J. Y., and
DIMAAMPAO, JJ.

**COMMISSION ON ELECTIONS
CONSTITUTED AS THE NATIONAL
BOARD OF CANVASSERS FOR
SENATORS AND COMMISSION ON
ELECTIONS,**

Respondent.

Promulgated:

September 28, 2021

X ----- *Antonio L. Sison* ----- X

DECISION

LOPEZ, J., J.:

Submitted before Us is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court filed by petitioners Ricardo L. Penson (Penson), Hans Christian M. Señeres (Señeres), Rizalito L. David (David), and Baldomero

¹ Rollo, pp. 3-27.

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C. Falcone (Falcone) imputing grave abuse of discretion amounting to lack or excess of jurisdiction upon respondent Commission on Elections (COMELEC) constituted as the National Board of Canvassers (NBOC) for Senators and Party-List Representatives, in proclaiming the 12 duly-elected Senators in the May 13, 2013 national and local elections through the issuance of NBOC Resolution No. 004-13² dated May 18, 2013, NBOC Resolution No. 0010-13³ dated June 5, 2013, and Senatorial Canvass Report No. 17⁴ dated June 5, 2013.

The Antecedents

On December 2, 1997, the Congress enacted Republic Act (R.A.) No. 8436 or the "Election Modernization Act of 1997" in line with the State's policy to ensure a free, orderly, honest, peaceful, and credible elections.⁵

One of the innovations introduced in R.A. No. 8436 is the concept of Automated Election System (AES) or a system which uses appropriate technology for voting and electronic devices to count votes and canvass/consolidate results.⁶

Pertinently, Section 6⁷ of R.A. No. 8436 has authorized the COMELEC to utilize an AES for the process of voting, counting of votes and canvassing/consolidation of results in the national and local elections.⁸

Section 23 thereof further provides for the composition of the NBOC for Senators, which shall be comprised of the Chairman and Members of the COMELEC sitting *en banc*. The mandate of the NBOC for Senators is to canvass the results of the election and consequently, proclaim the winners for the position of Senators:

Section 23. National Board of Canvassers for Senators. The chairman and members of the Commission on Elections sitting *en banc*, shall compose the national board of canvassers for senators. It shall canvass the results for senators by consolidating the results contained in

² *Id.* at 48-50.

³ *Id.* at 51-53.

⁴ *Id.*

⁵ See Section 1, R.A. No. 8346.

⁶ Section 2.1, R.A. No. 8436.

⁷ SECTION 6. *Authority to use an automated election system.* - To carry out the above-stated policy, the Commission on Elections, herein referred to as the Commission, is hereby authorized to use an automated election system, herein referred to as the System, for the process of voting, counting of votes and canvassing/consolidation of results of the national and local elections: Provided, however, That for the May 11, 1998 elections, the System shall be applicable in all areas within the country only for the positions of president, vice-president, senators and parties, organizations or coalitions participating under the party-list system.

x x x x.

⁸ *Id.*

the data storage devices submitted by the district, provincial and city boards of canvassers of those cities which comprise one or more legislative districts. Thereafter, the national board shall proclaim the winning candidates for senators.

On January 23, 2007, R.A. No. 8346 was amended by R.A. No. 9369 or the "Automation Law." Among the provisions introduced by the amending law is a change in the mandate of the COMELEC, now sitting as the NBOC for both Senators and Party-List Representatives, which shall proclaim the winning candidates for both positions after consolidating the certificate of canvass electronically transmitted.⁹

Unlike in R.A. No. 8436, the AES in R.A. No. 9369 can either be paper-based¹⁰ or direct recording election system¹¹ depending on COMELEC's determination.¹² In both cases, however, the law mandates that there be a Random Manual Audit (RMA) in one precinct per congressional district, viz.:

SECTION 24. A new Section 29 is hereby provided to read as follows:

SECTION. 29. *Random Manual Audit.* – Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference of root cause and initiate a manual count for those precincts affected by the computer or procedural error. (Emphasis supplied)

In compliance therewith, on May 10, 2013, the COMELEC as NBOC (COMELEC-NBOC) randomly selected the cities/municipalities which will be subjected to RMA through the use of Automated Random Selection

⁹ SECTION 22. Section 23 of Republic Act No. 8436 is hereby amended to read as follows:

Section 27. *National Board of Canvassers for Senators and Party-List Representatives.* - The chairman and members of the Commission on Election sitting *en banc*, shall compose the national board of canvassers for senators and party-list representatives. It shall canvass the results by consolidating the certificates of canvass electronically transmitted. Thereafter, the national board shall proclaim the winning candidates for senators and party-list representatives.

¹⁰ SECTION 2. Section 2 of Republic Act No. 8436 is hereby amended to read as follows:

Section 2. *Definition of Terms.* - As used in this Act, the following terms shall mean:

x x x x.

7. *Paper-based election system* - a type of automated election system that use paper ballots, records and counts votes, tabulates, consolidates/canvasses and transmits electronically the results of the vote count;

¹¹ 8. *Direct recording electronic election system* - a type or automated election system that 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 a computer programs, record voting data and ballot images, and transmits voting results electronically.

¹² SECTION 1. Section 1 of Republic act No.8436 is hereby amended to read as follows:

x x x x.

The State recognizes the mandate and authority of the Commission to prescribe adoption and use of the most suitable technology of demonstrated capability taking into account the situation prevailing in the area and the funds available for the purpose.

Program (ARSP). After two (2) days, the COMELEC-NBOC selected the priority and contingency clustered precincts. A total of 234 clustered precincts, which correspond to one precinct per legislative district was randomly selected in each province and city.

On May 13, 2013, the national and local elections were held.

Pursuant to R.A. No. 9369, the COMELEC issued Resolution No. 9595 providing the guidelines on the conduct of RMA by the Random Manual Audit Team (RMAT) for the positions of Senator, Member of the House of Representatives, and Mayor.¹³

After the May 13, 2013 national and local elections, the COMELEC-NBOC proceeded to canvass the results by consolidating the electronically transmitted certificates of canvass.

True to the intent and spirit of R.A. No. 9369, is to have a fast and accurate result that is reflective of the genuine will of the people, the COMELEC-NBOC issued the first assailed Resolution¹⁴ No. 004-13 dated May 18, 2013, which initially proclaimed the following senatorial candidates (in alphabetical order) who garnered the most number of votes during the May 13, 2013 elections:

WHEREAS, on the basis of the National Canvass Report No. 16 (NCR 16), attached herewith, *the following candidates for Senator (arranged in alphabetical order) [who] received the first twelve (12) highest number of votes for Senators in the May 13, 2013 national and local elections:*

ANGARA, JUAN EDGARDO M.
AQUINO, PAOLO BENIGNO IV A.
BINAY, MARIA LOURDES NANCY S.
CAYETANO, ALAN PETER S.
EJERCITO, JOSEPH VICTOR G.
ESCUDERO, FRANCIS JOSEPH G.
HONASAN, GREGORIO B.
LEGARDA, LORNA REGINA B.
LLAMANZARES, MARY GRACE P.
PIMENTEL, AQUILINO MARTIN III D.
TRILLANES, ANTONIO IV F.
VILLAR, CYNTHIA A.

WHEREAS, based on NCR 16, the difference in the votes obtained by the No. 12 and 14 candidates is 705,940;

X X X X.

¹³ SECTION 10, COMELEC Resolution No. 9595.

¹⁴ *Rollo*, pp. 48-50.

The initial proclamation of the aforesaid senatorial candidates was based on COMELEC-NBOC's determination that the remaining number of votes that have yet to be canvassed will not materially affect the votes obtained by the 12 winning candidates for Senator.

Subsequently, on June 5, 2013, the COMELEC-NBOC issued the second assailed Resolution No. 0010-13,¹⁵ which officially declared the 12 candidates as winners and thus proclaimed them as duly elected Senators of the Republic of the Philippines. The Resolution likewise cited Senatorial Canvass Report No. 17, which stated the tally of the number of votes obtained by each candidate, thus:

WHEREAS, the Commission of Elections, sitting *en banc* as the National Board of Canvassers (NBOC) for Senators and [Party]-List Representatives, officially canvassed in open and public session, the votes cast for Senators in connection with the May 13, 2013 automated national and local elections.

WHEREAS, *the NBOC declared the following twelve (12) candidates for Senator (arranged in alphabetical order) as winners and proclaimed them as duly elected Senators of the Republic of the Philippines in the May 13, 2013 automated national and local elections considering that the remaining votes that have not yet been canvassed would not materially affect the results:*

ANGARA, JUAN EDGARDO M.
AQUINO, PAOLO BENIGNO IV A.
BINAY, MARIA LOURDES NANCY S.
CAYETANO, ALAN PETER S.
EJERCITO, JOSEPH VICTOR G.
ESCUDERO, FRANCIS JOSEPH G.
HONASAN, GREGORIO B.
LEGARDA, LORNA REGINA B.
LLAMANZARES, MARY GRACE P.
PIMENTEL, AQUILINO MARTIN III D.
TRILLANES, ANTONIO IV F.
VILLAR, CYNTHIA A.

WHEREAS, the NBOC continued to canvass the votes for Senators by tallying the remaining uncanvassed votes for Senators;

WHEREAS, on June 5, 2013, *the NBOC issued Senatorial Canvass Report No. 17 showing the votes garnered by each of the candidates for Senator of the Republic of the Philippines;*

WHEREAS, while there are still remaining uncanvassed votes the same will no longer affect the ranking of the winning candidates for Senator of the Republic of the Philippines; x x x (Italics supplied)

¹⁵ *Id.* at 51-53.

On March 31, 2014, petitioners filed the instant petition seeking to nullify the aforementioned NBOC Resolutions and Senatorial Canvass Report No. 17 based on the following grounds:

First, petitioners bewail that the COMELEC-NBOC committed grave abuse of discretion when it prematurely made a partial proclamation of the 12 senators in the May 13, 2013 national and local elections despite the questionable accuracy of the election returns that were canvassed.¹⁶ The allegation of questionable accuracy was rooted on the variance between the results of the RMA and the manual count. Petitioners highlight that out of the 234 sample precincts, only 212 RMA Reports or only 90.6% were processed.¹⁷ Since the COMELEC-NBOC was able to prepare and identify contingency sample clustered precincts, there should have been an effort on the part of the COMELEC-NBOC to replace the precincts that could not be accounted for in order to reduce the questionable sample size.¹⁸

Second, petitioners decry that the COMELEC-NBOC committed grave abuse of discretion when it terminated the canvassing of the May 13, 2013 national and local elections for Senators through the issuance of NBOC Resolution No. 0010-12 dated June 5, 2013 and Senatorial Canvass Report No. 17, on the premise that the “*remaining votes that have yet to be canvassed would not materially affect the results.*”¹⁹ As the COMELEC-NBOC failed to state the relevant data pertaining to the total number of votes and the number of votes still to be canvassed, it was premature for the COMELEC-NBOC to stop the proceedings. According to petitioners, it was also imperative on the part of the COMELEC-NBOC to show the total number of votes that have been nullified and not counted in order to determine the true will of the electorate during the May 13, 2013 senatorial elections.²⁰

Third, petitioners lament that the COMELEC-NBOC failed to comply with the Authentication of Electronically Transmitted Election Results under Section 30 of R.A. No. 8346 as the electronic transmissions were not digitally signed. The allegation of petitioners stemmed from the alleged failure of the Technical Evaluation Committee (TEC) to include in its Final Report dated December 10, 2013 that there were in fact digital signatures.²¹

Fourth, petitioners submit that the COMELEC-NBOC committed grave abuse of discretion when it ignored the findings of the TEC pertaining to the integrity of the conduct of the canvass, and that there was an automated “dagdag bawas,” resulting in the proclamation of “accidental senators.” The COMELEC-NBOC also failed to act on the TEC’s

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 18-29.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 20.

²⁰ *Id.*

²¹ *Id.* at 21-22.

recommendation that proper identification and auditing of additional precincts is necessary to determine whether extraneous lines appeared in the digital image of the ballots cast.²²

Fifth and lastly, petitioners posit that the COMELEC-NBOC violated the constitutional provision on transparency in matters of public concern when it failed to make public the following: (1) the conduct of the audit including the transmission of election returns containing digital signatures; (2) results of the canvass with a breakdown of the distribution by region, (3) results of the RMA; and (4) results of the Technical Report on the Root Cause Analysis for RMA dated December 10, 2013.²³

Acting thereon, the Court, in a Resolution²⁴ dated April 22, 2014 ordered the COMELEC-NBOC to file its comment.

In compliance thereto, the COMELEC-NBOC, through the Office of the Solicitor General (OSG) filed its Comment,²⁵ assailing the petition on both procedural and substantive grounds.

Procedurally, the OSG asserts that the Court has no jurisdiction over the issues presented by petitioners as the same fall within the jurisdiction of the Senate Electoral Tribunal (SET), which is the sole judge of all contests relating to the election, returns and qualifications of the members of the Senate under Article VI, Section 17 of the 1987 Constitution.²⁶

Furthermore, the OSG propounds that the petition for *certiorari* under Rule 65 of the Rules of Court is not the proper remedy to assail the NBOC Resolutions because the same were not issued by the COMELEC-NBOC in the exercise of its quasi-judicial functions.²⁷ Petitioners likewise failed to show that there is no appeal, or any plain, speedy and adequate remedy available to question the assailed NBOC Resolutions. The OSG stressed that petitioners has available and adequate remedy, that is, to file a petition before the SET.²⁸ At any rate, even if the present petition for *certiorari* is the proper remedy, the OSG points out that the same is dismissible outright for being filed out of time.²⁹

In addition, the OSG underscores that petitioners have no legal standing to file the present petition and invoke the Court's discretionary power of judicial review for failure to substantiate such personal interest that

²² *Id.* at 22-24.

²³ *Id.* at 24-25.

²⁴ *Id.* at 80.

²⁵ *Id.* at 86-134.

²⁶ *Id.* at 99-101.

²⁷ *Id.* at 103-104.

²⁸ *Id.* at 104.

²⁹ *Id.* at 105-106.

would be materially affected or prejudiced once the Court has nullified or sustained the assailed Resolutions.³⁰

Substantively, the OSG asserts that there is no grave abuse of discretion when the COMELEC-NBOC proclaimed the 12 winning Senators during the May 13, 2013 elections because the alleged inaccuracies in the RMA is not a ground to delay the proclamation of the winning candidates under Section 38 of R.A. No. 9369.³¹

Moreover, the OSG opines that there was nothing premature when the COMELEC-NBOC terminated the canvassing of the senatorial canvass on June 5, 2013 because the remaining votes that were not canvassed would not affect the ranking of the winning candidates. As certified by its Election Records and Statistics Department, the number of registered voters not included in the Senatorial Canvass Report No. 17 is only Fifty-Eight Thousand Five Hundred Ninety-Seven (58,597).³²

Likewise, the OSG propounds that there was compliance with the authentication requirement under Section 25 of R.A. No. 9369. Citing the case of *Capalla v. COMELEC*,³³ the OSG stresses that it was already settled that the Precinct Count Optical Scan (PCOS) machines are capable of producing digitally-signed transmissions. Thus, the alleged lack of categorical statement from the TEC on this matter does not necessarily mean that there was non-compliance with the authentication requirement.³⁴

The OSG also contends that the TEC's recommendation to audit additional precincts cannot override the clear mandate of Section 24 of R.A. No. 9369, which only requires that RMA be conducted in one precinct per congressional district. Thus, the failure of the COMELEC-NBOC to heed the recommendation of the TEC did not amount to grave abuse of discretion.³⁵ Besides, it would be impractical and too costly on the part of the COMELEC-NBOC to accommodate petitioners' demand to identify the precincts that may have encountered extraneous lines on the digital image in the ballots cast. Such demand would entail a massive audit of all the precincts to search for the alleged extraneous lines.³⁶

Finally, the OSG claims that the COMELEC-NBOC has made public all the documents relative to the conduct of the RMA during the May 13, 2013 elections and had annexed the same in its Comment including the RMA Final Report. The OSG emphasizes that these documents are also posted in the COMELEC website. On the other hand, the OSG points out

³⁰ *Id.* at 107-108.

³¹ *Id.* at 112-114.

³² *Rollo*, pp. 118-119.

³³ 687 Phil. 617 (2012).

³⁴ *Rollo*, pp. 119-128.

³⁵ *Id.* at 129-130.

³⁶ *Id.* at 130-131.

that the public disclosure of the Technical Report on the Root Cause Analysis of the RMA dated December 10, 2013 cannot be denied. In fact, petitioners were able to attach the same as part of their petition.³⁷ According to the OSG, had petitioners made a simple request of these documents from the COMELEC or inquired from the COMELEC's official website, the present nuisance suit could have saved the parties and the Court's precious time and resources.³⁸

On October 10, 2014, Glenn A. Chong, Melchor G. Magdamo, Nelson J. Celis, Wendell A. Unlayao, and Volunteers Against Crime and Corruption, represented by its Chairman Martin B. Diño (collectively referred to as petitioners-intervenors), filed a Petition-in-Intervention,³⁹ which is a substantial reiteration of the main issues advanced by petitioners in their petition for *certiorari*. As additional arguments, petitioners-intervenors claim that the assailed Resolutions of the COMELEC-NBOC should be nullified in view of the latter's failure to comply with Section 12 of R.A. No. 9369, which requires that the source code of the PCOS machines be made available and open to any interested parties for review to ensure that no malicious instructions are contained therein and that no other utility, software or programs are embedded to introduce any extrinsic data.⁴⁰

Petitioners-intervenors also assert that there was non-compliance with the authentication requirement under Section 30 of R.A. No. 8436, as amended, because of the specific instruction of COMELEC to the Board of Election Inspectors (BEI) not to authenticate the election returns with their respective digital signatures.⁴¹ Petitioners-intervenors likewise posit that the minimum systems capabilities provided under R.A. No. 8436, as amended, were not complied with as the voting process did not provide for a voter-verified paper audit trail.⁴²

Finally, petitioners-intervenors cite as their smoking gun, the Decision dated March 21, 2014 of the Regional Trial Court (RTC) of Gapan City, Branch 34, Nueva Ecija docketed as Civil Case No. 4378-13,⁴³ which involved the alleged anomaly in the counting of votes cast in the PCOS machines for senatorial candidate Bro. Eddie Villanueva. For petitioners-intervenors, the findings in the aforesaid RTC Decision is a testament that the COMELEC NBOC manipulated the result of the elections through what they termed as "*electronic dagdag bawas*."

³⁷ *Id.* at 131-132.

³⁸ *Id.* at 132.

³⁹ *Id.* at 230-245.

⁴⁰ *Id.* at 233-234.

⁴¹ *Id.* at 234-236.

⁴² *Id.* at 236-237.

⁴³ *Id.* at 246-252.

Acting on the petition-in-intervention,⁴⁴ the Court issued a Resolution dated October 21, 2014 requiring the adverse parties to file their Comment.

As the allegations in the petition-in-intervention are essentially the same as those in the petition for *certiorari*, the OSG reiterated its earlier submissions in its Comment to the petition-in-intervention.⁴⁵ In addition to such, the OSG stressed that the COMELEC-NBOC has complied with the Section 10 of R.A. No. 8436, as amended by making the source code of the automated election system available for review to all interested parties. It has also promulgated Resolution Nos. 9651 and 9657 to facilitate the review of the aforesaid source code.⁴⁶

The OSG likewise maintains that the issue concerning the authentication of electronically transmitted election returns have long been settled in *Capalla v. COMELEC*⁴⁷ where the Court has found that the PCOS machines used in the 2010 elections are not only capable of generating digitally signed transmissions, but had in fact generated digitally signed election returns. The OSG highlights that the PCOS machines used in the 2010 elections are the same PCOS machines used during the 2013 elections.⁴⁸ The OSG further underscores that the AES complied with the minimum capabilities standards under R.A. No. 8436 by providing a voter-verified paper audit trail. In fact, the RMA that was conducted during the automated elections were made possible because of the voter-verified paper audit trail.⁴⁹

Finally, the OSG contends that the COMELEC-NBOC was not part of any scheme that resulted in the alleged manipulation of the results in the 2013 elections. In fact, it has participated in the investigation conducted by the Joint Congressional Oversight Committee on AES involving the recount of votes of senatorial candidate Bro. Eddie Villanueva.⁵⁰

As for the petitioners, they filed a Comment⁵¹ manifesting their non-objection to the admission of the petition-in-intervention.

Petitioners likewise filed a Reply,⁵² echoing their earlier submissions in their petition for *certiorari*. In addition, they addressed their alleged procedural lapses in filing the petition. According to petitioners, the jurisdiction of the SET is limited to election “contests”, which are disputes

⁴⁴ *Id.* at 275.

⁴⁵ *Id.* at 342-383.

⁴⁶ *Id.* at 357.

⁴⁷ *Supra* note 33.

⁴⁸ *Id.* at 358-372.

⁴⁹ *Id.* at 372-373.

⁵⁰ *Id.* at 374-377.

⁵¹ *Id.* at 320-324.

⁵² *Id.* at 277-294.

between two contending parties with the end view of one replacing the other. Since they do not seek to replace the proclaimed winners, the jurisdiction over the case rests with the Court and not with the SET.⁵³ Furthermore, petitioners insist that the petition for *certiorari* is the proper remedy and they have a legal standing to file the same because the case filed is a citizen's suit concerning an issue of transcendent importance.⁵⁴ They also claim that since the proclamation is void from the very beginning, the period to file the petition for *certiorari* is imprescriptible.⁵⁵

Issue

In essence, the threshold issue for the Court's resolution is whether the COMELEC-NBOC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing NBOC Resolution No. 004-13 dated May 18, 2013, NBOC Resolution No. 0010-13 and Senatorial Canvass Report No. 17 both dated June 5, 2013, which proclaimed the 12 winning candidates as duly elected Senators of the Republic of the Philippines during the 2013 national and local elections.

Our Ruling

The petition is bereft of merit.

Prefatorily, it is basic that *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character.⁵⁶ It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack, or in excess, of jurisdiction.⁵⁷ This remedy essentially serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function.⁵⁸ Further, being an extraordinary remedy, a writ of *certiorari* may only be availed of when there is no appeal or plain, speedy and adequate remedy in the ordinary course of law.⁵⁹ Where an appeal is available, *certiorari* will not prosper even if the ground therefor is grave abuse of discretion.⁶⁰

⁵³ *Id.* at 278.

⁵⁴ *Id.* at 278-281.

⁵⁵ *Id.* at 279-280.

⁵⁶ *Oporto v. Members of the Board of Inquiry and Discipline of the NAPOCOR*, 590 Phil. 102, 112 (2008).

⁵⁷ *Valdez v. Government Service Insurance System*, 579 Phil. 69, 82 (2008).

⁵⁸ See *AGG Trucking, et al. v. Yuag, et al.*, 675 Phil. 108,120 (2011).

⁵⁹ See *Espiritu, et al. v. Tankiansee, et al.*, 667 Phil. 19, 30-31 (2011).

⁶⁰ *Atienza v. Court of Appeals*, 528 Phil. 52, 57 (2006).

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In *SMI Development Corporation v. Republic*,⁶¹ We held that the determination as to what exactly constitutes a plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.⁶² There are, however, many authorities that subscribe to the view that it is the inadequacy – not the mere absence – of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of *certiorari*.⁶³ Thus, case law illumines that an adequate remedy is a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the *certiorari* proceeding, but a remedy which would promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court, tribunal, board or officer.⁶⁴

In this case, the plain, speedy and adequate remedy available to petitioners, which they opted not to avail, was to file an election protest before the SET.

Section 17, Article VI of the 1987 Constitution expressly articulates the constitutional mandate and jurisdiction of the SET as the sole judge of all contests relating to the “election, returns, and qualifications” of the members of the Senate. It states:

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. (Emphasis supplied)

The use of the word “sole” in Section 17, Article VI of the 1987 Constitution underscores the exclusivity of the electoral tribunal’s jurisdiction over all election contests relating to members of the House of Representatives and the Senate. The authority conferred upon these electoral tribunals is intended to be full, clear, complete and unimpaired, thereby divesting the jurisdiction previously vested upon the COMELEC under the 1973 Constitution over all contests relating to the election, returns, and qualifications of the members of the Batasang Pambansa. Thus, in *Co v.*

⁶¹ 380 Phil. 832-845 (2000).

⁶² *Id.* at 839.

⁶³ *Okada v. Security Pacific Assurance Corporation*, 595 Phil. 732, 749 (2008), citing *Jaca, et al. v. Davao Lumber Co., et al.*, 198 Phil. 493, 517 (1982); and *Conti v. CA*, 336 Phil. 956, 966 (1999).

⁶⁴ See *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 786 (2003).

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*Electoral Tribunal of the House of Representatives*⁶⁵ citing *Lazatin v. HRET*,⁶⁶ the Court emphasized the SET and HRET's original and exclusive jurisdiction over all election contests of their respective members:

The Supreme Court in the case of *Lazatin v. HRET* (168 SCRA 391 [1988]) stated that under the 1987 Constitution, **the jurisdiction of the Electoral Tribunal is original and exclusive, viz.:**

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred [*Angara v. Electoral Commission, supra, at 162*]. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as *complete and unimpaired* as if it had remained originally in the legislature." [*Id.* at 175] Earlier, this grant of power to the legislature was characterized by Justice Malcolm as "*full, clear and complete*" [*Veloso v. Board of Canvassers of Leyte and Samar, 39 Phil. 886 (1919)*]. Under the amended 1935 Constitution, **the power was unqualifiedly reposed upon the Electoral Tribunal** [*Suanes v. Chief Accountant of the Senate, 81 Phil. 818 (1948)*] **and it remained as full, clear and complete as that previously granted the Legislature and the Electoral Commission** [*Lachica v. Yap, G.R. No. L-25379, September 25, 1968, 25 SCRA 140*]. **The same may be said with regard to the jurisdiction of the Electoral Tribunal under the 1987 Constitution.**⁶⁷ (Emphasis supplied)

In the exercise of its rule-making powers, the SET has promulgated the 2013 Revised Rules of the Senate Electoral Tribunal to govern its processes and proceedings. Rule 14 thereof mirrors the constitutional provision delineating the SET's exclusive jurisdiction over all election contests relating to the members of the Senate:

Rule 14. Jurisdiction. – The Tribunal is the **sole** judge of all contests relating to the election, returns, and qualifications of the members of the Senate. (Emphasis supplied)

In relation thereto, it has long been recognized that the jurisdiction of the SET and HRET commences only after a winning candidate has already been proclaimed, taken his oath, and assumed office as either a member of the House of Representatives or the Senate.

In *Vinzons-Chato v. COMELEC*,⁶⁸ the Court had an occasion to state: **that once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the**

⁶⁵ 276 Phil. 758 (1991).

⁶⁶ 250 Phil. 390-403 (1988).

⁶⁷ *Supra* note 65, at 776.

⁶⁸ 548 Phil. 712 (2007).

petitioner is to file an electoral protest with the HRET.⁶⁹

The same legal precept was echoed in the case of *Limkaichong v. COMELEC, et al.*⁷⁰ involving an electoral protest questioning the qualification of a winning candidate who had taken his oath of office and assumed his post as a member of the House of Representatives. In upholding the jurisdiction of the HRET to settle the controversy, the Court held thus:

[O]nce a winning candidate **has been proclaimed, taken his oath, and assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.** It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending before it at the time of the proclamation. **The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications.** The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.⁷¹ (Emphasis supplied, citations omitted)

Similarly, in *Barbers v. COMELEC (Barbers)*,⁷² the Court enunciated that upon the proclamation of a winning senatorial candidate, the proper recourse of the aggrieved party to assail the validity of the former's proclamation is to file an election protest before the SET:

[W]here the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.' **In like manner, where as in this case, petitioner assails the Commission's resolution proclaiming the twelfth (12th) winning senatorial candidate, petitioner's proper recourse was to file a regular election protest which under the Constitution and the Omnibus Election Code exclusively pertains to the Senate Electoral Tribunal.**⁷³ (Emphasis supplied)

Similar to the present case, petitioners seek to nullify the COMELEC-NBOC's issuances proclaiming the 12 winning senatorial candidates in the 2013 elections who have already assumed their office as members of the Senate. Thus, the proper recourse of petitioners was clearly to file a regular election protest with the SET.

⁶⁹ *Id.* at 725-726.

⁷⁰ 601 Phil. 751 (2009).

⁷¹ *Id.* at 779-780.

⁷² 499 Phil. 570 (2005).

⁷³ *Id.* at 581.

The pertinent rule governing the manner of initiating an election protest against the members of the Senate is laid down under Rules 15 and 16 of the 2013 Revised Rules of SET, which provide:

RULE 15. - *How Initiated.* - An election contest is initiated by the filing of a verified election protest or a verified petition for *quo warranto* against a Member of the Senate. An election protest shall not include a petition for *quo warranto*, nor shall a petition for *quo warranto* include an election protest.

RULE 16. *Election Protest.* - A verified petition contesting the election of any Member of the Senate shall be filed by **any candidate who has duly filed a certificate of candidacy and been voted for the office of Senator** within thirty (30) days after the proclamation of the protestee. No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly. (Emphasis supplied)

x x x x.

Thus, in an election protest, it is imperative that the protestant is a candidate who has duly filed a certificate of candidacy and had been voted upon for the said office. Apropos is the case of *Rasul v. COMELEC*,⁷⁴ where the Court stressed on the statutory requirement that an election protest must be filed only by a candidate. In the said case, a petition for *certiorari* was filed seeking for the nullification of COMELEC Resolution No. 3047-A, which proclaimed the 12 winning senatorial candidates, more specifically, the proclamation of Teresa Aquino-Oreta who was the 12th winning candidate. Ruling for the dismissal of the petition, the Court held that the jurisdiction of the case lies with the SET as the petitioner in *Rasul* was a candidate for the position of Senator and had been voted for such office. Citing the Rules of the SET, the Court highlighted that an election protest must be filed by any candidate who has filed a certificate of candidacy and has been voted upon for the same office.⁷⁵

In this case, petitioners Penson, Señeres, David, and Falcone are the proper parties to file the election protest being candidates for the position of Senator during 2013 national and local elections and were ranked 29th, 31st, 30th, and 33rd, respectively.⁷⁶

Petitioners, however, contend that the jurisdiction of the SET in election “contests” is limited only to disputes between two contending parties whereby one challenges the validity of the other’s election or qualification with the intention of replacing the former in his/her position. Since they do not seek to replace the winning senatorial candidates, they claim that the jurisdiction over the case rests with this Court and not with the SET.

⁷⁴ 371 Phil. 760 (1999).

⁷⁵ *Id.* at 766.

⁷⁶ *Rollo*, pp. 52-53.

We do not agree.

Prior to the 1987 Constitution, the COMELEC was vested with the power to resolve contests relating to the election, returns, and qualifications of the members of the Batasang Pambansa including elective provincial and city officials. This is explicitly provided in Section 2(2), Article XII-C of the 1973 Constitution, which reads:

ARTICLE XII

THE CONSTITUTIONAL COMMISSIONS

x x x x.

THE COMMISSION ON ELECTIONS

SEC. 2. The Commission on Elections shall have the following powers and functions:

x x x x.

2. Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.

x x x x. (Emphasis supplied)

Thus, in the leading case of *Javier v. COMELEC (Javier)*,⁷⁷ the Court expounded on the phrase “*election, returns and qualifications*” in relation to the quasi-judicial powers of the COMELEC conferred upon it under the 1973 Constitution:

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. But if it is necessary to specify, we can say that “**election**” referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; “**returns**” to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and “**qualifications**” to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.⁷⁸ (Emphasis supplied)

In the same case, the Court, speaking through Justice Isagani Cruz, has shed light on the meaning of the term “contests” in relation to the COMELEC’s quasi-judicial functions. He clarified that “contests” should not be confined to its restrictive meaning but should be given a wide

⁷⁷ 228 Phil. 193-211 (1986).

⁷⁸ *Id.* at 205-206.

possible scope of construction as to encompass contentions involving a claim or title to the office **without due regard to the contestant's claim to such office:**

[T]he term "contest" as it was understood at the time Article XII-C, section 2(2) was incorporated in the 1973 Constitution did not follow the strict definition of a contention between the parties for the same office. Under the Election Code of 1971, which presumably was taken into consideration when the 1973 Constitution was being drafted, election contest included the *quo warranto* petition that could be filed by any voter on the ground of disloyalty or ineligibility of the contestee although such voter was himself not claiming the office involved.

The word "contests" should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the 1973 Constitution should be interpreted liberally. **As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute.**⁷⁹ (Emphasis supplied)

The interpretation laid down in *Javier* is actually a departure from the traditional concept of election "contests" which used to be confined to "statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into the office."⁸⁰

Notably, while the pronouncements in *Javier* was decided under the auspices of the 1973 Constitution, the same remains instructive on the extent of the constitutional grant of jurisdiction bestowed upon the electoral tribunals under the 1987 Constitution. In fact, the constitutional language has not changed. The jurisdiction vested to the SET and HRET was similar to that of the COMELEC under the 1973 Constitution.⁸¹ Thus, the interpretation given to the term "contests" in *Javier*, pertaining to the jurisdiction of the COMELEC still applies in interpreting SET's jurisdiction under the 1987 Constitution. Accordingly, petitioners attempt to narrowly define election contests as disputes between two contending parties whereby one intends to replace the other is bereft of merit.

In view of these disquisitions, the Court is constrained to dismiss the present petition.

Firstly, the jurisdiction of the SET to take cognizance over the instant petition, to the exclusion of other tribunals, is clear. It is the SET which has the exclusive jurisdiction to hear and decide all matters relating to the alleged irregularities in the canvassing of election returns and nullity of the

⁷⁹ *Id.*

⁸⁰ *Vera, et al. v. Avelino, et al.*, 77 Phil. 192,296 (1946), citing the dissenting opinion of Justice Perfecto.

⁸¹ *Tolentino v. Senate Electoral Tribunal*, G.R. No. 248005, May 11, 2021.

proclamation of the 12 winning senatorial candidates. To delve on these matters would be to usurp on the clear, complete and categorical authority bestowed upon the SET as the sole judge of all contests relating to the election, returns, and qualifications of the members of the Senate. As succinctly held in *Barbers*,⁸² any pursuit by the Court to assume jurisdiction would be tantamount to an encroachment of the constitutional functions of the SET.

Secondly, it cannot be overemphasized that a special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.⁸³ *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment to the proper forum despite the availability of that remedy, *certiorari* not being a substitute for lost appeal.⁸⁴ This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution.⁸⁵

Here petitioners should have timely filed an election protest before the SET, which We stress is a plain, speedy and adequate remedy, before invoking the Court's discretionary power of judicial review under Rule 65 of the Rules of Court. Petitioners failed to prove that the election protest before the SET is an inadequate remedy that would not promptly relieve them from the effects of the assailed COMELEC-NBOC's issuances. Thus, the existence and availability of such remedy precludes them from resorting directly to this Court via a petition for *certiorari*.

Having disposed the main petition in the foregoing manner, the dismissal of the petition-in-intervention ensues as a matter of course. An intervention is regarded as a mere collateral or accessory to the original action, such that the dismissal of the original case necessarily includes that of the petition-in-intervention. Further, being a mere ancillary or supplemental to an existing litigation, an intervention would not survive *sans* the Court's jurisdiction over the main action. As this Court enunciated in *Asian Terminals, Inc. v. Bautista-Ricafort*:⁸⁶

[I]ntervention is merely ancillary and supplemental to the existing litigation and never an independent action, the dismissal of the principal action necessarily results in the dismissal of the complaint-in-intervention. Likewise, a court which has no jurisdiction over the principal action has no

⁸² See *Barbers v. COMELEC*, *supra* note 72, at 588.

⁸³ *Balayan v. Acorda*, 523 Phil. 305, 309 (2006).

⁸⁴ *International Exchange Bank v. Court of Appeals*, 518 Phil. 528, 535-536 (2006).

⁸⁵ *Nuque v. Aquino, et al.*, 763 Phil. 362, 367-368 (2015).

⁸⁶ 536 Phil. 614-631 (2006).

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jurisdiction over a complaint-in-intervention. Intervention presupposes the pendency of a suit in a court of competent jurisdiction. Jurisdiction of intervention is governed by jurisdiction of the main action.⁸⁷

Such fundamental requirement of jurisdiction over the main action before an intervention may prosper was likewise elucidated in the old but still relevant case of *Kendrick v. Kendrick*.⁸⁸

An existing suit within the court’s jurisdiction is a prerequisite of an intervention, which is an ancillary proceeding in an already instituted suit or action by which a third person is permitted to make himself a party, either joining the plaintiff in claiming what is sought by the complainant, or uniting with the defendant in resisting the claims of the plaintiff, or demanding something adversely to both of them. (Emphasis supplied)

All told, the Court has no jurisdiction to entertain much less resolve, the matters raised in the main petition and petition-in-intervention. The issues advanced therein are matters best addressed to the sound judgment and discretion of the SET, which has exclusive jurisdiction to act on it. At the risk of being repetitive, the power of the SET is full, clear and complete. It excludes the exercise of any authority on the part of this Court that would in any wise restrict or curtail it or even affect the same.⁸⁹ This is in recognition and faithful adherence to the constitutional mandate that the Electoral Tribunal of each House of Congress shall be the “*sole judge of all contests relating to the election, returns, and qualifications of their respective members.*”

WHEREFORE, premises considered, the Petition for *Certiorari* and Petition-in-Intervention are **DISMISSED**.

SO ORDERED.


JOSEPH V. LOPEZ
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

⁸⁷ *Id.* at 630.

⁸⁸ 5 Cir., 16 F.2d 744, 745 (1926), citing *Rocca v. Thompson*, 223 U.S. 317, 331, 32 S. Ct. 207, 56 L. Ed. 453 (1912); *Stewart v. Dunham*, 115 U.S. 61 5 S. Ct. 1163, 29 L. Ed. 329 (1885); *Adler v. Seaman* (C. C.A.) 266 F. 828 (1920).

⁸⁹ *Lachica, et al. v. Hon. Yap, et al.*, 134 Phil. 164, 167 (1968).

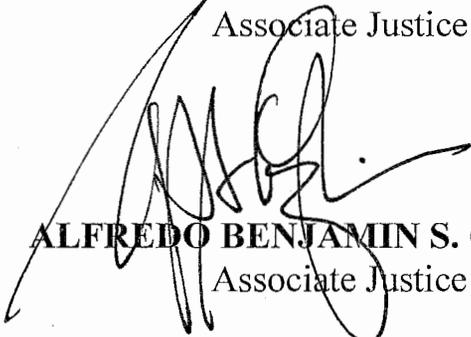
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ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



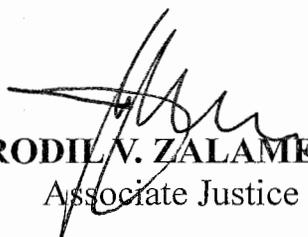
ROSMARIE D. CARANDANG
Associate Justice



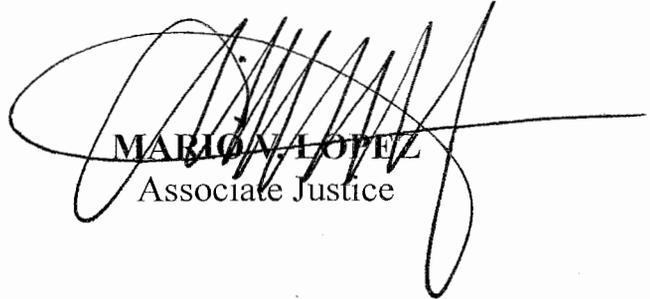
AMY C. LAZARO-JAVIER
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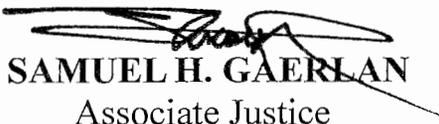
HENRI JEAN PAUL B. INTING
Associate Justice



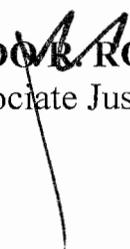
RODIL N. ZALAMEDA
Associate Justice



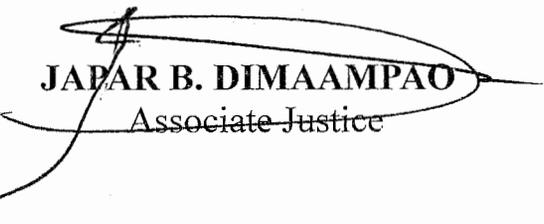
MARIA A. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



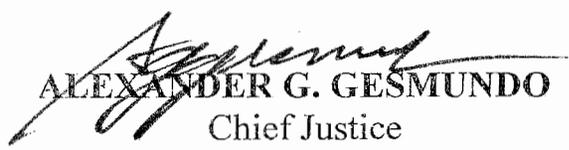
RICARDO R. ROSARIO
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ALEXANDER G. GESMUNDO
Chief Justice

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