

MIRIAM DEFENSOR-SANTIAGO, PROTESTANT, VS. FIDEL VALDEZ RAMOS, PROTESTEE.

P.E.T. Case No. 001. February 13, 1996

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In her motion of 16 August 1995, reiterated in her Comment of 29 August 1995, Protestant Miriam Defensor-Santiago prayed that the revision of ballots in the remaining precincts of the pilot areas be dispensed with and the revision process in the pilot areas be deemed completed.

We deferred action on that motion and required the Protestant and the Protestee to submit their respective memoranda on the issue of whether this case had been rendered moot by the election of the Protestant as a Senator in the May 1995 election and her assumption of office as such on 30 June 1995.

The Protestant answers this issue in the negative. Relying on *Sibulo vda. de De Mesa vs. Mencias*,^[1] *Lomugdong vs. Javier*,^[2] and *De Castro vs. Ginete*,^[3] she asserts that an election contest involves not only an adjudication and settlement of the private interests of the rival candidates, but more importantly, the paramount need to dispel, once and for all, the uncertainty that beclouds the true choice of the electorate. Hence, it is imbued with, public interest and should be pursued to its final conclusion to determine the bona fide winner. She further asserts that an election case may be rendered moot only if the term of the contested office has expired,^[4] thus her election as Senator and assumption of office as such cannot, 'under the rule laid down in *Moraleja vs. Relova*,^[5] be construed as an abandonment of the instant protest. Finally, she alleges that this Court has departed from the orthodox view that a case should be dismissed if it has been mooted.^[6]

For his part, the Protestee submits that there is strong legal basis for this Tribunal to rule that the Protestant is deemed to have abandoned the instant protest, in light of the ruling in *Dimaporo vs. Mitra*^[7] which construed Section 67, Article IX of B.P. Blg. 881 (Omnibus Election Code).^[8] He submits, however, that public interest requires that this protest be resolved on the merits considering that: (a) it involves a matter of paramount and grave public interest; and (b) it was filed merely to keep Protestant Santiago in the limelight in preparation for her Senatorial campaign. He likewise claims that a resolution on the merits would confirm his victory in the 11 May 1992 presidential election and prove that the instant protest is unfounded. Furthermore, it would establish guiding and controlling principles or doctrines with respect to presidential election protest cases, thereby educating the bench and the bar and preventing the indiscriminate filing of baseless protest cases.

We cannot subscribe to the view of the Protestee that by filing her certificate of candidacy for Senator Protestant Santiago ipso facto forfeited her claim to the office of President pursuant to Section 67 of B.P. Blg. 881. Plainly, the said section applies exclusively to an incumbent elective official who files a certificate of candidacy for any office "other than the one he is holding in a permanent capacity." Even more plain is that the Protestant was not the incumbent President at the time she filed her certificate of candidacy for Senator nor at any time before that. Thus, the holding in *Dimaporo* does not apply to the Protestant.

Neither do we find any convincing logic to the Protestee's proposition that this case should nevertheless be resolved on the merits because its filing was done in bad faith, i.e., merely to keep the Protestant in the limelight in preparation for her Senatorial campaign. If that were so, then public interest would be served if this case were

put to an abrupt end after the Protestant won a seat in the Senate. Finally, neither do we find any cogent nor compelling reason to proceed with this case, in the event that we find it to be moot, simply to establish guiding and controlling principles or doctrines with respect to election protests involving the office of the President or the Vice- President.

I.

The key then to the resolution of the aforesaid issue is the consideration of public interest and public policy and their encompassing effects on election cases which have been unequivocally expressed in the cases cited by the Protestant.

In *Sibulo vda. de De Mesa vs. Mencias*,^[9] this Court stated:

It is axiomatic that an election contest involving as it does not only the adjudication settlement of the private interests of the rival candidates but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift, is a proceeding imbued with public interest which raises it onto a plane over and above ordinary civil actions. For this reason, broad perspectives of public policy impose upon courts the imperative duty to ascertain by all means within their command who is the real candidate elected in as expeditious a manner as possible, without being fettered by technicalities and procedural barriers to the end that the will of the people may not be frustrated (*Ibasco vs. Ilao, et al.*, G.R. L-17512, December 29, 1960; *Reforma vs. De Luna*, G.R. L-13242, July 31, 1958). So inextricably intertwined are the interests of the contestants and those of the public that there can be no gainsaying the logic of the proposition that even the voluntary cessation in office of the protestee not only does not ipso facto divest him of the character of an adversary in the contest inasmuch as he retains a party interest to keep his political opponent out of the office and maintain therein his successor, but also does not in any manner impair or detract from the jurisdiction of the court to pursue the proceeding to its final conclusion (*De Los Angeles vs. Rodriguez*, 46 Phil. 595, 597; *Salcedo vs. Hernandez*, 62 Phil. 584, 587; *Galves vs. Maramba*, G.R. L-13206).

Upon the same principle, the death of the protestee De Mesa did not abate the proceedings in the election protest filed against him, and it may be stated as a rule that an election contest survives and must be prosecuted to final judgment despite the death of the protestee. (In *Silverio vs. Castro*, 19 SCRA 520 [1967], where the trial court proceeded with the trial of an election protest and decided it even if the protestee had already died and his Vice-Mayor had assumed office by succession, this Court, instead of dismissing the appeal brought on behalf of the deceased protestee, required the Vice-Mayor to intervene on the side of the appellant).

In *Lomugdang vs. Javier*,^[10] this Court declared:

Determination of what candidate has been in fact elected is a matter clothed with public interest, wherefore, public policy demands that an election contest, duly commenced, be not abated by the death of the contestant. We have squarely so ruled in *Sibulo vda. de Mesa vs. Judge Mencias*, G.R. No. L-24583, October 26, 1966, in the same spirit that led this Court to hold that the ineligibility of the protestant is not a defense (*Caesar vs. Garrido*, 53 Phil. 57), and that the protestee's cessation in office is not a ground for the dismissal of the contest nor detract the Court's jurisdiction to decide the case (*Angeles vs. Rodriguez*, 46 Phil. 595; *Salcedo vs. Hernandez*, 62 Phil. 584).

In the same *Sibulo* case, already cited, this Court likewise ruled that by virtue of Section 7, Republic Act 2264, the vice-mayor elect has the status of a real party in interest in the continuation of the proceedings and is entitled to intervene therein. For if the protest succeeds and the protestee is unseated, the vice mayor succeeds to the office of mayor that becomes vacant if the duly elected cannot assume the post.

In *Moraleja vs. Relova*,^[11] this Court ruled:

As to the contention that by accepting such appointment as Technical Assistant, protestant has abandoned his protest, all that need be said is that once the court has acquired jurisdiction over an election contest, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties, so much so that there can be no default, compromise nor stipulation of facts in this kind of cases. (Francisco, *How To Try Election Cases*, p. 163, citing *Civilio v. Tomacruz*, 62 Phil. 689). In the same manner that the acceptance by the protestee of an appointment to another position is not a ground for dismissal of the protest (*Philippine Law on Elections* by Martin, 1970 ed., pp. 258-259, citing *Calvo v. Maramba*, G.R. No. L-13206, January 7, 1918) like the resignation of the protestee from the contested office (*Angeles v. Rodriguez*, 46 Phil. 595), simply because it is of public interest that the real winner be known, neither can the acceptance of a more or less temporary employment, such as that of a technical assistant of the Vice-Governor, which is a primarily confidential position, be considered as inconsistent with protestant's determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate. In such instances, the plight of protestant may be viewed in the same light as that of an employee who has been illegally dismissed and who, to find means to support himself and family while he prosecutes his case for reinstatement, accepts a temporary employment elsewhere. Such employee is not deemed to have abandoned the position he seeks to recover. (*Tan v. Gimenez, et al.* G.R. No. L-12525, February 19, 1960, 107 Phil. 17; *Potot v. Bagano*, G.R. No. L-2456, January 25, 1949, 82 Phil. 679). Of course, the case of protestant who accepts a permanent appointment to a regular office could be different, but We are not ruling on it here.

In *De Castro vs. Ginete*,^[12] this Court stated:

The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate. What is sought in an election protest is the correction of the canvass of the votes, which is the basis of the proclamation of the winning candidate. An election contest involves a public office in which the public has an interest. Certainly, the act of a losing candidate of recognizing the one who is proclaimed the winner should not bar the losing candidate from questioning the validity of the election of the winner in the manner provided by law.

The factual milieu in these cases is not on all fours with the instant protest.

In *Sibulo vda. de De Mesa*, as in the later case of *Silverio vs. Castro*,^[13] the protestee had been proclaimed the winning mayoralty candidate and had assumed office, and then died during the pendency of the election protest. While in *Lomugtang*, it was the protestant who died during the pendency of the protest.

In *Moraleja*, the election protest survived the protestant's acceptance of temporary employment during the pendency of his election protest. Likewise, in *De los Angeles vs. Rodriguez*,^[14] cited in *Sibulo vda. de De Mesa*, an election protest was continued despite the resignation from office of the protestee.

Finally, in *De Castro*, the only issue presented was whether the protest should be dismissed on the ground of estoppel. In this proceeding, the protestant congratulated the protestee after the latter was proclaimed the winner by the board of canvassers and even exhorted those present during the inauguration and installation into office of the protestee to support the latter's administration.

May the above dicta apply to the case of Protestant Santiago who assumed the office of Senator after her election as such in the 8 May 1995 election? This question was impliedly raised but not resolved in *Moraleja*. For after holding that the acceptance by the protestant therein of a temporary appointment during the pendency of his protest did not amount to an abandonment thereof, nor could it be considered inconsistent with his determination to protect and pursue the public interest involved in the election protest, this Court noted: "Of course, the case of a protestant who accepts a permanent appointment to a regular office could be different, but We are not ruling on it here."^[15]

Indeed, it would be entirely different where the protestant pursued the new position through a popular election, as in the case of Protestant Santiago who filed a certificate of candidacy for Senator in the 8 May 1995 election, campaigned for such office, and submitted herself to be voted upon. She knew that the term of office of the Senators who would then be elected would be six years, to commence at noon on the thirtieth day of June next following their election[16] and to end at noon of 30 June 2001. Knowing her high sense of integrity and candor, it is most unlikely that during her campaign, she promised to serve the electorate as Senator, subject to the outcome of this protest. In short, she filed her certificate of candidacy for the Senate without any qualification, condition, or reservation.

In so doing, she entered into a political contract with the electorate that if elected, she would assume the office of Senator, discharge its functions and serve her constituency as such for the term for which she was elected. These are givens which are in full accord with the principle enshrined in the Constitution that public office is a public trust, and public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.[17]

Indeed, it has been aptly said:

It is impossible that government shall be carried on, and the functions of civil society exercised, without the aid and intervention of public servants or officers, and every person, therefore, who enters into civil society and avails himself of the benefits and protection of the government, must owe to this society, or, in other words, to the public, at least a social duty to bear his share of the public burdens, by accepting and performing, under reasonable circumstances, the duties of those public offices to which he may be lawfully chosen.[18]

In this jurisdiction, an elected public official may even be held criminally liable should he refuse to discharge an elective office.[19]

The term of office of the Senators elected in the 8 May 1995 election is six years, the first three of which coincides with the last three years of the term of the President elected in the 11 May 1992 synchronized elections. The latter would be Protestant Santiago's term if she would succeed in proving in the instant protest that she was the true winner in the 1992 elections. In assuming the office of Senator then, the Protestant has effectively abandoned or withdrawn this protest, or at the very least, in the language of Moraleja, abandoned her "determination to protect and pursue the public interest involved in the matter of who is the real choice of the electorate." Such abandonment or withdrawal operates to render moot the instant protest. Moreover, the dismissal of this protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the 1992 presidential election, thereby enhancing the all-too crucial political stability of the nation during this period of national recovery.

It must also be stressed that under the Rules of the Presidential Electoral Tribunal, an election protest may be summarily dismissed, regardless of the public policy and public interest implications thereof, on the following grounds:

- (1) The petition is insufficient in form and substance;
- (2) The petition is filed beyond the periods provided in Rules 14 and 15 hereof;
- (3) The filing fee is not paid within the periods provided for in these Rules;
- (4) The cash deposit, or the first P100,000.00 thereof, is not paid within 10 days after the filing of the protest; and
- (5) The petition or copies thereof and the annexes thereto filed with the Tribunal are not clearly legible.[20]

Other grounds for a motion to dismiss, e.g., those provided in the Rules of Court which apply in a suppletory character,[21] may likewise be pleaded as affirmative defenses in the answer. After which, the Tribunal may, in its discretion, hold a preliminary hearing on such grounds.[22] In sum, if an election protest may be dismissed on technical grounds, then it must be, for a decidedly stronger reason, if it has become moot due to its abandonment by the Protestant.

II.

There is yet another reason why this case should now be dismissed.

This Tribunal cannot close its eyes to the fact that the Protestant has decided to waive the revision of the remaining unrevised ballots from 4,017 precincts out of the 17,527 precincts of the designated three pilot areas. This is an unabashed reversal from her original stand in her Motion and Manifestation dated 18 October 1993. Taking this into account, this Tribunal declared in its resolution of 21 October 1993:

After deliberating on the foregoing pleadings and the arguments of the parties, the Tribunal rules for the Protestant insofar as the revision of the remaining ballot boxes from her pilot areas are concerned, and against the immediate application of Rule 61 of the Rules of the Tribunal to the Protestee in respect of the Counter-Protest.

At this stage of the proceedings in this case it cannot be reasonably determined whether the revised ballots are "considerable" enough to establish a trend either in favor of or against the Protestant as would justify an appropriate action contemplated in Rule 61 of the Rules of the Tribunal, or whether the unrevised ballots from said areas would not, in the language of the Protestant, "materially affect the result of the representative sample of the ballot boxes so far revised." As to the 1,300 ballot boxes from Makati, the proper time to raise the objections to the ballot boxes and its contents would be during the revision stage.

Consequently, we resolved therein to:

A. ORDER the revision of the remaining unrevised ballot boxes enumerated in the aforequoted paragraph A of the 5 October 1993 Resolution and for that purpose to DIRECT the Acting Clerk of Court of the Tribunal to collect said ballot boxes and other election documents and paraphernalia from their respective custodians in the event that their revisions in connection with other election protests in which they are involved have been terminated, and if such revisions are not yet completed, to coordinate with the appropriate tribunal or court in which such other election protests are pending and which have already obtained custody of the ballot boxes and started revision with the end in view of either seeking expeditious revisions in such other election protests or obtaining the custody of the ballot boxes and related election documents and paraphernalia for their immediate delivery to the Tribunal; and

B. REQUIRE the Protestant to inform the Tribunal, within ten (10) days from receipt hereof, if after the completion of the revision of the ballots from her pilot areas she would present evidence in connection therewith.

Until the present, however, the Protestant has not informed the Tribunal whether after the completion of the revision of the ballots from her pilot areas, she still intends to present evidence in connection therewith. This failure then, is nothing short of a manifest indication that she no longer intends to do so.

It is entirely irrelevant at this stage of the proceedings that the Protestant's revisors discovered in the course of the revisions alleged irregularities in 13,510 out of the 17,525 contested precincts in the pilot areas and have objected to thousands of ballots cast in favor of the Protestee. Revision is merely the first stage, and not the alpha and omega, of an election contest. In no uncertain terms then, this Tribunal declared in its resolution of 18 March 1993 that:

Protestant knows only too well, being a lawyer and a former judge herself, that the revision phase of her protest is but the first stage in the resolution of her electoral protest and that the function of the revisors is very limited. In her 12 February 1993 Comment on Protestee's 5 February 1993 Urgent Motion for the issuance of a resolution which, inter alia, would clarify that revisors may observe the objections and/or claims made by the revisors of the other party as well as the ballots subject thereof, and record such observations in a form to be provided for that purpose, Protestant unequivocally stated:

"8.

Further, the principle and plan of the RPET [Rules of the Presidential Electoral Tribunal] is to subdivide the entire election contest into various stages. Thus, the first stage is the Revision Proper. Second is the technical examination if so desired by either party. Third is the reception of evidence. And Fourth, is the filing of parties' memoranda."

and described the function of the revisors as "solely to examine and segregate the ballots according to which ballots they would like to contest or object (contested ballots) and those which they admit or have no objections (uncontested ballots)." Indeed, revisors do not have any judicial discretion; their duties are merely clerical in nature (*Hontiveros vs. Altavas*, 24 Phil. 632 [1913]). In fact, their opinion or decision on the more crucial or critical matter of what ballots are to be contested or not does not even bind the Tribunal (*Yalung vs. Atienza*, 52 Phil. 781 [1929]; *Olano vs. Tibayan*, 53 Phil. 168 [1929]). Thus, no undue importance may be given to the revision phase of an election contest. It can never serve as a logical or an acceptable basis for the conclusion that massive fraud or irregularities were committed during an election or that a Protestant had won in said election. If that were so, a Protestant may contest all ballot boxes and, in the course of the revision thereof, object - for any imagined ground whatsoever, even if the same be totally unfounded and ridiculous - to all ballots credited to the Protestee; and then, at the end of the day, said Protestant may even announce to the whole world that contrary to what is reflected in the election returns, Protestee had actually lost the elections.

All told, a dismissal of this election protest is inevitable.

III.

However, three Members of the Tribunal outrightly disagree with the foregoing disquisitions. Hence, a reply to the important points they raise is in order.

Mr. Justice Puno's perception that the majority would dismiss this "election protest as moot and academic on two (2) grounds: first, that the findings of irregularities made by the revisors of the protestant in the course of the revision of ballots in 13,510 contested precincts are entirely irrelevant; and second, she abandoned her protest when she filed her certificate of candidacy in the 8 May 1995 senatorial elections," is inaccurate. The dispositive portion of this resolution leaves no room for any doubt or miscomprehension that the dismissal is based on the ground that the protest "has been rendered moot and academic by its abandonment or withdrawal by the Protestant as a consequence of her election and assumption of office as Senator and her discharge of the duties and functions thereof." There is, therefore, ONLY ONE reason or ground why the protest has been rendered moot and academic, i.e., it has been abandoned or withdrawn. This was the very issue upon which the parties were required, in the resolution of 26 September 1995, to submit their respective memoranda.

The majority neither conveyed, asserted nor even suggested, as Mr. Justice Puno has apparently understood, that this protest has become moot and academic because the finding of irregularities by the Protestant's revisors in the course of the revision of the ballots in 13,510 contested precincts in the pilot areas are "entirely irrelevant," and that the Protestant has abandoned this protest by filing a certificate of candidacy for the office of Senator in the 8 May 1995 elections. The majority's views on "irrelevancy" and "on the filing of the certificate of candidacy" are

not the grounds themselves, but parts only of the arguments to strengthen the conclusion reached, i.e., abandonment. Otherwise stated, in order to make the point crystal clear, the majority never held that the irrelevancy of the finding of irregularities is a ground why this protest has become moot and academic. It only declared that the Protestant's: (a) waiver of revision of the unrevised ballots from the remaining 4,017 contested precincts in the pilot areas; and (b) failure to comply with the resolution of 21 October 1995 requiring her to inform the Tribunal within ten days from notice if she would still present evidence after completion of the revision of the ballots from her pilot areas - rendered such "findings" of irregularities entirely irrelevant considering the Tribunal's disquisitions on what revision is in its 18 March 1993 resolution.

In his dissent, Mr. Justice Puno lifted the words "entirely irrelevant" from the fourth paragraph under the heading "II" of this Resolution. It must, however, be stressed that the said paragraph is inexorably linked to the preceding two paragraphs relating to the above-mentioned waiver and non-compliance, which provide the major premises for the fourth paragraph; more concretely, the latter is nothing more than the logical conclusion which the major premises support.

The reasons adduced by Mr. Justice Puno for the Protestant's turn-around are mere speculations. In any event, the Protestant's possible "belief that the contested ballots in 13,500 precincts when properly appreciated will sufficiently establish her electoral victory," cannot stand against her previous insistence to proceed with the revision of the remaining unrevised ballots and the aforementioned finding of the Tribunal in its resolution of 21 October 1993. The Tribunal is not to blame for "the slow pace of the protest," if at all she so believes in such a state of things. Neither can the thought of cutting costs be a valid reason. The Protestant knew from the outset that the revision of the ballots in the pilot areas was a crucial phase of this protest because, under Rule 61 of the Rules of the Tribunal, the protest could forthwith be dismissed if the Tribunal were convinced that she would probably fail to make out a case but only after examination of the ballots from the pilot areas and the evaluation of the evidence offered in connection therewith. It goes without saying that every ballot then in the pilot areas counts.

Then too, it was never the view of the majority that the Protestant's filing of the certificate of candidacy for a seat in the Senate in the 8 May 1995 election was the sole and exclusive operative act for what Mr. Justice Puno perceives to be the majority's second ground why this protest has become moot and academic. To the majority, such filing was only the initial step in a series of acts performed by the Protestant to convincingly evince her abandonment of this protest, viz., campaigning for the office of Senator, assumption of such office after her election, and her discharge of the duties and functions of the said office. Precisely, in the resolution of 26 September 1995, this Court directed the Protestant and the Protestee to submit their respective memoranda on the issue.

[o]f whether or not the protest has not been rendered moot and academic by the election of the Protestant as Senator and her subsequent assumption of office as such on 30 June 1995." (italics supplied)

As to the concept of abandonment, Mr. Justice Puno and Mr. Justice Kapunan cite Black's Law Dictionary and the cases of *Roebuck vs. Mecosta Country Road Commission*,^[23] *Dober vs. Ukase Inv. Co.*,^[24] and *McCall vs. Cull*,

[25]

cited therein. We have turned to the primary sources of these cases, meticulously perused them, and found none materially significant to this protest.

The first two cases above refer to abandonment of property. *Roebuck* involved the issue of whether a roadway had been abandoned by the Mecosta Road Commission. The Court therein held that in order for there to be an abandonment of land dedicated to public use, two elements must concur, viz., (a) intention to relinquish the right

or property, but without intending to transfer title to any particular person; and (b) the external act which such intention is carried into effect. While *Dober*, on the issue of whether the plaintiff therein abandoned a certain property, quoted *Corpus Juris* that the intention to abandon must be determined from the facts and circumstances of the case. There must be a clear, unequivocal and decisive act of the party to constitute abandonment in respect of a right secured - an act done which shows a determination in the individual not to have a benefit which is designed for him.

It is, of course, settled that a public office is not deemed property.[26]

Only *McCall* involved the issue of abandonment of office. It is stated therein as follows:

Abandonment is a matter of intention and, when thought of in connection with an office, implies that the occupant has quit the office and ceased to perform its duties. As long as he continues to discharge the duties of the office, even though his source of title is two appointments, one valid and the other invalid, it cannot be said he has abandoned it. It was said in *Steingruber v. City of San Antonio, Tex. Corn. App.*, 220 S.W. 77, 78: "A public office may be abandoned. Abandonment is a species of resignation. Resignation and abandonment are voluntary acts. The former is a formal relinquishment; the latter a relinquishment through non-user. Abandonment implies non-user, but non-user does not, of itself, constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved."

Strictly speaking, *McCall* is inapplicable to this protest for, as correctly stated in the dissent of Mr. Justice Kapunan, the Protestant could not abandon the office of President which she was not holding at the time she filed the certificate of candidacy for Senator. But the majority of the Tribunal never declared, nor even implied, that she abandoned the office of President because it knew that she had yet nothing to abandon. Precisely, she filed this protest to be declared the winner for that office, to thereafter assume and perform the duties thereof, and exercise the powers appertaining thereto. What the Tribunal explicitly states is that the Protestant abandoned this Protest, thereby rendering this protest moot.

Mr. Justice Puno also insists that abandonment raises a question of fact and that the Tribunal cannot resolve it "for lack of competent evidence"; moreover, he notes that the Protestee "has not adduced evidence which can be the basis for a finding that she intentionally abandoned her protest; on the contrary, the Protestee does not want the protest to be dismissed on a technicality but prays that it be decided on the merits." Suffice it to say that the Protestant herself has not denied nor questioned the following facts, which by themselves, constitute overwhelming proof of the intention to abandon the protest:

- (a) Filling of a certificate of candidacy for Senator for the 8 May 1995 elections;
- (b) Campaigning for the office of Senator in such election,
- (c) Taking her oath of office as Senator upon the commencement of the term thereof;
- (d) Assumption of office as Senator; and
- (e) Discharge and performance of the duties appertaining to the office of Senator.

These acts speak for themselves - *res ipsa loquitur* - to negate any proposition that the Protestant has not abandoned this protest.

Thus, what initially appears to be the correct view in the dissent is, in the final analysis, misplaced. This must also be the verdict upon the following pronouncements of Mr. Justice Puno:

A more fundamental reason prevents me from joining the majority. With due respect, I submit that the majority ruling on abandonment is inconsistent with the doctrine that an election contest is concerned less with the private interest of the candidates but more with public interest. Under a republican regime of government, the overarching object of an election contest is to seek and enforce the judgment of the people on who should govern them. It is not a happenstance that the first declaration of policy of our Constitution underlines in bright that "sovereignty resides in the people and all government authority emanates from them." The first duty of a citizen as a partake of sovereignty in a democracy is to exercise his sovereignty just as the first duty of any reigning government is to uphold the sovereignty of the people at all cost. Thus, in *Moraleja vs. Relova*, we emphatically held that "x x x once the court has acquired jurisdiction over an election contest, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties so much so that there can be no default, compromise nor stipulation of facts in this kind of cases." Wisely, this Tribunal has consistently demurred from dismissing election contests even on the ground of death of the protestee or the protestant.

The majority appears to stray away from this lodestar of our Constitution. It will dismiss the case at bar even while the protestee and the protestant are yet alive, even while the term of the 1992 president-elect has yet to expire, and even while the protestee and the protestant together plead that the Tribunal should determine the true will of the people by deciding their dispute on the merit[s] and not on technicalities that trifle with the truth. I submit that it is the better stance for the Tribunal to decide this election contest on the merit[s] and vindicate the political judgment of the people which far surpasses in significance all other considerations. Our duty to tell the people who have the right to govern them cannot depend on the uncertain oscillations of politics of the litigants as often times they are directed by the wind of convenience, and not by the weal of the public.

For one, the majority has, in no uncertain terms, demonstrated the dissimilarities in the factual settings of the instant protest vis-a-vis the earlier cases that enunciated the doctrine relied on by Mr. Justice Puno. Then, too, it must be reiterated, to avoid further miscomprehension, that the *Moraleja* ruling even conceded that the matter of abandonment "could be different" if the petitioner therein had accepted "a permanent appointment to a regular office" during the pendency of his protest. In short, *Moraleja* in fact intimates abandonment of an election protest if, in the meantime, the Protestant accepts a permanent appointment to a regular office. If that be so, then would it be, and for weightier reasons, against a protestant who voluntarily sought election to an office whose term would extend beyond the expiry date of the term of the contested office, and after winning the said election, took her oath and assumed office and thereafter continuously serves it.

In *Moraleja*, the Supreme Court was meticulous in excluding abandonment from the enumeration of specific "acts or wishes" of the parties which must be disregarded because of the public interest component of an election protest. As reflected in the above quotation from Mr. Justice Puno's dissent, only default, compromise, or stipulation of facts are included.

Finally, with all due respect, the above pronouncement of Mr. Justice Puno forgets that, as distinctly pointed out in the early part of this Resolution, the Rules of the Tribunal allow summary dismissal of election protests even for less important grounds, to repeat, such as the petition filed with the Tribunal or the annexes attached thereto are not clearly legible, or the filing fees and cash deposits were not filed within the periods fixed in the Rules,[27] and the additional provision for dismissal under Rule 61. All these provisions of the Rules would then be put to naught or, at the very least, modified or amended in a way not authorized by the Rules, if the theory of Mr. Justice Puno be accepted. Such theory would unreasonably bind the Tribunal to the technical minutiae of trial on the merits to bring to their ultimate end all protests or contests filed before it - including those filed by candidates who even forgot to vote for themselves and obtained no votes in the final count, but, unable to accept defeat, filed a protest claiming massive fraud and irregularities, vote-buying, and terrorism. Consequently, all the time and energy of the Justices of the Supreme Court would be spent appreciating millions of revised ballots to the

prejudice of their regular judicial functions in the Court, as, the electoral protest of every Juan, Pedro, and Jose who lost in the presidential elections would have to be heard on the merits. Public policy abhors such a scenario and no public good stands to be thereby served.

WHEREFORE, the Tribunal hereby resolved to

(1) GRANT the Protestant's Motion of 16 August 1995 to dispense with the revision of ballots and other election documents in the remaining precincts of the pilot areas:

(2) DISMISS the instant election protest, since it has been rendered moot and academic by its abandonment or withdrawal by the Protestant as a consequence of her election and assumption of office as Senator and her discharge of the duties and functions thereof; and

(3) DISMISS, as a consequence, the Protestee's Counter-Protest.

No pronouncements as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Regalado, Davide, Jr., Romero and Hermosisima, Jr., JJ., concur.

Padilla, J, see concurring and dissenting opinion.

Bellosillo, J., adopts concurring and dissenting opinion of J. Padilla.

Melo, J., in the result.

Puno, J., dissents.

Vitug, J., see separate (dissenting) opinion

Kapunan, J., see dissenting opinion

Mendoza, J., joins Justice Kapunan's dissenting opinion

Francisco, J., joins dissenting opinion of Justice Puno.

Panganiban, J., no part. As former practicing lawyer, have rendered legal opinion in this matter.

[1] 18 SCRA 533 [1966].

[2] 21 SCRA 402 [1967].

[3] 27 SCRA 623 [1969].

[4] Citing *Tuanda vs. Dionaldo*, 17 SCRA 646 [1966].

[5] 42 SCRA 10 [1971].

[6] Citing *Eastern Broadcasting Corp. (DYRE) vs. Dans*, 137 SCRA 628 [1985]; *Salonga vs. Patio*, 134 SCRA 438 [1985].

[7] 202 SCRA 779 [1991].

[8] The section reads:

Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

[9] *Supra*. note 1 at 538.

[10] Supra, note 2 at 407.

[11] Supra, note 5 at 14-15.

[12] Supra, note 3.

[13] 19 SCRA 520 [1967].

[14] 46 Phil. 595 [1924].

[15] Supra, note 5 at 15.

[16] Section 4. Article VI, 1987 Constitution.

[17] Section 1. Article XI, 1987 Constitution.

[18] FLOYD R MECHEM, Treatise on the Law of Public Officers and Employees, § 240, 155-156.

[19] Article 234, Revised Penal Code, provides:

ART 234. Refusal to discharge elective office.- The penalty of arresto mayor or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.

[20] Rule 19. Rules of the Presidential Electoral Tribunal.

[21] Rule 69, Id.

[22] Rule 23. Id.

[23] 49 Mich. App. 128, 229 N.W. 2d 343, 349.

[24] 139 Or. 626, 10 P 2d 356, 357.

[25] 51 Ariz. 237, 75 P 2d 696, 698.

[26] ISAGANI A. CRUZ, Constitutional Law, 1993 ed., 101, citing Rubi vs. Provincial Board of Mindoro, 38 Phil. 660 [1919].

[27] 19, Rules of the Presidential Electoral Tribunal.

CONCURRING AND DISSENTING

PADILLA, J.:

I concur in the Tribunal's Resolution dismissing the present protest and, as a consequence, the counter protest. My concurrence is anchored not on the merits of the protest and counter-protest - since they have not reached the period of appreciation or evaluation of the ballots - nor on the failure of protestant to comply with procedural requirements, but simply upon the protestant's assumption and discharge of office as a Senator of the Republic after the 8 May 1995 elections.

Protestant's candidacy for Senator in the 8 May 1995 elections, her election to said office and her actual assumption and discharge of the office, combined to constitute, in my view, a supervening fact that rendered moot and academic her present protest because, if she were to pursue her present protest (without such supervening fact) and, if she were to win the protest, her term of office as President of the Philippines would in any case expire on 30 June 1998. When she, however, chose to run for Senator in the 8 May 1995 elections, which was after her

filing of the present protest, she knew that, if elected, her term of office as Senator would expire only on 30 June 2001. Therefore, as a successful protestant in this case, she could be President only up to 30 June 1998. What happens then to the last three (3) years of her term as Senator, i.e., 30 June 1998 to 30 June 2001? There would be a void, a hiatus or vacuum because after serving as President up to 30 June 1998, she can no longer assume the office of Senator from 30 June 1998 to 30 June 2001. There would likewise be a void, a hiatus or vacuum in her term of office as Senator from the time she assumes the presidency to 30 June 1998 (assuming she were to win the present protest). Thus, by continuing this protest, there could result an ensuing vacuum in the office of Senator, to which position protestant has been duly elected subsequent to the filing of her present protest. And yet, *natura vacuum abhorret*. (Nature abhors a vacuum).

Public policy-wise, it is also not fair to the people to elect a Senator for six (6) years and yet, he or she will serve for less than that period. In other words, by voluntarily opting to become a Senator of the land with a term of office expiring on 30 June 2001, protestant must be deemed to have abandoned this protest which, if successfully pursued, would at most bring her only up to 30 June 1998 in the office of the President, with the last three (3) years of her term as Senator going to waste, in terms of loss of people's representation in the Senate.

I repeat that in this protest, protestant seeks to be declared as the truly elected President up to 30 June 1998. In the 8 May 1995 elections, however, she was elected Senator for a term ending on 30 June 2001. As Senator, she has become a member of the legislative department of government impressed with the duty, among others, to fiscalize the executive. She cannot, in my view, opt to fiscalize the executive until she herself becomes the executive, at which point, she will abandon the fiscalizing duty entrusted to her by the people. She must choose only one of the two (2) positions involved; she cannot have both within overlapping periods of time. And she, in fact, made the choice - becoming and qualifying as a Senator of the Republic from 30 June 1995 to 30 June 2001.

It appears clear that the people (electorate) expect her to perform dutifully, creditably and successfully in the position of her last and most recent choice.

She should, in my considered view, be deemed to have abandoned or waived her claim to the Presidency of the Republic, at least until 30 June 1998, when she can run for the said office without relinquishing or forfeiting her seat as Senator (See Sec. 67, Art. IX, BP 881).

DISSENTING OPINION

PUNO, J.:

The presidential election of May 11, 1992 was a watershed in our political history. The first presidential election after the EDSA revolution, it was a test to determine whether our people were ready to reexercise their sovereignty vitiated during the authoritarian years. It was also a test to ascertain the capability of government to hold clean, honest, and credible elections. It attracted the keen interest of many and no less than seven (7) candidates vied for the presidency.[1] After the smoke of election battle cleared, candidate Fidel V. Ramos was proclaimed winner. He garnered 5,342,571 votes while candidate M. Defensor-Santiago took the second place as she obtained 4,465,173 votes.[2] Soon, murmurs and whispers of fraud filled the air with all the candidates, including the winner, alleging that they were victims of election irregularities. The losers were urged to seek judicial relief but only M. Defensor-Santiago dared to file an election protest, a remedy derisively dismissed by some as a chase of a chimera. The others left their grievance to the tribunal of the people's conscience.

Mrs. Santiago formally filed her election protest on July 20, 1992. Paragraph 3 of her Protest capsulizes her cause of action, viz:

x x x

"3. In violation of the Constitution and specific statutory provisions, the protestee in conspiracy with top officials of the then reigning administration used government funds like the rebel returnee funds, the BALGU AND NALGU funds, among others, and government facilities like radio and television networks as well as transportation facilities to campaign for the protestee and buy out whole slates of candidates, voters, watchers and members of the board of election inspectors/tellers, election registrars and other Comelec officials, other strategic officials in government as well as other individuals to manipulate, tamper, change, replace, alter, switch ballots and election returns and other election documents including certificates of canvass and statement of votes by precinct and municipality, print ballots and stuff them in ballot boxes, the results of the election in favor of the protestee."

On September 22, 1992, after the filing of the Answer of the protestee containing a counter protest, this Tribunal ordered the protestant to pinpoint the three (3) areas that "best exemplify the frauds and irregularities committed in the 1992 presidential election." The protestant specified the pilot areas as Metro Manila, Pampanga, and Zamboanga involving a total of seventeen thousand five hundred twenty-seven (17,527) precincts. Revision of ballots in these pilot areas proceeded though it suffered some delay primarily because the same ballots were also used as evidence in the election protest filed by Cielo Macapagal-Salgado against Bren Guiao involving the governorship of Pampanga and the election protest filed by Augusto Syjuco against Joker Arroyo involving the then lone congressional seat in Makati.

On August 16, 1995, protestant filed a Motion alleging that the ballots and other election documents in thirteen thousand five hundred ten (13,510) precincts out of the seventeen thousand five hundred twenty-seven (17,527) precincts in the pilot areas had already been revised. She prayed "x x x that the revision of ballots and other election documents in the remaining precincts of the pilot areas be dispensed with and the revision process of the pilot areas be deemed completed." We deferred our ruling on the prayer of the protestant.

It is of public notice that the protestant filed her certificate of candidacy in the election of May 8, 1995 for senator. She won and was proclaimed and now discharges the duties of the office.

The majority would dismiss protestant's election protest as moot and academic on two (2) grounds: first, that the findings of irregularities made by the revisors of the protestant in the course of the revision of ballots in 13,510 contested precincts are entirely irrelevant; and second, she abandoned her protest when she filed her certificate of candidacy in the May 8, 1995 senatorial elections.

With due respect, I dissent.

The majority holds that "it is entirely irrelevant at this stage of the proceedings that the protestant's revisors discovered in the course of the revisions alleged irregularities in 13,510 out of the 17,525 contested precincts in the pilot areas." The majority noted the protestant's decision to waive the revision of the remaining unrevised ballots from 4,017 precincts. It also noted the failure of the protestant to inform the Tribunal whether she still intends to present additional evidence after the completion of the revision of the ballots from the pilot areas.

I will not count against the protestant her decision to waive revision of the ballots from 4,017 precincts. Without engaging in speculation, it seems to me obvious that the protestant made the waiver because of her belief, rightly or wrongly, that the contested ballots in 13,500 precincts when properly appreciated will sufficiently establish her electoral victory. It is also apparent that the protestant is wary of the slow pace of the protest and she felt that the waiver will at least shorten the lengthening odds of time against her. Indubitably too, the waiver will enable her to cut the cost of her protest.

Nor will I make any adverse inference from the alleged failure of the protestant to inform this Tribunal whether she would still be presenting evidence to support the allegations of fraud and irregularities made by her revisors.

The records show that in a motion dated August 16, 1995, she prayed that the revision of ballots in the remaining precincts of the pilot areas be deemed completed. The Tribunal has not acted on this motion, hence, the process of revision of ballots is not formally finished. Since the Tribunal has not formally declared the termination of the process of revision, it is not timely for protestant to manifest whether or not she would adduce further evidence to prove her claim of fraud and irregularities. In any event, if the Tribunal entertains any doubt on the matter it should issue an Order requiring the protestant to make clear whether or not she intends to exercise her right to present further evidence. Valuable rights need not be lost on the basis of equivocal acts and omissions.

Prescinding from these premises, I will not dismiss as entirely irrelevant the allegations of the revisors of the protestant that they discovered in the course of the revision irregularities in 13,510 precincts in the pilot areas. The protestant still has the opportunity to adduce further evidence to prove her case. She can still undertake to make a technical examination of the ballots through handwriting experts. She can still present the testimonies of witnesses like voters, watchers, inspectors and others who have knowledge of the alleged fraud and irregularities. She can still submit a memorandum of facts and law to clinch her case. It is only after the protestant has been afforded the opportunity to exercise these rights that the Tribunal can proceed to examine the contested ballots. Then and only then can the Tribunal rule whether or not the protestant failed to make a case.

It can be assumed *arguendo* that the protestant has lost her right to present additional evidence by her failure to invoke it within a reasonable time. Even then, I submit that the non-presentation of further evidence is not necessarily fatal. Certain types of fraud and irregularities can be proved without the testimonies of handwriting experts or the testimonies of voters, watchers, inspectors and others who witnessed the same. There are fraud and irregularities which are patent on the face of the ballots and other election documents and paraphernalia. Ballots that are marked, ballots that are spurious, ballots written by the same hand, a ballot written by different hands, tampered tally sheets, false list of voters, falsified election returns, and other election documents can be appreciated without need of evidence aliunde. For this reason, the Tribunal cannot evade the duty to examine the protested ballots for the ballots are the best evidence to enable the court to determine the votes obtained by the protestant and the protestee.[3] Needless to state, until the Tribunal examines and appreciates the protested ballots it cannot dismiss the protest.

I do not also subscribe to the ruling of the majority that the protestant abandoned her protest when she ran for Senator and discharged her duties. Abandonment in law means "voluntary relinquishment of all right, title, claim x x x with the intention of not reclaiming it." [4] In ascertaining abandonment, whether in election, property, or criminal litigations, "x x x intention is the first and paramount object of inquiry for there can be no abandonment without the intent to abandon." [5] Intention is subjective and can be inferred from the acts and conduct of a person. It is a question of fact. [6] In the case at bar, the Tribunal cannot resolve this question of fact for lack of competent evidence. The protestee has not adduced evidence to prove acts and omissions of the protestant which can be the basis for a finding that she intentionally abandoned her protest. Indeed, the protestee does not want the protest to be dismissed on a technicality but prays that it be decided on the merits. The lack of competent evidence on record notwithstanding, the majority ruled, to wit:

"x x x She knew that the term of office of the Senators who would then be elected would be six (6) years. to commence at noon on the thirtieth day of June next following their election and to end at noon of 30 June 2001. Knowing her high sense of integrity and candor, it is most unlikely that during her campaign she promised to serve the electorate as Senator, subject to the outcome of this protest. In short, she filed her certificate of candidacy for the Senate without any qualification, condition, or reservation." (Italics supplied)

Clearly, the majority merely relied on a deduction to support its conclusion that the protestant did not make any promise to serve the electorate as a Senator subject to the outcome of this protest. It deduced this conclusion from

its knowledge of protestant's "high sense of integrity and candor." The argument is a non sequitur. If the protestant has candor, the conclusion ought to be that she should have bared to the electorate the pendency of her protest.

A more fundamental reason prevents me from joining the majority. With due respect, I submit that the majority ruling on abandonment is inconsistent with the doctrine that an election contest is concerned less with the private interest of the candidates but more with public interest. Under a republican regime of government, the overarching object of an election contest is to seek and enforce the judgment of the people on who should govern them. It is not a happenstance that the first declaration of policy of our Constitution underlines in bright that "sovereignty resides in the people and all government authority emanates from them."^[7] The first duty of a citizen as a particle of sovereignty in a democracy is to exercise his sovereignty just as the first duty of any reigning government is to uphold the sovereignty of the people at all cost. Thus, in *Moraleja vs. Relova*,^[8] we emphatically held that "x x x once the court has acquired jurisdiction over an election contest, the public interest involved demands that the true winner be known without regard to the wishes or acts of the parties so much so that there can be no default, compromise nor stipulation of facts in this kind of cases." Wisely, this Tribunal has consistently demurred from dismissing election contests even on the ground of death of the protestee or the protestant.^[9]

The majority appears to stray away from this lodestar of our Constitution. It will dismiss the case at bar even while the protestee and the protestant are yet alive, even while the term of the 1992 president-elect has yet to expire, and even while the protestee and the protestant together plead that the Tribunal should determine the true will of the people by deciding their dispute on the merit and not on technicalities that trifle with the truth. I submit that it is the better stance for the Tribunal to decide this election contest on the merit and vindicate the political judgment of the people which far surpasses in significance all other considerations. Our duty to tell the people who have the right to govern them cannot depend on the uncertain oscillations of politics of the litigants as often times they are directed by the wind of convenience, and not by the weal of the public.

I proffer this postulate only because of the dominant public interest involved in the case at bar. This case does not involve an obscure office but the presidency. It concerns the first presidential election after the EDSA revolution. Only 877,398 votes separate the protestee and the protestant.

Ballots in 13,500 precincts are contested by the revisors of the protestant which if found correct can materially affect the results of the election. The protestant has charged that nationwide irregularities were committed in the elections. The protestee, on the other hand, dismisses the protest as merely intended to keep the protestant in the limelight in preparation for her senatorial campaign. Even the protestee has pleaded that the protest be tried on its merit as it involves a matter of paramount and grave public interest. Considering these distinct facts, the Tribunal should not dismiss the protest on the ground of mootness.

To be sure, the majority cultures the thesis that the dismissal of the case at bar will "x x x serve public interest, as it would dissipate the aura of uncertainty on the results of the 1992 presidential election." Dismissing the case on the tenuous technicality that it has become moot and academic will not tell the people who really won the last presidential election. Only the light of truth can pierce the uncertainty that has enveloped its results. It is with reason that the protestant has been joined by the protestee in the plea that this Tribunal decide their case on its merit so that once and for all, its result will be free from the badgerings of doubt. I join their plea for the people deserve the whole truth and in an election contest a half-truth is a lie. I vote to continue hearing the election protest at bar and decide it on the merit without unnecessary delay.

[1] Aside from the protestee and protestant, the other candidates were Eduardo M. Cojuangco, Jr., Salvador H. Laurel, Imelda R. Marcos, Ramon V. Mitra, and Jovito R. Salonga.

[2] The other candidates garnered the following votes: Cojuangco, Jr. (4,116,376); Laurel (770,046); Marcos (2,338,294); Mitra (3,316,661); and Salonga (2,302,124). See Resolution No. 2 of both Houses of the Congress of the Philippines adopted June 22, 1992.

[3] Francisco, Vicente, How to Try Election Cases. 1973 ed., p. 253.

[4] Black's Law Dictionary, 6th ed., p. 2.

[5] Ibid., citing Roebuck v. Mecosta Country Road Commission, 49 Mich. App. 128, 229NW 2d 343, 345; See also Moreno, Phil. Law Dictionary, 3rd ed., pp. 2-4.

[6] Ibid., p. 3.

[7] Section 1, Article 11 of the Constitution.

[8] 42 SCRA 10 [1971].

[9] Sibulovda. de Mesa vs. Mencias, 18 SCRA 533 [1966]; Silverio vs. Castro, 19 SCRA 520 [1967]; and Lomugdang vs. Javier, 21 SCRA 402 [1967].

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