



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

**MAYOR EMMANUEL
L. MALIKSI,**
Petitioner,

G.R. No. 203302

Present:

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

- versus -

**COMMISSION ON ELECTIONS
AND HOMER T. SAQUILAYAN,**
Respondents.

Promulgated:

April 11, 2013

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RESOLUTION

BERSAMIN, J.:

The Court hereby resolves the Extremely Urgent Motion for Reconsideration filed by petitioner Emmanuel L. Maliksi against the Court's decision promulgated on March 12, 2013, dismissing his petition for *certiorari* assailing the resolution dated September 14, 2012 of the Commission on Elections (COMELEC) *En Banc* that sustained the declaration of respondent Homer T. Saquilayan as the duly elected Mayor of Imus, Cavite.

8

For clarity, we briefly restate the factual antecedents.

During the 2010 Elections, the Municipal Board of Canvassers proclaimed Saquilayan the winner for the position of Mayor of Imus, Cavite. Maliksi, the candidate who garnered the second highest number of votes, brought an election protest in the Regional Trial Court (RTC) in Imus, Cavite alleging that there were irregularities in the counting of votes in 209 clustered precincts. Subsequently, the RTC held a revision of the votes, and, based on the results of the revision, declared Maliksi as the duly elected Mayor of Imus commanding Saquilayan to cease and desist from performing the functions of said office. Saquilayan appealed to the COMELEC. In the meanwhile, the RTC granted Maliksi's motion for execution pending appeal, and Maliksi was then installed as Mayor.

In resolving the appeal, the COMELEC First Division, without giving notice to the parties, decided to recount the ballots through the use of the printouts of the ballot images from the CF cards. Thus, it issued an order dated March 28, 2012 requiring Saquilayan to deposit the amount necessary to defray the expenses for the decryption and printing of the ballot images. Later, it issued another order dated April 17, 2012 for Saquilayan to augment his cash deposit.

On August 15, 2012, the First Division issued a resolution nullifying the RTC's decision and declaring Saquilayan as the duly elected Mayor.¹

Maliksi filed a motion for reconsideration, alleging that he had been denied his right to due process because he had not been notified of the decryption proceedings. He argued that the resort to the printouts of the ballot images, which were secondary evidence, had been unwarranted because there was no proof that the integrity of the paper ballots had not been preserved.

On September 14, 2012, the COMELEC *En Banc* resolved to deny Maliksi's motion for reconsideration.²

Maliksi then came to the Court *via* petition for *certiorari*, reiterating his objections to the decryption, printing, and examination of the ballot images without prior notice to him, and to the use of the printouts of the ballot images in the recount proceedings conducted by the First Division.

In the decision promulgated on March 12, 2013, the Court, by a vote of 8-7, dismissed Maliksi's petition for *certiorari*. The Court concluded that

¹ *Rollo*, p. 125.

² *Id.* at 63

Maliksi had not been denied due process because: (a) he had received notices of the decryption, printing, and examination of the ballot images by the First Division — referring to the orders of the First Division directing Saquilayan to post and augment the cash deposits for the decryption and printing of the ballot images; and (b) he had been able to raise his objections to the decryption in his motion for reconsideration. The Court then pronounced that the First Division did not abuse its discretion in deciding to use the ballot images instead of the paper ballots, explaining that the printouts of the ballot images were not secondary images, but considered original documents with the same evidentiary value as the official ballots under the Rule on Electronic Evidence; and that the First Division's finding that the ballots and the ballot boxes had been tampered had been fully established by the large number of cases of double-shading discovered during the revision.

In his Extremely Urgent Motion for Reconsideration, Maliksi raises the following arguments, to wit:

I.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN DISMISSING THE INSTANT PETITION DESPITE A CLEAR VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW CONSIDERING THAT DECRYPTION, PRINTING AND EXAMINATION OF THE DIGITAL IMAGES OF THE BALLOTS, WHICH IS THE BASIS FOR THE ASSAILED 14 SEPTEMBER 2012 RESOLUTION OF THE PUBLIC RESPONDENT, WHICH IN TURN AFFIRMED THE 15 AUGUST 2012 RESOLUTION OF THE COMELEC FIRST DIVISION, WERE DONE INCONSPICUOUSLY UPON A *MOTU PROPRIO* DIRECTIVE OF THE COMELEC FIRST DIVISION SANS ANY NOTICE TO THE PETITIONER, AND FOR THE FIRST TIME ON APPEAL.

II.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN UPHOLDING THE COMELEC FIRST DIVISION'S RULING TO DISPENSE WITH THE PHYSICAL BALLOTS AND RESORT TO THEIR DIGITAL IMAGES NOTWITHSTANDING THE FACT THAT THE BALLOTS ARE THE BEST AND MOST CONCLUSIVE EVIDENCE OF THE VOTERS' WILL, AND THAT BALLOT IMAGES CAN BE RESORTED TO ONLY IF THE OFFICIAL BALLOTS ARE LOST OR THEIR INTEGRITY WAS COMPROMISED AS DETERMINED BY THE RECOUNT/REVISION COMMITTEE, CIRCUMSTANCES WHICH ARE WANTING IN THIS CASE, AND IN FACT THE INTEGRITY OF THE BALLOT BOXES AND ITS CONTENTS WAS PRESERVED AND THE ISSUE OF TAMPERING WAS ONLY BELATEDLY RAISED BY THE PRIVATE RESPONDENT AFTER THE REVISION RESULTS SHOWED THAT HE LOST.

III.

WITH ALL DUE RESPECT, IT IS THE HUMBLE SUBMISSION OF THE PETITIONER-MOVANT THAT THE 12 MARCH 2013 RESOLUTION ISSUED BY THE HONORABLE SUPREME COURT *EN BANC* IS NULL AND *VOID AB INITIO* AND THEREFORE OF NO FORCE AND EFFECT, FOR HAVING BEEN PROMULGATED DESPITE THE ABSENCE OF HONORABLE SUPREME COURT JUSTICE JOSE PORTUGAL PEREZ AT THE TIME OF THE DELIBERATION AND VOTING ON THE 12 MARCH 2013 *RESOLUTION* IN THE INSTANT CASE.³

Maliksi insists: (a) that he had the right to be notified of every incident of the proceedings and to be present at every stage thereof; (b) that he was deprived of such rights when he was not informed of the decryption, printing, and examination of the ballot images by the First Division; (c) that the March 28, 2012 and April 17, 2012 orders of the First Division did not sufficiently give him notice inasmuch as the orders did not state the date, time, and venue of the decryption and printing of the ballot images; and (d) that he was thus completely deprived of the opportunity to participate in the decryption proceedings.

Maliksi contends that the First Division's *motu proprio* directive for the decryption, printing, and examination of the ballot images was highly irregular. In this regard, he asserts: (a) that the decryption, printing, and examination should have taken place during the revision before the trial court and after the revision committee had determined that the integrity of the official ballots had not been preserved; (b) that the trial court did not make such determination; (c) that, in fact, Saquilayan did not allege or present any proof in the RTC to show that the ballots or the ballot boxes had been tampered, and had, in fact, actively participated in the revision proceedings; (d) that the First Division should not have entertained the allegation of ballot tampering belatedly raised on appeal; (e) that the First Division should have limited itself to reviewing the evidence on record; and (f) that the First Division did not even explain how it had arrived at the conclusion that the integrity of the ballots had not been preserved.

Maliksi submits that the decision promulgated on March 12, 2013 is null and void for having been promulgated despite the absence from the deliberations and lack of signature of Justice Jose Portugal Perez.

Ruling

The Court grants Maliksi's Extremely Urgent Motion for Reconsideration, and reverses the decision promulgated on March 12, 2013

³ Id. at 575-577.

on the ground that the First Division of the COMELEC denied to him the right to due process by failing to give due notice on the decryption and printing of the ballot images. Consequently, the Court annuls the recount proceedings conducted by the First Division with the use of the printouts of the ballot images.

It bears stressing at the outset that the First Division should not have conducted the assailed recount proceedings because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed it to conduct a recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, 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.⁴

As we see it, the First Division arbitrarily arrogated unto itself the conduct of the recount proceedings, 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*⁵ 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."

Based on the pronouncement in *Alliance of Barangay Concerns (ABC) v. Commission on Elections*, 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. Thus, the COMELEC *En Banc* should not have upheld the First Division's deviation from the regular procedure in the guise of speedily resolving the election protest, in view of its failure to provide the parties with notice of its proceedings and an opportunity to be heard, the most basic requirements of due process.

⁴ COMELEC Resolution No. 8804, Rule 6, Section 1.

⁵ G.R. No. 199050, August 28, 2012.

I. Due process requirements

The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves.⁶ In *Vinzons-Chato v. House of Representatives Electoral Tribunal*,⁷ 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.

⁶ 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

⁷ G.R. No. 199149, January 22, 2013.

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 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, the aforesaid 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*), as amended by COMELEC Resolution No. 9164, 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, 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. (Emphases supplied.)

X X X X

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:

X X X X

(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. (Emphases supplied.)

X X X X

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. (Emphases supplied.)

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; Emphases supplied.)

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 boxes 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. 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.

When, as in the present case, it was not the Revision/Recount Committee or the RTC exercising 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, the parties should have been given a formal notice thereof.

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 to 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 declared as justification was a simple generalization 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.⁸ (Emphasis supplied)

X X X X

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 explanation by the COMELEC *En Banc* did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the First Division's proceedings.

In his dissenting opinion, Justice Antonio T. Carpio advances the view that the COMELEC's finding of ballot tampering was a mere surplusage because there was actually no need for such finding before the ballots' digital counterparts could be used. He cites Section 3, Rule 16 of COMELEC Resolution No. 8804, as amended by Resolution No. 9164, which states:

Section 3. Printing of Ballot Images. - In case the parties deem it necessary, they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images **in addition to those mentioned in the second paragraph of item (e)**. Parties concerned shall provide the necessary materials in the printing of images such as but not limited to copying papers, toners and printers. Parties may also secure, upon prior approval by the Division of the Commission, a soft copy of the ballot images contained in a secured/hashed disc on the condition that the ballot images be first printed, at the expense of the requesting party, and that the printed copies be signed by the parties' respective revisors or representatives and by an ERSD IT-capable representative and deposited with the Commission.

The Over-all chairman shall coordinate with the Director IV, Election Records and Statistics Department (ERSD), for the printing of images. Said director shall in turn designate a personnel who will be responsible in the printing of ballot images.

Justice Carpio posits that when a party files a motion for the printing of the ballots that he or she deems necessary, there is actually no need for a

⁸ *Rollo*, p. 102.

finding of tampering of the ballots or the ballot boxes before the COMELEC Division may grant the motion. He states that a determination by the parties that the printing is necessary under Section 3 is a ground separate from Section 6(e), which in turn pertinently states that:

Section 6. Conduct of the Recount –

X X X X

(e) Before the opening of the ballot box, the Recount Committee shall note its condition as well as that of the locks or locking mechanism and record the condition in the recount report. From its observation, the Recount Committee must also make a determination as to whether the integrity of the ballot box has been preserved.

In the event that there are signs of tampering or if the ballot box appears to have been compromised, the Recount Committee shall still proceed to open the ballot box and make a physical inventory of the contents thereof. The committee shall, however, record its general observation of the ballots and other documents found in the ballot box.

The application of Section 3 to this case is inappropriate, considering that the First Division did not in any way suggest in its decision dated August 15, 2010 that it was resolving Saquilayan's motion to print the ballot images. Instead, the First Division made therein a finding of tampering, thus:

The COMELEC (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 images of the appealed ballots.

Even the COMELEC *En Banc* did not indicate in its decision dated September 14, 2012 that the First Division merely resolved Saquilayan's motion for the printing of the ballot images; instead, it reinforced the First Division's finding that there was tampering of the ballots. The non-mention of Saquilayan's motion was a clear indication of the COMELEC's intention to act *motu proprio*; and also revealed its interpretation of its very own rules, that there must be justifiable reason, *i.e.* tampering, before the ballot images could be resorted to.

The application of Section 3 would only highlight the First Division's denial of Maliksi's right to due process. For, if the First Division was really only acting on a motion to allow the printing of the ballot images, there was a greater reason for the First Division to have given the parties notice of its ruling thereon. But, as herein noted, the First Division did not issue such ruling.

To interpret Section 3 as granting to any one of the parties the right to move for the printing of the ballot images should such party deem it necessary, and the COMELEC may grant such motion, is contrary to its clear wording. Section 3 explicitly states: “in case the parties deem it necessary, they may file a motion.” The provision really envisions a situation in which both parties have *agreed* that the ballot images should be printed. Should only one of the parties move for the printing of the ballot images, it is not Section 3 that applies but Section 6(e), which then requires a finding that the integrity of the ballots has been compromised.

The 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. Notably, 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.

The service of the First Division orders requiring Saquilayan to post and augment the cash deposits for the printing of the picture images did not sufficiently give Maliksi notice of the First Division’s decision to print the picture images. The said orders did not meet the requirements 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.

Moreover, due process of law does not only require notice of the decryption, printing, and recount proceedings to the parties, but also demands an opportunity to be present at such proceedings or to be represented therein. Maliksi correctly contends that the orders of the First Division simply required Saquilayan to post and augment his cash deposit. The orders did not state the time, date, and venue of the decryption and recount proceedings. Clearly, the First Division had no intention of giving the parties the opportunity to witness its proceedings.

*Mendoza v. Commission on Elections*⁹ instructs that notice to the parties and their participation are required during the adversarial aspects of the proceedings. 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 in the SET. Mendoza later learned that the COMELEC, with the permission of the SET, had meanwhile conducted proceedings within the SET's premises. Mendoza then claimed that his right to due process was violated because he had not been given notice by the COMELEC that it would be conducting further proceedings within the SET premises. The Court did not sustain his claim, 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 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

⁹ G. R. No. 188308, October 15, 2009, 603 SCRA 692.

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.¹⁰ (Emphasis supplied.)

Here, the First Division denominated the proceedings it had conducted as an “appreciation of ballots” like in *Mendoza*. But unlike in *Mendoza*, 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.

Significantly, Section 6(l), Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, requires the parties’ presence during the printing of the images of the ballots, thus:

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.

x x x x

We should not ignore that the parties’ participation during the revision and recount proceedings would not benefit only the parties, but 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. The parties’ presence would have ensured that the requisite procedures have been followed, including the required authentication and certification that the images to be printed are genuine. 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

¹⁰ Id. at 716-717.

COMELEC was merely content with listing 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.

II. Remand to the COMELEC

We are mindful of the urgent need to speedily resolve the election protest because the term of the position involved is about to end. Thus, we overlook *pro hac vice* the lack of factual basis for the COMELEC's decision to use the digital images of the ballots and sustain its decision thereon. Although a remand of the election protest to the RTC would have been the appropriate procedure, we direct the COMELEC *En Banc* instead to conduct the decryption and printing of the digital images of the ballots and to hold recount proceedings, with due notice to all the parties and opportunity for them to be present and to participate during such proceedings. Nothing less serves the ideal objective safeguarded by the Constitution.

In the absence of particular rules to govern its proceedings in accordance with this disposition, the COMELEC is urged to follow and observe Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164.

The Court, by this resolution, does not intend to validate the victory of any of the parties in the 2010 Elections. That is not the concern of the Court as yet. The Court simply does not want to countenance a denial of the fundamental right to due process, a cornerstone of our legal system.¹¹ After all, it is the Court's primary duty to protect the basic rights of the people vis-à-vis government actions, thus:

It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: "The end does not justify the means." No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles.¹²

¹¹ *Pinlac v. Court of Appeals*, G.R. No. 91486, January 19, 2001, 349 SCRA 635, 653.

¹² *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 177.

WHEREFORE, the Court **PARTIALLY GRANTS** the Extremely Urgent Motion for Reconsideration of petitioner Emmanuel Maliksi; **REVERSES** the Court's decision promulgated on March 12, 2013; and **DIRECTS** the Commission on Elections *En Banc* to conduct proceedings for the decryption of the picture images of the ballots involved in the protest after due authentication, and for the recount of ballots by using the printouts of the ballot images, with notice to and in the presence of the parties or their representatives in accordance with the procedure laid down by Rule 15 of COMELEC Resolution No. 8804, as amended by Resolution No. 9164.

No pronouncement on costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

I join the dissent of J. Carpio
M. Sereno

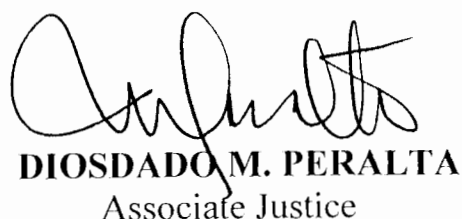
MARIA LOURDES P. A. SERENO
Chief Justice

I dissent
Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Arturo D. Brion
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Carpio
M. C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

I join J. Carpio's dissent.

Whosed
ROBERTO A. ABAD
Associate Justice

[Signature]
MARTIN S. VILLARAMA, JR.
Associate Justice

I concur in a separate opinion
JOSE PORTUGAL PEREZ
Associate Justice

[Signature]
JOSE CATRAL MENDOZA
Associate Justice

[Signature]
BIENVENIDO L. REYES
Associate Justice

I join the dissent of J. Carpio
MP
ESTELA M. PERLAS-BERNABE
Associate Justice

I join dissent of J. Carpio
[Signature]
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice