

### SC dismisses Macalintal petition to abolish PET

In a 32-page decision, the high court, through Associate Justice Antonio Eduardo Nachura, dismissed the petition filed by election lawyer Romulo Macalintal as it pointed out that Presidential Election Tribunal (PET) is not simply an agency to which members of the court were designated. Macalintal, in his petition, said the creation of the PET was a violation of Article 7, Section 4, of the 1987 Constitution, which provides that "the Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President, and may promulgate its rules for the purpose." He pointed out that the Supreme Court could not act as a quasi-judicial body with a separate budget, employees and a different seal. Macalintal added that the designation of the Chief Justice and other justices of the Supreme Court to the PET violated Section 12 of Article 8 of the Constitution. It explained that the high court's duty sitting as PET is part of its judicial power. The high court added that even the House of Representatives and the Senate Electoral Tribunal are not strictly and literally courts of law but handles election contests which is actually a judicial power. With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The high court added that Macalintal is estopped from questioning the legality of existence of the PET because he appeared before it as counsel for former president now Congresswoman Gloria Macapagal-Arroyo in the election protest filed by the late Fernando Poe Jr. SC stressed out that such appearance as counsel before the tribunal, to our mind, would have been the first opportunity to challenge the constitutionality of the tribunal's constitution.

### PET orders concerning Roxas protest

The Supreme Court, sitting as the Presidential Electoral Tribunal (PET), has ordered the Comelec to collect election paraphernalia like ballot boxes and documents relevant to the election protest of vice presidential candidate Manuel Roxas II. In a resolution issued on November 23, the tribunal allowed the Comelec to turn over to the poll body's First Division the custody of the ballots, ballot boxes, election documents, keys and other paraphernalia used in the May 10, 2010 automated elections for the following areas: Marikina City in the National Capital Region, Dumaguete City, Negros Oriental, Sibalay City, Negros Occidental, Sarangani province and Camarines Norte province. The Supreme Court sits as PET in resolving election protests in the presidential and vice presidential races. The PET also ordered the Comelec to protect the integrity of the data storage devices containing electronic data that show proof of the results "in the contested 76,340 clustered precincts subject of the protest and [Binay's] counter-protest."

The turnover of such election paraphernalia is a response to Comelec Resolution No. 2812 dated 17 October 1995 "where any of the ballot boxes, ballots, election returns, election documents or paraphernalia subject of a protest or counter-protest are also involved in election contests before other fora, such as the Presidential Electoral Tribunal (PET), the Senate Electoral Tribunal (SET), and the House of Representatives Electoral Tribunal (HRET), have preferential right over the custody and recount of ballots involved in simultaneous protests, the Commission shall make the appropriate coordination and request with the tribunal involved as to temporary prior custody of ballot boxes and recount of ballots and other documents and storage devices, or the synchronization of such recount of ballots".

PET also directed the camps of Vice President Jejomar Binay and vice presidential candidate Manuel "Mar" Roxas II to reply to their respective motions filed before the special election body. In an eight-page resolution, the PET ordered Roxas to submit within 10 days his comment to the manifestation filed by Binay, who won over Roxas in the May 10 elections by close to 1 million votes. In his October 20 manifestation, the vice president asked PET to turn down his rival's motion to conduct a random manual audit and forensic analysis of the votes cast for the position of vice president. Binay, a former Makati City mayor, also asked for the immediate revision of votes and to require Roxas to pay additional deposit for the 333,270 polling precincts under protest. In addition, Binay urged the PET to hold oral arguments to discuss the issues concerning Roxas's election protest. The special election body also directed Binay to reply within 10 days to his rival's urgent motion. Roxas, in his petition, asked the PET to require telecommunication companies and the House of Representatives to "retain, secure, preserve, and/or store" all digital records pertaining to the automated elections from April 10 to June 9. He also urged the PET to issue a precautionary protection order directing the Senate to "preserve and safeguard" the election equipment used in the country's first nationwide automated elections. Aside from the orders, the special body noted 12 separate pleadings in connection with Roxas' legal action against Binay.

### NAMFREL-Department of Health (DOH) Procurement Monitoring Update: Medical Gas Piping and Construction of Quirino Memorial Medical Center (QMMC)

NAMFREL procurement observers attended the pre-bid conference of the Bids and Awards Committee (BAC) of the QMMC on December 1, 2010. The conference was for Phase 8-Part 5 project on the Medical Gas Piping and Construction of QMMC. The projects Approved Budget Contract (ABC) is Php 28,194,260.56. Two prospective bidders (V Construction and CC Barcelona) attended and signified their intent to bid for the project. During the proceedings some clarifications were raised on the form of insurance for the project. A bidder requested if they can submit a surety callable upon demand to compensate for the small mark up posed by a tight ABC. A DOH BAC representative clarified that the DOH is following an existing 2004 order that acceptable bid security forms are in cash, cashier's/ manager's check, and bank guarantee. Furthermore, the BAC can always exercise its discretion whether to accept or not other forms of insurance bond which would be most advantageous to the Government of the Philippines (GOP). In the case of the inquiry, the BAC clarified that no other forms of insurance will be accepted other than the ones specified in the circulated Administrative Order 136 no. 2004, which amends the provision for Forms of Bid Security, Performance Security, Advance Payment Guarantee and Project Guarantee for GOP-funded Infrastructure Projects of the DOH, to wit:

D. Project Warranty in an amount in accordance with the following schedule:

1. Cash deposit, cash bond or letter of credit – Five (5%) of the total contract price
2. Bank Guarantee – Ten percent (10%) of the total contract price

Eventually, the BAC ruled that they will strictly adhere with the provisions in the administrative order, hence, the request by one of the bidders was not granted. However, the BAC allowed the concerned bidder to submit in writing their request for an appropriate reply. The QMMC BAC secretariat confirmed that the scheduled Submission and Opening of Bids for the project will push through on December 13, 2010 until further advice.

Abs cbn news, GMA news, Philippine Daily Inquirer (PDI), NAMFREL data]