

SET's role in unexpected resignation of Sen. Zubiri

Written by ANTONIO C. CAMPO
Friday, 12 August 2011 13:38



IN view of the unexpected resignation of Sen. Juan Miguel Zubiri as senator, I will write about the constitutional provision and jurisprudence on the Senate Electoral Tribunal as the sole judge of all contests relating to the election, returns and qualifications of senators.

Statement of facts — Pimentel vs. Zubiri

Sen. Zubiri won the 12th Senate slot on election results in the 2007 midterm election and was subsequently proclaimed by the Commission on Elections.

It was alleged in Aquilino Pimentel's election protest that votes in Maguindanao in the 2007 midterm elections had been manipulated to favor Zubiri and other candidates of then President Gloria Macapagal-Arroyo.

Aquilino Pimentel III was the closest contender for the 12th Senate in the 2007 midterm elections.

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The latest report from Davao City confirms that the Senate Electoral Tribunal is set to proclaim Pimentel on Aug. 10, 2011.

The governing law on all election contests is embodied under Section 17, Article VI of the 1987 Philippine Constitution which is set forth below:

Sec. 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.

Sec. 19, Art. VI further provides that the Electoral Tribunal and the Commission on Appointments shall be constituted within 30 days after the Senate and the House of Representatives shall have been organized with the election of the President and the Speaker.

In two cases decided by the Supreme Court of the Philippines namely, *Aquino vs. Comelec*, 248 SCRA 400, Sept. 18, 1995 and *Rasul vs. Comelec*, 313 SCRA 18, Aug. 24, 1999, the dispositive parts of the highest court's decisions are set forth below:

1. *Aquino vs. Comelec* - The electoral tribunal assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become members of either the Senate or the House of Representatives, and a candidate who has not been proclaimed and has not taken his oath of office cannot be said to be a member.

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2. Rasul vs. Comelec - The proper remedy of a losing candidate who assails the Comelec's resolution proclaiming the twelfth (12th) winning senatorial candidate is to file a regular election protest which under the Constitution and the Omnibus Election Code exclusively pertains to the Senate Electoral Tribunal.

In the case of Aquino vs. Comelec, the highest court ruled that the Comelec has not lost its jurisdiction over Aquino, the petitioner's qualifications to run for Member of the House of Representatives.

The court further ruled that a candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution.

Since Aquino has not been proclaimed as the winning candidate his petition against the Comelec was dismissed, on the ground that the House Electoral Tribunal clearly assumed jurisdiction over all contests relative to the election only when the latter become members of either the Senate or the House of Representatives.

Aquino was disqualified under Sec. 6 of Republic Act No. 6646.

In the case of Rasul vs. Comelec, the court dismissed the petition of Rasul since Teresa Aquino-Oreta has already been proclaimed by the Comelec as the twelfth winning senatorial candidate.

Hence, the proper venue is the Senate Electoral Tribunal.

However, the case versus the Comelec has been rendered moot and academic, as the lawyer of Rasul had already filed an election protest with the Senate Electoral Tribunal. (Omnibus Election Code annotated by Rufus B. Rodriguez.)

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