



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

RECORDED
 JUL 22 2021

BY: _____
 TIME: _____

EN BANC

FRANCIS N. TOLENTINO,
 Petitioner,

G.R. No. 248005

Present:

GESMUNDO, C.J., *
 PERLAS-BERNABE,*
 LEONEN,*
 CAGUIOA,*
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 DELOS SANTOS,
 GAERLAN,
 ROSARIO, and
 LOPEZ, J., JJ.

- versus -

SENATE ELECTORAL
 TRIBUNAL and COMMISSION
 ON ELECTIONS,

Promulgated:

Respondents.

May 11, 2021

[Signature]

x-----x

DECISION

LOPEZ, J., J.:

This is a Petition for *Certiorari*¹ under Rule 65, in relation to Rule 64, of the Rules of Court, seeking to reverse and/or set aside Resolution No. 16-141² dated February 21, 2019 and Resolution No. 16-143³ dated May 6, 2019 rendered by the Senate Electoral Tribunal (SET) in “Francis N. Tolentino, *Protestant v. Leila M. De Lima, Protestee*,” docketed as SET Case No. 001-16.

* No part.
 1 *Rollo*, pp. 3-36.
 2 *Id.* at 44-53.
 3 *Id.* at 68-73.

Briefly, the assailed Resolution No. 16-141 dated February 21, 2019 denied petitioner Senator Francis N. Tolentino's Motion for Return of Payments dated October 1, 2018. On the other hand, the impugned Resolution No. 16-143 dated May 6, 2019 denied petitioner's Motion for Reconsideration.

THE FACTS

During the May 9, 2016, National, Local and Autonomous Region of Muslim Mindanao (*ARMM*) Elections, the Commission on Elections (*COMELEC*) utilized a total of Ninety-Two Thousand Five Hundred Nine (92,509) Vote Counting Machines (*VCMS*) and their respective components and other paraphernalia. These election machines and equipment were procured by the *COMELEC* from Smartmatic-TIM under an Automated Election System (*AES*) contracts, which were in the nature of a lease with option to purchase (*OTP*). The terms of which expressly provide as follows:

“6.9 All Goods still in the possession of COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase under this Contract, and the COMELEC shall pay the corresponding price in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, without prejudice to COMELEC requiring the protestant to shoulder such costs.”⁴

On June 20, 2016, petitioner filed an election protest against Senator Leila M. De Lima, pertaining to the official results of the senatorial elections.

In Resolution No. 16-01⁵ dated July 7, 2016, the SET, acting on petitioner's protest, directed the *COMELEC* “*to safeguard and preserve the integrity of all ballot boxes, their contents and keys, lists of voters with voting records, books of voters and other documents and materials or paraphernalia used or accomplished in connection with the 09 May 2016 elections for the office of Senator of the Philippines, as well as data storage devices containing electronic data evidencing the conduct and the results of election, which are in their keeping and custody, as the case may be; and to hold all such materials/documents subject to further orders and instructions of the Senate Electoral Tribunal.*”

In a letter⁶ dated July 22, 2016, the *COMELEC* sought clarification on the coverage of the protection order under Resolution No. 16-01.

⁴ *Id.* at 223. (Emphases ours).

⁵ *Id.* at 74-78.

⁶ *Id.* at 79-82.

In response, the SET issued Resolution No. 16-06⁷ dated August 15, 2016, modifying the protection order and excluded therefrom the hardware and supplementary components of the VCMs and Consolidated Canvassing System (CCS) laptops used during the elections, which do not contain any election data. Moreover, pursuant to Section 6.9 of the AES Contracts, the SET Executive Committee required the COMELEC to provide the amount to be paid by petitioner as retention costs of the VCMs and the CCS laptops pertaining to the latter's protest.

Thereafter, the SET issued Resolution No. 16-15⁸ dated November 9, 2016 requiring petitioner to manifest to the Tribunal his intended course of action with respect to the retained equipment related to his election protest. In compliance therewith, petitioner submitted a Manifestation⁹ dated November 18, 2016 requesting that forty-five (45) VCMs and six (6) CCS laptops be retained by the COMELEC. Subsequently, he filed a Motion¹⁰ dated November 18, 2016, praying that an additional One Hundred Six (106) VCMs and their SD cards and other materials contained therein, be safeguarded and preserved by the COMELEC.

Acting thereon, the SET issued Resolution No. 16-17¹¹ dated November 22, 2016 directing the COMELEC to retain, safeguard and preserve the machines and equipment specified by petitioner in his Manifestation and Motion, both dated November 16, 2018, subject to the payment of petitioner of additional cash deposit to cover the cost of the said machines and equipment and required petitioner to deposit with the Tribunal, not later than November 29, 2016, the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36). Material portion of which reads:

ACCORDINGLY, the Executive Committee of the Tribunal resolves to:

x x x x

b) Without prejudice to the Tribunal's ruling on Protestant Tolentino's failure to seasonably submit his Preliminary Conference Brief, **DIRECT the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops, the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's Manifestation and the one hundred six (106) Vote Counting Machines (VCMs) and their Secure Digital (SD) cards enumerated in Protestant's Motion, subject to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment;** and

⁷ *Id.* at 83-87.

⁸ *Id.* at 265-266.

⁹ *Id.* at 267-269.

¹⁰ *Id.* at 272-276.

¹¹ *Id.* at 293-299.

c) REQUIRE Protestant Tolentino to deposit with the Tribunal not later 29 November 2016, the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36), representing the cost of the aforesaid machines and equipment, computed as follows:

6 CCS Laptops at P29,909.16 each	=	P179,454.96
45 VCMs at P20,770.40 each	=	P934,668.00
106 VCMs at P20,770.40 each	=	<u>P2,201,662.40</u>
TOTAL		<u>P3,315,785.36</u>

The Precautionary Order issued by the Tribunal is further modified accordingly.

SO ORDERED.¹²

On December 1, 2016, petitioner initially deposited with the SET the amount of One Million One Hundred Fourteen Thousand One Hundred Twenty-Two and 96/100 Pesos (P1,114,122.96), representing the cost of the forty-five (45) VCMs and six (6) CCS laptops.

In its Resolution No. 16-37¹³ dated March 2, 2017, the SET acknowledged the above initial payment and required petitioner to deposit the remaining balance in the amount of Two Million Two Hundred One Thousand Six Hundred Sixty-Two and 40/100 Pesos (P2,201,662.40), representing the cost of retention by the COMELEC of the 106 VCMs, otherwise, his election protest will be dismissed. The SET also stated that any right, if any, of petitioner arising from his payment of the said amount shall be threshed out between him and the COMELEC, the pertinent portion of which is reproduced as follows:

IN VIEW OF THE FOREGOING, the Tribunal resolves to:

x x x x

d) REQUIRE protestant Tolentino to deposit with the Tribunal within fifteen (15) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty[-]Two and 40/100 Pesos (P2,201,662.40), **representing the cost of the retention** by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016. Any right, if any, of Protestant Tolentino arising from his payment of the said amount shall be threshed out between Protestant Tolentino and [the] COMELEC.

Upon failure of Protestant Tolentino to seasonably comply with this Resolution, the Tribunal may dismiss the instant electoral protest or take such other action as it may deem equitable under the premises.

SO ORDERED.¹⁴

¹² *Id.* at 298-299. (Emphases ours).

¹³ *Id.* at 363-374.

¹⁴ *Id.* at 373-374. (Emphasis ours).

Petitioner moved for reconsideration, but the same was denied by the SET in Resolution No. 16-49¹⁵ dated May 25, 2017, which also reiterated the directive for petitioner to deposit the remaining balance of the retention cost of the election machines and equipment.

Thus, on June 13, 2018, petitioner paid the remaining balance.

On October 3, 2018, petitioner filed a Motion for the Return of Payments,¹⁶ asserting that the payments made by him in the total amount of ₱3,315,785.36 should be returned because despite paying the purchase price of these election machines and equipment, he never enjoyed ownership rights over the same. He had no opportunity to possess them as these machines and equipment remained in the custody of the COMELEC. He cannot even access them without permission from the COMELEC.

Petitioner further contended that the purchase of the said machines and equipment was in furtherance of his election protest. Since free access to, use and enjoyment of the same, were denied, if not limited, forensic examinations of the hardware could not be done. Considering that these machines and equipment were not utilized and would no longer be of use in his election protest, the complete payment made by him did not bear its purpose.

In its Comment¹⁷ dated October 31, 2018, the COMELEC mainly asserted that the payments made by petitioner were for the retention of the election paraphernalia in relation to his election protest and not for the payment of the election paraphernalia itself. If not for the election protest of petitioner, these election paraphernalia would have long been turned over by the COMELEC to Smartmatic-TIM prior to December 1, 2016, pursuant to their contract. Likewise, there was no contract of sale between petitioner and the COMELEC over these election machines and equipment, such that there could never be transfer of ownership over these items to petitioner.

In his Reply¹⁸ dated November 19, 2018, petitioner argued that the subject election machines and equipment were never used in his election protest for reasons that are solely attributable to the COMELEC. He also posited that the amount of ₱3,315,785.36 as “retention cost” of the machines and equipment is too onerous and violative of his right to free access and due process. He also invoked the powers and discretion of the SET to invalidate Section 6.9 of the AES Contracts between the COMELEC and Smartmatic-TIM on the ground that it is illegal as it bestows upon the COMELEC the sole discretion to determine whether or not to require the protestant to shoulder the retention cost of the machines and equipment to be used in an election protest.

¹⁵ *Id.* at 436-442.

¹⁶ *Id.* at 525-529.

¹⁷ *Id.* at 531-543.

¹⁸ *Id.* at 544-553.

Lastly, petitioner propounded that the COMELEC extended its option to purchase and eventually exercised the option through a Deed of Sale dated January 12, 2018. The exercise of the option to purchase supposedly debunked the necessity for the COMELEC to charge him with retention cost.

In a letter dated November 26, 2018, the SET sought clarification from the COMELEC if indeed the subject VCMs and CCS laptops were paid with government funds when the COMELEC exercised its option to purchase on January 12, 2018.

In response thereto, the COMELEC reiterated its position that the amount paid by petitioner, which he deposited with the SET, represents the cost of the retention and, thus, belongs to the government.

In Resolution No. 16-141¹⁹ dated February 21, 2019, the SET denied petitioner's Motion for the Return of Payments, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the Tribunal resolves to:

- a. DENY Protestant's Motion for the Return of Payments dated 1 October 2018, involving the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36) for lack of merit.
- b. DIRECT the Secretary of the Tribunal to cause the immediate turn-over to the Commission on Elections the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (P3,315,785.36);
- c. NOTE the COMMENT (on Protestant Francis N. Tolentino's Motion for the Return of Payments) dated 24 October 2018 filed by the Commission on Elections;
- d. NOTE the REPLY (to [the] COMELEC's Comment dated October 31, 2018) dated 19 November 2018 filed by Protestant Tolentino; and
- e. NOTE the MANIFESTATION of the Commission on Elections dated 29 January 2019.

SO ORDERED.

In arriving at such disposition, the SET opined that the power to interpret and pass upon the legality of Section 6.9 of the Contract of Lease with Option to Purchase between the COMELEC and Smartmatic-TIM rests with the regular courts. Hence, any decision or action which the Tribunal may take on these matters would be wanting of any legal basis. The SET also stressed that in Resolutions No. 16-37 and 16-53, it consistently resisted in ruling on any concerns relative to the disputed provision and emphasized that

¹⁹ *Supra* note 2.

any issue relating to the ownership of the subject election machines and equipment should be properly addressed to the COMELEC. The SET also clarified that when it used the term “costs of the said machines and equipment” in its Resolution No. 16-17, it was referring to the cost which the COMELEC needed to pay Smartmatic-TIM under the option to purchase clause of the contract. Thus, when the disputed provision became effective on December 1, 2016, the retained machines and equipment were considered sold to the COMELEC, with the latter requiring the Protestant to shoulder the costs under the option to purchase. In addition, the SET ratiocinated that the alleged illegality and/or enforceability of the disputed provision cannot be a valid ground for the Tribunal to withhold the turnover of the amount deposited by petitioner to COMELEC. In any case, the petitioner is not without recourse, as he can still question the validity of the disputed provision by availing the proper remedies, even after the amount is released to the COMELEC.

Feeling aggrieved, petitioner filed a Motion for Reconsideration dated March 1, 2019, but failed to obtain a favorable relief, as the SET denied the same in its Resolution No. 16-143²⁰ dated May 6, 2019.

Undeterred by the setback, petitioner resorted to this present Petition for *Certiorari* anchored on this lone issue:

WHETHER OR NOT THE HONORABLE SET COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RESOLVED X X X TO RELEASE THE AMOUNT OF THREE MILLION THREE HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED EIGHTY-FIVE AND 36/100 PESOS (PHP 3,315,785.36) TO THE COMELEC WITHOUT PREJUDICE TO THE FILING OF A CIVIL ACTION FOR THE RETURN THEREOF.²¹

In the main, petitioner imputes grave abuse of discretion on the part of the SET when it refused to rule on the following issues: (1) the return of his cash deposit in the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eighty-Five and 36/100 Pesos (₱3,315,785.36) to cover the intended use of the VCMs and CCS; and (2) the alleged invalidity and unconstitutionality of Section 6.9 of the AES Contracts between the COMELEC and Smartmatic-TIM.

For petitioner, the intentional inactions of the SET show a clear and direct grave abuse of discretion as it failed to exercise its constitutional mandate to judge all contests relating to the election, returns, and qualifications of the Members of the Senate. As the proper forum for matters related to or arising out of his election protest, he incessantly insists that the SET should have passed upon the core controversy between him and the COMELEC.

²⁰ *Supra* note 3.

²¹ *Rollo*, p 19.

In this connection, petitioner propounds that the SET committed a patent and grave injustice when it allowed the release of his cash deposits to the COMELEC despite the fact that the election machines and equipment were not used for forensic audit, as he intended, due to reasons, directly attributable to the COMELEC. He claims that in a Manifestation dated August 7, 2018, the COMELEC admitted that the use of these election paraphernalia poses many serious technical challenges, aside from the fact that the Election Management System (*EMS*) was non-operational. Since the COMELEC failed to deliver what was incumbent upon it, he theorizes that the release of cash deposits amounted to unjust enrichment. Petitioner also posits that it would be confiscatory to consider the cash deposits as government funds immediately beyond December 1, 2016, without even considering that the retained election machines and equipment did not accomplish its purpose, due to the fault of the COMELEC.

Moreover, petitioner stands firm in his contention that to consider the entire cost of the election machines and equipment as “retention cost” is too onerous and would contravene his right to free access to an electoral tribunal and election protest. He insinuates that Section 6.9 of the AES Contracts constitutes an obstruction to the free access of litigants engaged in an election case as it imposes a retention cost which is equivalent to the cost of the machines and equipment. He postulates that this requirement is financially cumbersome to litigants and also discriminatory.

In addition, petitioner continues to harp on the alleged illegality and invalidity of Section 6.9 of the AES Contracts, as it supposedly bestows upon the COMELEC the sole discretion whether or not he should shoulder the costs. There are also no parameters or measures on how the COMELEC should exercise the discretion.

Relative thereto, petitioner puts forth that the SET subordinated itself to Section 6.9 of the AES Contracts by giving the same too much weight, and worse, by passing the resolution of the matter between him and the COMELEC to a separate forum. He emphasizes that the SET, being the sole judge of his election protest and having the inherent power to control its proceedings, should have settled the controversy between him and the COMELEC, instead of allowing itself to be compelled by the latter to enforce and uphold Section 6.9 of the AES Contracts. He also claims that the SET has an administrative authority to return the cash deposits made by him or, at the very least, to withhold its disposition pending the resolution of legal issues between him and the COMELEC.

On the other hand, the respondents, through the Office of the Solicitor General (*OSG*), chiefly assert that the present Petition for *Certiorari* is improper to question the alleged inaction of the SET. To begin with, the SET has no jurisdiction to rule on the issues pertaining to petitioner's cash deposit

and on the alleged invalidity and unconstitutionality of Section 6.9 of the AES Contracts. The constitutional mandate of the SET is limited to matters affecting the protestant's title. It does not include the power to declare void a contract validly executed between the COMELEC and Smartmatic-TIM. Respondents further propound that petitioner should have instituted a separate action to declare the nullity of Section 6.9 of the AES Contracts, rather than collaterally attacking the same in his election protest before the SET and in this petition for *certiorari*, which neither the SET nor this Court can take cognizance of.

Correlatively, respondents stress that unless declared void in a proper proceeding, the AES Contracts remain valid and the SET correctly relied on Section 6.9 of the AES Contracts when it ordered the release of the retention costs, in the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eighty-Five and 36/100 Pesos (₱3,315,785.36) to the COMELEC.

Furthermore, respondents underscore that there can be no return of the payments made by petitioner because the COMELEC validly paid the same to Smartmatic-TIM upon the lapse of the period to return the leased goods under Section 6.9 of the AES Contracts.

Respondents also highlight that petitioner was well aware that he was obliged to shoulder the retention costs for the subject machines and equipment. Despite such awareness, petitioner willingly moved for the safeguarding and preservation of these items, which the COMELEC, in fact did, in compliance with the directive of the SET. Thus, petitioner cannot successfully claim that the payments made by him did not bear its purpose.

In addition, respondents submit that the reimbursement of the retention money to petitioner would mean that government funds would be used to pay the retention costs to Smartmatic-TIM. This then would violate one of the fundamental principles enshrined under Presidential Decree (*P.D.*) No. 1445, which provides that government funds or property shall be spent or used solely for public purposes. Respondents posit that petitioner's election protest does not pass the "public purpose test" to warrant a valid disbursement of public funds.

Taken collectively, respondents propound that the Petition for *Certiorari* has no leg to stand on for failure of petitioner to prove grave abuse of discretion on the part of the SET.

THE COURT'S RULING

The Petition is bereft of merit.

The SET has no jurisdiction to pass upon the issue on the validity and constitutionality of Section 6.9 of the AES Contracts.

The constitutional mandate and jurisdiction of the SET is expressly articulated in Section 17, Article VI of the 1987 Constitution, which provides:

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 and underscoring supplied)

Pursuant to the 1987 Constitution, the SET is the sole judge of all contests relating to the "election, returns, and qualifications of the members of the Senate." The use of the word "sole" in Section 17, Article VI of the Constitution underscores the categorical and complete jurisdiction of the SET over election contests relating to members of the Senate, to the exclusion of all other tribunals. As this Court enunciated in *Lazatin v. HRET*.²²

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred. 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." Earlier, this grant of power to the legislature was characterized by Justice Malcolm "as full, clear and complete." Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

Prior to the creation of the SET under 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*

²² 250 Phil. 390, 399-400 (1988). (Citations omitted).

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.

C. THE COMMISSION ON ELECTIONS

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

- (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.

Significantly, in *Javier vs. COMELEC*,²³ the Court expounded on the phrase "*election, returns and qualifications*" in relation to the *quasi*-judicial powers of the COMELEC as sole judge of all contests relating to the elections, returns and qualifications of the national legislature and elective provincial and city officials, *viz.*:

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.

The foregoing interpretation of what constitutes election, returns and qualifications" in *Javier* is instructive and has shed light on the extent of the constitutional grant of jurisdiction given to electoral tribunals as the sole judges of all contests relating to the elections, returns, and qualifications of their respective members.

With the enactment of Section 17, Article VI of the 1987 Constitution, the jurisdiction of the COMELEC had been transferred to the electoral tribunals of the Senate and the House of Representatives to be the sole judges of all contests relating to the elections, returns, and qualifications of their respective Members. Nonetheless, the constitutional language has not changed. The jurisdiction vested to the SET and the HRET was similar to that of the COMELEC under the 1973 Constitution. Thus, the doctrine laid down in *Javier*, pertaining to the jurisdiction of the COMELEC remains applicable

²³ 228 Phil. 193, 205-206 (1986). (Emphases ours).

in interpreting the SET's jurisdiction.²⁴

Accordingly, in *Pangilinan v. COMELEC*,²⁵ the Court construed Section 17, Article VI of the 1987 Constitution in the following manner:

x x x The Senate and the House of Representatives now have their respective Electoral Tribunals which are the "sole judge of all contests relating to the election, returns, and qualifications of their respective Members," thereby divesting the Commission on Elections of its jurisdiction under the 1973 Constitution over election cases pertaining to the election of the Members of the Batasang Pambansa (Congress). x x x

With respect to the House of Representatives, it is the House of Representatives Electoral Tribunal (HRET) that has the sole and exclusive jurisdiction over contests relative to the election, returns and qualifications of its members. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the Omnibus Election Code underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

Corollarily, in the exercise of its rule-making powers granted by the the Constitution, the SET promulgated the 2020 Rules of Senate Electoral Tribunal to govern its proceedings. Rules 8 and 9 thereof provide:

RULE 9. *Express and Implied Powers* – The Tribunal shall exercise all such powers as are expressly vested in it by the Constitution or by law, and such other powers as may be necessary or incidental to the accomplishment of its purpose and functions.

Rule 10. *Inherent Powers* – The Tribunal has inherent powers, among others, to:

- a. Preserve and enforce order in its immediate presence;
- b. Preserve and enforce order in proceedings before it, its Executive Committee, any of its Divisions, or officials acting under its authority;
- c. Compel obedience to its judgments, order and processes;
- d. Compel the attendance of witnesses and the production of evidence in any case or proceeding before it;
- e. Administer, or cause to be administered, oaths in any case or proceeding before it, and in all other cases where it may be necessary in the exercise of its powers;
- f. Control its processes and amend its decisions, resolutions, or orders to make them conform to law and justice;

²⁴

Rollo, p. 665.

²⁵

298 Phil 685, 692 (1993).

- g. Authorize a copy of a lost or destroyed pleading or other paper to be filed and used in lieu of the original, and restore and supply deficiencies in its records and proceedings;
- h. Promulgate its own rules of procedure and amend or revise the same and adopt any suitable process or procedure not specifically provided by law or these Rules; and
- i. Exercise exclusive control, direction and supervision of all matters pertaining to its functions and operations.

A cursory reading of the foregoing unmistakably would show that the SET has no express, inherent or implied power to declare void or unconstitutional Section 6.9 of the AES Contracts, which requires the protestant to shoulder the retention costs. The authority of the SET is limited to matters affecting the validity of the protestant's title. While it may be true that the SET has the power to control its proceedings, such power cannot, by any means, be construed as including the power to interpret much less invalidate a contract between third parties. Thus, any issue concerning the contract between the COMELEC and Smartmatic-TIM is beyond the jurisdiction and constitutional mandate of the SET. To rule otherwise is to overstretch if not to go astray from the interpretation of the SET's constitutional grant of jurisdiction as the sole judge of all contests relating to the elections, returns, and qualifications of the members of the Senate, as laid down in *Javier*.

Apropos on this matter are the following disquisitions of the SET:

Notwithstanding the arguments presented by Protestant Tolentino showing the alleged illegality and/or unenforceability of Section 6.9 of the contract between COMELEC and SMARTMATIC-TIM Corporation, **it is beyond the jurisdiction of the Tribunal to interpret the controversial provision in the contract. Under existing rules, the power of interpreting contracts and passing on its validity and enforceability is within the exclusive jurisdiction of the regular courts.** Any decision, resolution or action which the Tribunal may take touching on the illegality and/or unenforceability of the disputed provision of the contract would be wanting of any legal basis. (Emphasis Supplied)

Indeed, to properly assail the disputed provision, petitioner should have instituted a direct action for its nullity before the regular courts, instead of collaterally attacking the same in his election protest before the SET. Had the SET passed upon this issue, it would have acted beyond its authority as to constitute grave abuse of discretion amounting to lack or excess of jurisdiction.

Under Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* is an extraordinary remedy that is available only upon showing that a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of excess of jurisdiction.

The writ of *certiorari* is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction.²⁶

To be more precise, the phrase "without jurisdiction" means that the court acted with absolute lack of authority or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. "Excess of jurisdiction" occurs when the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. While that of "grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.²⁷

Here, it is decisively clear that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the SET. In fact, the SET has acted well within the parameters of its jurisdiction when it desisted to rule upon the issue pertaining to the alleged unconstitutionality and invalidity of the disputed provision.

The SET properly relied on Section 6.9 of the AES Contracts when it ordered the release of cash deposit of petitioner to the COMELEC.

The power and authority of the COMELEC to procure election machines and equipment is clearly spelled out in Section 12 of Republic Act (R.A.) No. 8436,²⁸ otherwise known as the "Election Modernization Act of 1997," as amended by R.A. No. 9369,²⁹ or the *Automation Law*, to wit:

²⁶ *Cruz v. People*, 812 Phil. 166, 171 (2017).

²⁷ *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 396-397 (2008).

²⁸ AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

²⁹ AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF

SEC.12. Procurement of Equipment and Materials. - To achieve the purpose of this Act, **the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities, and other service**, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulation. With respect to the May 10, 2010 election and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or board. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness.

x x x. (Emphasis supplied)

In accordance therewith, the COMELEC entered into two (2) AES Contracts with Smartmatic-TIM, which are in the nature of a lease with option to purchase. The option contract between the COMELEC and Smartmatic-TIM is embodied in the questioned Section 6.9 of the AES contracts, which uniformly provides as follows:

“6.9 All Goods still in the possession of COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase under this Contract, and the COMELEC shall pay the corresponding price in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, without prejudice to COMELEC requiring the protestant to shoulder such costs.”³⁰

To put it simply, the option contract stipulates that the VCMs and other election paraphernalia are leased by the COMELEC from Smartmatic-TIM. Upon the lapse of the agreed lease period, or on December 1, 2016, all election machines and equipment still in its possession, due to any election contest or audit shall be considered sold to COMELEC, with the latter requiring the protestant to shoulder the costs under the option to purchase.

Relatedly, the previous AES Contracts that are also in the nature of a lease with an option to purchase entered into by the COMELEC with Smartmatic-TIM during the May 10, 2010 Synchronized National and Local elections were deemed valid by the Court.³¹

In *Capalla v. COMELEC*,³² the Court characterized the AES Contracts involving the May 20, 2010 elections in this wise:

ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.”

³⁰ *Rollo*, p. 223.

³¹ *Id.* at 672.

³² 687 Phil. 617 (2012).

One. Smartmatic-TIM was not granted additional right that was not previously available to the other bidders. Admittedly, the AES contract was awarded to Smartmatic-TIM after compliance with all the requirements of a competitive public bidding. **The RFP, Bid Bulletins and the AES contract identified the contract as one of lease with option to purchase. The AES contract is primarily a contract of lease of goods listed in the contract and purchase of services also stated in the contract.** Section 4.3 thereof gives the Comelec the OTP the goods agreed upon. The same provision states the conditions in exercising the option, including the additional amount that the Comelec is required to pay should it exercise such right. It is, therefore, undisputed that this grant of option is recognized by both parties and is already a part of the principal contract of lease.

As can be inferred therefrom, a lease agreement with an option to purchase is not a novel contract with respect to the COMELEC's authority to procure election equipment and materials.³³ The same has also been entered into by the COMELEC in the past election and has been recognized as valid and advantageous to the government.

Parenthetically, petitioner seriously erred when it contended that the SET allowed itself to be subordinated to Section 6.9 of the AES Contracts between the COMELEC and Smartmatic-TIM. Petitioner loses sight of the fact that until and unless Section 6.9 of the AES Contracts is declared void or unconstitutional in a proper proceeding, the presumption tilts in favor of its validity. Thus, the SET cannot be faulted for relying and enforcing the said provision, when it ordered the release of the cash deposits of petitioner to the COMELEC in the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (₱3,315,785.36) representing the retention costs of the machines and equipment retained in relation to his election protest.

There can be no return of the deposits made by petitioner as the same was properly paid by the COMELEC to Smartmatic-TIM

It must be recalled that petitioner filed a Manifestation³⁴ and Motion³⁵ for the COMELEC to retain the custody and possession of 151 VCMs and six (6) laptops, as well as the SD cards and other materials, contained therein for safeguarding and preservation. It was petitioner who believed that these election paraphernalia were necessary for the resolution of his election protest against Senator Leila M. de Lima.

Acting thereon, the COMELEC, in its Resolution No. 16-17,³⁶ ordered the COMELEC to safeguard and preserve these election machines and

³³ Rollo, p. 672.

³⁴ *Supra* note 9.

³⁵ *Supra* note 10.

³⁶ *Supra* note 11.

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equipment, subject to the payment of petitioner of the amount of Three Hundred Fifteen Thousand Seven Hundred Eight-Five & 36/100 Pesos (₱3,315,785.36), pursuant to Section 6.9 of the AES Contracts. This was followed by another Resolution No. 16-37,³⁷ where the SET clarified that the amount deposited by petitioner represents the retention costs of these election paraphernalia.

Given these factual milieu, it is evidently clear that the COMELEC only retained the possession and custody of the subject machines and equipment because of the pending election protest of petitioner after the May 2016 elections. When petitioner manifested and moved for the safeguarding and preservation of these election paraphernalia, he was fully apprised that he has to shoulder the retention costs pursuant to Section 6.9 of the AES Contracts. Otherwise, the COMELEC, having already retained possession thereof, would be constrained to pay Smartmatic-TIM the retention cost out of its own pocket.³⁸ Such scenario would then have the effect of undermining the "public purpose requirement" expressly mandated under P.D. No. 1445, otherwise known as the "*Government Auditing Code of the Philippines*." In particular, Section 4(2) thereof states:

Section 4. Fundamental Principles. – Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

x x x x

(2) Government funds or property shall be spent or used solely for public purposes.

To be sure, the meaning of the term "public use" has evolved over time in response to changing public needs and exigencies. Public use, which was traditionally understood as strictly limited to actual "use by the public," has already been abandoned. "Public use" has now been held to be synonymous with "public interest," "public benefit," and "public convenience."³⁹ Thus, in *Yap vs. COA*,⁴⁰ the Court exhaustively elaborated on the expanded concept of the term "public use" or "public purpose" in relation to the disbursement of government funds, viz.:

In this regard, it is necessary for this Court to elaborate on the nature and meaning of the term "public purpose," in relation to disbursement of public funds. As understood in the traditional sense, public purpose or public use means any purpose or use directly available to the general public as a matter of right. Thus, it has also been defined as "an activity as will serve as benefit to [the] community as a body and which at the same time is directly related function of government." However, the concept of public use is not limited to traditional purposes. Here as elsewhere, the idea that

³⁷ *Supra* note 13.

³⁸ *Rollo*, p. 674.

³⁹ *Republic of the Philippines v. Heirs of Saturnino Borbon, et al.*, 750 Phil. 37, 49 (2015).

⁴⁰ 633 Phil. 174, 187-188 (2010).

"public use" is strictly limited to clear cases of "use by the public" has been discarded. In fact, this Court has already categorically stated that the term "public purpose" is not defined, since it is an elastic concept that can be hammered to fit modern standards. It should be given a broad interpretation; therefore, it does not only pertain to those purposes that which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform. In short, public use is now equated with public interest, and that it is not unconstitutional merely because it incidentally benefits a limited number of persons.

Applied in this case, we find that the SET correctly denied petitioner's Motion for the Return of Payments. Had the SET ruled differently, it would have unduly favored an electoral candidate because government funds would have been utilized for the continued lease of the retained machines and equipment deemed necessary in his election protest. Indisputably, petitioner's election protest, which is aimed at advancing his personal interest as a senatorial candidate, does not fall within the expanded concept of "public purpose" to warrant the disbursement of government funds.

Moreover, petitioner's persistent insinuation that the payments made by him did not bear its purpose is untenable. Pursuant to the SET's directive, the COMELEC had, in fact, preserved and safeguarded the election equipment and materials involving his election protest. Were it not for the election protest initiated by him, said election paraphernalia would have long been turned-over by the COMELEC prior to December 1, 2016. Due to the lapse of the period to return the goods, the COMELEC became bound to pay Smartmatic-TIM under the AES Contracts.

In the same vein, there is no merit in petitioner's relentless contention that by paying the retention costs, which is equivalent to the entire cost of the election machines and equipment, he became the owner thereof. To stress, the payments made by petitioner did not cover the full cost of the election machines and equipment. Rather, it is only a portion of the purchase price paid by the COMELEC in the form of a lease or rental fee. This is precisely the ruling of the SET when it clarified that the amount deposited by petitioner pertains to the retention cost or rental fee. In turn, the retention cost is only a part of the full cost of the machines and equipment needed by the COMELEC to pay Smartmatic-TIM under the option to purchase clause of the contract:

During the meeting on 02 May 2017, the Tribunal's attention was drawn to the letter of Commissioner Lim specifying therein the lease price per VCM unit which was paid by COMELEC to Smartmatic and the OTP price per unit which must be paid to Smartmatic once OTP clause becomes operative. **Clearly, part of the costs of the machines and equipment were paid for by the COMELEC in the form [of] lease or rental fee. Thus, the amount paid by the Protestant did not cover the full costs of the machines and equipment. It was in this context that the Tribunal**

eventually used the term “cost of the retention by the COMELEC” in its Resolution No. 16-037 dated 02 March 2017.⁴¹

Thus, to foreclose all arguments of petitioner, we find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the SET in rendering the assailed rulings. To recapitulate, the SET acted within the sphere of its jurisdiction when it desisted to rule on the issue concerning the alleged invalidity or unconstitutionality of Section 6.9 of the AES Contracts. Unless the disputed provision is declared void or unconstitutional in a proper proceeding, the SET properly relied and enforced the same when it turned over the deposits made by petitioner to the COMELEC as retention cost of the election machines and equipment. In turn, the amount deposited by petitioner was correctly paid by the COMELEC to Smartmatic-TIM as part of the full cost of the retained election machines and equipment considered sold to it after the lapse of the agreed lease period.

Nevertheless, all is not lost for petitioner as he can still institute a separate action to declare the alleged invalidity of Section 6.9 of the AES Contracts and to address any other concerns relative to his alleged right, if any, over the subject machines and equipment against the COMELEC. As succinctly put by the SET, petitioner is not without recourse, as he can still question the validity of the disputed provision by availing the proper remedies, even after the cash deposit is already released to the COMELEC.⁴²

At this juncture, it is well to remind that the judgments of the electoral tribunals are beyond judicial interference. The only instance where this Court may intervene in the exercise of its so-called extraordinary jurisdiction is upon a determination that the decision or resolution of the electoral tribunal was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or upon a clear showing of such arbitrary and improvident use of its power to constitute a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse.⁴³

In the old, but still relevant, case of *Marrero v. Bocar*,⁴⁴ the Court has ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of arbitrary and improvident use of power as will constitute a denial of due process."

Irrefragably, absent any clear showing of grave abuse of discretion, there is no occasion for this Court to exercise its corrective power. The function of this Court is simply to check whether the SET has exceeded the limits of its jurisdiction and not to ascertain the intrinsic correctness or merits

⁴¹ *Rollo*, p. 51. (Emphasis ours; citations omitted).

⁴² *Id.*

⁴³ See *Robles v HRET*, 260 Phil. 831, 837 (1990).

⁴⁴ 66 Phil. 429 (1938), cited in *Arroyo v. HRET*, G.R. No. 118597, July 14, 1995.

of its resolutions. The Court does not, to paraphrase it in *Co vs. HRET*,⁴⁵ venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action.

WHEREFORE, premises considered, Resolution No. 16-141 dated February 21, 2019 and Resolution No. 16-143 dated May 6, 2019 of the SET in SET Case No. 001-16 are **AFFIRMED**.

SO ORDERED.


JHOSEP V. LOPEZ
 Associate Justice

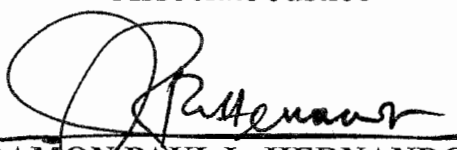
WE CONCUR:

No part
ALEXANDER G. GESMUNDO
 Chief Justice


No part
ESTELA M. PERLAS-BERNABE
 Associate Justice

No part
MARVIC M.V.F. LEONEN
 Associate Justice

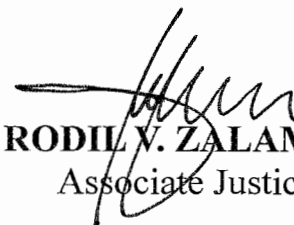
No part
ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice


ROSMARI D. CARANDANG
 Associate Justice

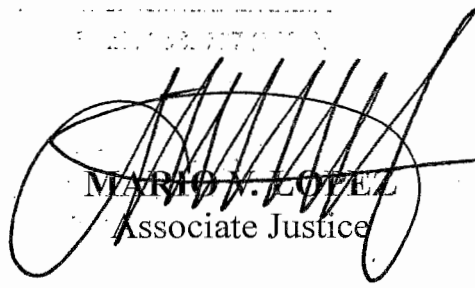

AMY C. LAZARO-JAVIER
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice



RODIL V. ZALAMEDA
 Associate Justice

⁴⁵ 276 Phil. 758, 777 (1991).

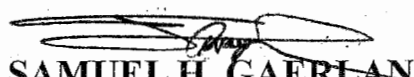
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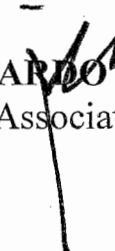
MARIO N. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



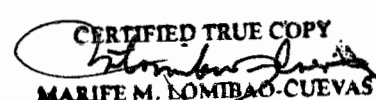
RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court