

LAKAS NG BAYAN (LABAN), PETITIONER, VS. COMMISSION ON ELECTIONS & NACIONALISTA PARTY, RESPONDENTS.

G.R. No. L-47883. March 25, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for prohibition and certiorari filed by Lakas ng Bayan (Laban) praying principally that the respondent Commission on Elections (Comelec) be enjoined "from according to respondent Nacionalista Party the rights and privileges of a separate political party without prejudice to said party from (sic) exercising such rights and privileges thru the Kilusan ng Bagong Lipunan in the forthcoming election for the Interim Batasang Pambansa on April 7th, 1978" by "reversing and nullifying the decision of the respondent Commission on Elections dated February 25, 1978", which dismissed its petition in Election Case No. 1978-3 in the Comelec wherein it was prayed "that the name of the Nacionalista Party in the official ballot for the April 7th, 1978 elections for the Interim Batasang Pambansa be stricken off and the effects thereof eliminated".

The thrust of this petition, like the one which provoked Comelec's impugned resolution, is that "the listing of the NP in the official ballot had two effects, namely, the direct effects and the consequential effects." As direct effects, it is maintained that the listing of the Nacionalista Party in the ballot "give (s) undue advantage" to the Kilusan ng Bagong Lipunan or KBL candidates, who are also the candidates of the Nacionalista Party. It is also claimed in the petition that the Comelec gave the Nacionalista Party a favored placement in the official ballot by "center-setting" and giving it "star billing" therein, thereby utilizing the official ballot as a vehicle of propaganda, since in such arrangement "the KBL candidates are clearly portrayed in the official ballot itself as enjoying multiple support; of being supported not only by the KBL but also by another political unit, the Nacionalista Party while petitioner's candidates as well as all other candidates appear as having the support only of their respective political group or aggrupation." Moreover, it is claimed that the official ballot as prepared by the Comelec "allows KBL candidates to be voted upon, to its undue advantage" because "it enables said candidates to be voted upon as a block in a number of six ways, namely, by writing either (1) Kilusan ng Bagong Lipunan, (2) KBL, (3) BL or (4) Nacio-nalista, (5) NP and (6) N -- as against petitioner whose candidates can be voted upon as a block in only two ways, namely, Lakas ng Bayan or its acronym, Laban." And so, it is charged, respondent Comelec "gravely abused its discretion entrusted to it in the preparation of the official ballot. It has even forsaken its constitutional duty to see to it that 'bona fide candidates for any public office shall be free from any form of harrassment and discrimination.' (Section 9 (1) Article XII (c), 1973 Constitution.)"

Under the title of "consequential effects - 1 -", petitioner's fundamental posture is that in the light of current election developments and the various actions taken and resolutions adopted by the National Directorate of the Nacionalista Party on February 1, 1978, the "NP has become an adjunct of the KBL" and "after becoming an adjunct of the KBL, the Nacionalista Party could not act independently of the KBL"; it "has submerged its organization into the KBL which evolved into becoming the dominant political unit. The Nacionalista Party was reduced to a supportive, subordinate role, unfree of the KBL", so the "NP can operate only thru and within the

KBL apparatus."

Under the same title, it is contended that pursuant to Section 140 of the Election Code of 1978, "a candidate may be in the ticket of only one political party, group or aggrupation", and the adoption by the Nacionalista Party of the whole ticket of 21 candidates of the KBL places not only one but twenty-one candidates in the ticket of more than one political party, group or aggrupation in violation of that express injunction.

As "Consequential effects - 11 -", it is petitioner's pose that in the future elections, the separate recognition by the Comelec of the KBL and the NP would automatically give those two accreditation rights under the system of accreditation of political parties established in Section 8 of Article XII (c) of the 1973 Constitution.

Petitioner also posits as "Consequential Effects - III -" (1) that because of the adoption by the Nacionalista Party of all the candidates of the KBL, said candidates would be "entitled to two separate advertising spaces and time in radio, television, and print media as against petitioner's candidates who would be entitled to only one despite the admonition to give equal time and space to all candidates" by Section 41 of the Election Code of 1978; (2) that with such adoption of candidates, "the KBL candidates would be able to spend double the amount allowed by the 1978 Election Code"; and (3) that under such arrangement complained of, the "KBL candidates -- would, therefore, be entitled to a total of six watchers in every voting center as against three watchers for petitioner's candidates thru the expedient of the KBL and NP nominating three watchers each."

Acting on the petition, the Court required, in its resolution of March 3, 1978, respondents to comment thereon not later than March 8, 1978. On March 6, 1978, the Nacionalista Party filed its comment in which it argues:

First, that "there is nothing whatsoever in the law that prevents two or more political parties, groups or aggrupations from certifying the same set of candidates for an election, and by this token, one or more political parties, groups or aggrupations are not barred from supporting all the candidates of petitioner Lakas ng Bayan in the coming IBP elections."

Second, that the Nacionalista remains as an "independent entity" and, in this connection, asserts the following:

"We can only be appalled indeed, by petitioner's unflattering innuendo that the Nacionalista Party is a nuisance party because it has lost its personality, having 'joined or been subordinated to its umbrella organization, the Kilusang Bagong Lipunan.'

"We are at this point constrained to state that respondent Nacionalista Party is an institution in the political, cultural and social heritage of our people, and remains proud of having produced among the finest leaders and heroes of the Republic. It is thus such a distinction that impels the Nacionalista Party to participate in the forthcoming IBP elections as an independent entity if only to assure the people that it wills to remain an active voice and guardian in their political affairs in the best traditions of its history."

Third, that although it denies the alleged propaganda motivation in the placement of Nacionalista Party in the official ballot, it "has no objection to its name and its set of candidates being printed on any other portion of the ballot and to petitioner's priority to 'center-setting', if it so desires."

Fourth, that reference to the future accreditation of political parties is purely hypothetical and premature, since it is highly speculative how the matter will be resolved in the future.

And fifth, as to the charge of petitioner about equal space and equal time, campaign expense limitations and the number of watchers for political parties, respondent Nacionalista Party calls attention to Resolution No. 1289 of

March 4, 1978 of the Comelec which is quoted in the Comment on behalf of the Comelec submitted by the Solicitor General as follows:

"NOW, THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution and the 1978 Election Code, promulgates, as it hereby promulgates, the following rules to govern the election expenses, appointment of watchers and use of print and broadcast media by political parties or groups that nominated a common set of candidates in the April 7, 1978 elections:

"SECTION 1. Limitation upon expenses of political parties or groups with a common set of candidates. - When two or more political parties, groups or aggrupations have nominated a common set of official candidates, the said political parties, groups or aggrupations may jointly spend for their common candidates an amount the aggregate of which shall not exceed fifty centavos for every voter currently registered therein.

"In case the political parties, groups or aggrupations fail to agree, the political party, group or aggrupation that first nominated the common set of candidates shall have the right to spend for the campaign of the said candidates to the exclusion of the other.

"SEC. 2. Purchase of air time and/or advertising space for campaign purposes. - Political parties, groups or aggrupations supporting a common set of candidates shall be allowed to purchase jointly air time and/or advertising space for the campaign of their common candidates, but the total duration and quality of the air time and the aggregate amount of advertising space purchased shall not exceed that allotted to other political parties, groups or aggrupations that nominated only one set of candidates.

"As far as practicable, in the case of candidates nominated by more than one political party, group or aggrupation the sale of air-time and/or advertising space shall be made only to the candidates, the contract for the use of such airtime and/or advertising space being signed by the candidates concerned.

"SEC. 3. Common watchers. Political parties, groups or aggrupations that nominated a common set of candidates shall be entitled to appoint jointly not more than three watchers in every voting center.

"In case of disagreement, the political party, group or aggrupation that first nominated the candidates shall have the right to appoint the watchers to the exclusion of the other."

and gives the Court assurances that "it shall comply strictly with the said resolution."

The Comment of Comelec informs the Court that "in the official ballot the NP will appear in the left hand column immediately below the KBL". When the sample of the official ballot with such revised format was shown to counsels for petitioner when this case was heard on March 14, 1978, the latter did not indicate any further objection thereto insofar as placement is concerned.

In all other respects, the Comelec's comment reiterates substantially the arguments in the Comment of the Nacionalista Party. Regarding the vital issue of whether or not the provision of Section 140 of the Election Code

to the effect that:

"x x x Provided, finally, That a candidate may be in the ticket of only one political party, group or aggrupation; if he is included in the ticket of more than one political party, group or aggrupation presenting different sets of candidates, he shall immediately inform the Commission as to which ticket he chooses to be included, and if he fails to do so, he shall cease to be considered to belong to any ticket. x x x"

stands in the way of allowing the Nacionalista Party to adopt all the candidates of KBL and still maintain a separate listing in the official ballot, the Solicitor General additionally presents the following considerations:

"Petitioner asserts as a matter of fact that the NP has become an adjunct of the KBL and consequently it can operate only thru and within the KBL apparatus.

"At the very least, petitioner's assertion is of doubtful veracity. It is stoutly denied by the NP itself. Judicial notice can also be taken of the fact that the NP has registered with the COMELEC as a party. It has refused to be dissolved and be absorbed by the KBL. Its support of the KBL is the best proof that it exists as a party and intends to engage in active partisan, political activities. Petitioner cannot hoodwink respondent into accepting as reality an utterly disputable fact.

"Similarly, there is no provision in the 1978 Election Code that proscribes two political units from supporting identical sets of candidates. Petitioner's reliance on section 140 of the 1978 Election Code which provides -

'x x x. Provided, finally, That a candidate may be in the ticket of only one political party, group or aggrupation; if he is included in the ticket of more than one political party, group or aggrupation presenting different sets of candidates, he shall immediately inform the Commission as to which ticket he chooses to be included, and if he fails to do so, he shall cease to be considered to belong to any ticket. x x x.'

is erroneous. A fair reading of the provision will yield the ineluctable conclusion that its purpose is to prevent the confusion that will result if a candidate appears in the ticket of more than one political party, group or aggrupation presenting different sets of candidates especially in the light of the adoption of the block voting mechanism. This confusion cannot arise in a situation where a common set of candidates is supported by two political units as in the case at bar.

"Petitioner's interpretation may have a color of correctness if the law simply provided that a candidate can be in the ticket of only one political party, group or aggrupation without any further qualification. For then one can appreciably argue that the intendment of the law to limit the appearance of candidates in one ticket is all pervasive since it does not distinguish whether or not the sponsoring party, group or aggrupation is presenting different sets of candidates. Section 140 of the 1978 Election Code however is not so worded, hence, petitioner's compartmentalized construction of the law by fragmenting its sentences without giving them the desired continuity of thought does violence to canons of statutory interpretation.

"The restrictive reading of the provision by petitioner is also at war with the essence of parliamentary system of government. It is common learning that coalition of parties, or of people pursuing parallel programs of government is a usual feature of parliamentary governments. The NP support of the KBL candidates constitutes no more than an early exercise of this established parliamentary practice."

Thus, with the removal of the Nacionalista Party from "center-setting" and "star billing" in the official ballot and the promulgation of Comelec Resolution 1289 aforequoted, it would appear that the arguments of alleged harassment and discrimination and undue and unfair advantage that Must have made petitioner seek protection from the Court have lost basis. Indeed, the swift and effective action taken by the Comelec on the matter two days after the petition was filed purporting to correct erroneous impressions that might have been left in the mind of petitioner by its decision in Election Case No. 1978-3 is worthy of special mention. To be sure, We have read the questioned decision and nowhere could We find therein any ruling giving or condoning the apprehended advantages in regard to equal time and equal space, the limitation of campaign expenditures and the designation of watchers by political parties and groups or aggrupations. But since petitioner wants to be sure that its candidates are not discriminated against in these respects, Comelec lost no time, upon realizing evidently that it had overlooked passing squarely on said points which were brought to its attention in the pleading of petitioner, Annex C of the petition herein, to properly deal with the complaint in accordance with the dictates of fairness and equality of opportunity among all the candidates.

This is as it should be. It is always best to minimize if not avoid the causes of litigation by voluntary action specially where public interest is involved and speedy action is of the essence. Considering the situation of its docket which requires almost superhuman effort to ease, the time and effort of the Supreme Court are better spared for thousands of other cases more deserving of its attention.

Thus, the commendable attitude shown by respondent Comelec has left the Court with only one issue to settle, namely, whether or not the Comelec acted against the law or in grave abuse of discretion in sanctioning and giving due course to the wholesale adoption by the Nacionalista Party of all the candidates of the KBL in Metro Manila or Region IV. (It appears that the same has been done in all the other regions.) In this regard, the Comelec is of the view that the law itself does not give it any further room to accommodate petitioner. According to the Comelec, since Section 199 of the Revised Election Code ordains the automatic registration of the Nacionalista Party, Liberal Party, Citizens Party and other national parties, on account of their registration before 1972, and expressly entitles said parties "to nominate and support their respective candidates for representative in the interim Batasang Pambansa" and, on the other hand, petitioner does not challenge the constitutionality of those provisions, it has no alternative but to give due course to the listing of the Nacionalista Party in the official ballot, considering further that, in its view, Section 140 of the same Code, contrary to the contention of petitioner allows multiple nominations by different parties of the same set of candidates.

On its part, petitioner submits that Section 140 is unequivocal and crystal-clear in enjoining in unmistakable terms that "a candidate may be in the ticket of only one political party, group or aggrupation." Such being the law, how can it be possible, petitioner contends, for 21 candidates to do so. To bolster its argument, Senator Rodrigo even pointed out that the intent of the law is to prevent any candidate "na mamangka sa dalawang ilog." It is also contended that it is inconsistent with the known practices in parliamentary government for any candidate to be trying to cater to the favor of more than one party.

From another point of view, petitioner maintains that "the respondent Comelec has acted as if it were unaware of current election developments" when it ignored Laban's contention that the Nacionalista Party has become an adjunct of the KBL and can, therefore, operate only within the latter's apparatus. Actually, petitioner appears to be a little lost in how to categorize the status of the Nacionalista Party vis-a-vis the KBL. Petitioner's counsel, Atty.

Arroyo had to plead to the Court at the hearing to give a little allowance for any imprecision in the language of their petition because, perhaps like the Solicitor General when he was drafting the Code, they found themselves racing with time when they prepared the same. But there is really no need to try to dwell at length or give decisive importance to the question of whether or not the Nacionalista Party and the KBL have distinct and separate personalities. Actually, if there is anything extant in the evidence submitted by the petitioner at the hearing consisting of the minutes of the meeting and the resolutions adopted by the National Directorate of the Nacionalista Party on February 1, 1978, Exhibits A, B and C, which are made Appendices A, B and C also of this decision, it is that the Nacionalista Party refused to be either reorganized or merged or otherwise fused with any other entity, including the KBL, thus preserving its independent personality as the historical political party of the past. Still such separate individuality is not, in Our view, decisive here.

What is seemingly more on the point in petitioner's stand is that these documents purportedly show that the Nacionalista Party is the sponsor of the KBL, so much so that its national directorate authorized the President (President Marcos), its titular head, to: -

"The National Directorate then proceeded to adopt another resolution to authorize the President to perform the following tasks in their behalf, to wit:

- To appoint the interim officers of the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp.;
- To constitute an ad hoc committee to screen and subsequently proclaim the official candidates to be fielded by the said coalition movement in the forthcoming Interim Batasang Pambansa elections; and
- To formulate the platform or program of government of the coalition movement, including rules and regulations to implement the same." (Annex A, pp. [3], [4].)

Under such circumstances, petitioner would insist that to avoid the advantages that would accrue to each of the two groups as a result of their separate listing, and for the sake of fairness, they should be considered as just one and the same party, group or aggrupation.

The Court does not find sufficient merit in the pose of petitioner. At the hearing, the Solicitor General informed the Court that as Chairman of the Committee of the Batasang Bayan on the Revision of Laws and the Election Code, it was he who prepared the draft of the Election Code of 1978. He explained that the provision relied upon by petitioner was intended merely to avoid confusion in the preparation of the ballot among voters who would wish to utilize the block-voting and that the Batasang Bayan could not have had in mind prohibiting the same set of candidates from being nominated by more than one political party, since no confusion could possibly arise in such a case. Moreover, he admitted quite candidly that he was working under time pressure, otherwise the wording of the provision could have been more felicitous. But even without taking into account the explanation of the Solicitor General, there are other considerations which to Our mind lead to the conclusion that the impugned ruling of the respondent is in accordance with law. Much less can it be dubbed as a grave abuse of discretion.

We are convinced there is no point in reading Section 140 of the Election Code of 1978 in the sense that it is illegal for a political party to adopt the complete set of candidates of another political party, group or aggrupation. To do so can even result in an abridgment of the freedom of association and of political beliefs consecrated in the Constitution. Coalition of parties is not strange in politics, particularly in countries with parliamentary governments.

Relatedly, let us consider the circumstances obtaining in the Philippines nowadays. It is a matter of judicial notice that in view of the suspension of political activities during the last five years of martial law and because of the

institution of the New Society, the status of political parties and the behavior of politicians in our country today cannot be expected to be as clearly definable as they should otherwise be. It has been said too often to be ignored that to a considerable extent the proclamation of martial law was caused by the excesses and abuses that characterized our politics and the conduct of our politicians before. Now, the basic purpose of martial law aside from combatting and suppressing the subversion and rebellion is to reform our society, to the end that the causes for their resurgence may be eliminated. The sweeping scope of the reforms intended naturally include that of political parties. Accordingly, it is but reasonable to assume that the provision of Section 199 of the Code recognizing the continued registration of the Nacionalista Party, the Liberal Party, the Citizens Party and other old groups could not be meant to perpetuate them just as they were in 1972, but rather to enable them only to have a fresh start and ultimately adjust themselves to the requirements of the new order.

It must be borne in mind that the election of April 7 next is the first one we are going to hold since 1972. In truth, there has been just enough time, since the holding thereof was officially announced, for the existing political parties to improvise ways and means of meeting the exigencies of the situation. No one can pretend that the old political parties, including the Nacionalista Party, have been able to adequately adopt the desired reformatory steps so that they may conform with the tenets of the New Society. As we see it, and as can be gathered from the very evidence of petitioner, Exhibits A, B and C, the KBL is one of such improvisations. The KBL is not a political party. It is a group or aggrupation which in the language of Section 3 of Resolution 1269 of the Comelec is "a temporary alliance, union or coalition including its branches and divisions, of persons or parties for the purpose of joint action and combining their resources to support a common list of candidates under a ticket officially nominated by it in contemplation of the system of voting provided under the 1978 Election Code for the election of members of the interim Batasang Pambansa". According to Annex B, the resolution of the National Directorate of the Nacionalista Party "creating the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal ATBP", it is "a new political movement to be known as the Bagong Lipunan Kilusan etc., which shall serve as an alliance, united front or umbrella organization for all Nacionalistas, Liberals, veterans and other groups, association or individuals willing to support the New Society initiated by the President and which shall represent the interests of the New Society in the forthcoming elections through the fielding of candidates therefor." More extensively, the whereases of its creation are stated thus:

"WHEREAS, elections shall be conducted on April 7, 1978 to determine the members of the Interim Batasang Pambansa, the establishment of which being a decisive step towards the orderly and smooth restoration of political normalcy in the country;

"WHEREAS, during this crucial period, the country can ill afford direct partisan strife characteristic of elections under the old order, and must instead adhere closely to the course of national unity and brotherhood under the New Society;

"WHEREAS, various leaders and individuals, regardless of their affiliations and loyalties to political parties, groups or associations, have indicated their desire to support the President in the pursuit of the goals and objectives of the New Society as well as the reforms initiated by the national leadership under the new order;

"WHEREAS, there is a need for a tangible, dynamic and responsive force under which the said followers and supporters of the New Society can be effectively united and mobilized during the forthcoming Interim

Batasang Pambansa elections;

"WHEREAS, now is the time to institutionalize in constructive political terms the success of the New Society in strengthening the national identity and independence, developing the economy, promoting social justice and democratizing the base of Philippine democracy."

Considering all these circumstances and having in view the rejection, according to Exhibit A, by the same national directorate of the proposals to change the platform and rules and regulations of the party and allowing it thereafter to field its own candidates for membership in the Interim Batasang Pambansa using the same name Nacionalista Party and (2) change the name of the party to "Bagong Lipunan Nacionalista" with new officers, platform and rules and regulations "embodying the goals and objectives of the New Society", it cannot be fairly said that the directorate had consented to the absorption of the party by the KBL. From these documents before Us, it is but reasonable to hold that while a coalition of forces was indeed agreed upon and implemented, with the Nacionalistas spearheading the movement, the Nacionalista Party nevertheless retained its independence and, in consequence, all the rights and privileges appertaining thereto. To be sure, the directorate did agree to authorize the President to more or less decide on the procedure of selection or on the selection itself of the candidates of the KBL, but We are not sufficiently persuaded that such authority necessarily precludes the right of the Nacionalista Party as such to take the measures it may deem proper for the preservation of its own status and image, as a political party and its rights and privileges as such for the purposes of subsequent elections. In other words, by nominating as its own the candidates of the KBL, the Nacionalista Party merely gave the mass of its loyal and die-hard partymen the opportunity to vote distinctly as Nacionalistas in the coming election, leaving it for the future, when political matters shall have had more time and opportunity to fully develop and firm themselves up in relation to the modes and objectives of the New Society, for each of them to join the party of their choice, assuming the KBL will eventually evolve into a new political party. Until that time comes, it would be ignoring significant historical realities and practically placing political thought in a straight jacket to recognize the KBL as the exclusive vehicle for the articulation of political ideals. For that matter, the Liberal Party were likewise free to consider the Laban as not necessarily the final organization of the opposition.

After all, nowhere in the Election Code is there any prohibition against such a political approach to the prevailing situation, as discussed above. Contrary to the contention of petitioner, the adoption by the Nacionalista Party of all the 21 candidates of the KBL is not multiplication by that number of the violation of the injunction in Section 140 against a candidate being in the ticket of more than one party. While indeed it would appear that instead of only one candidate, 21 candidates are in the ticket of more than one party, the truth of the matter is that they actually compose the whole ticket and that ticket is only one. We are satisfied that the two clauses of the proviso in question should be read as a whole and understood or construed as merely an emphatic way of projecting the point that a candidate should not be in two different sets or distinct tickets of candidates. As We see it, the basic intent is to discourage opportunism, wherein a candidate takes advantage of two opposing groups to promote his personal victory in complete disregard of the fact that when two parties have different sets of candidates, it follows that they are not fully agreed on and may even be opposed to each other in objectives and ideals, hence the obvious lack of principle and immorality of being carried by both. These defects cannot be present when the two parties or groups have identical candidates for a given election, signifying thereby that they are identically motivated by the same aspirations for the purposes at least of that particular election. It may be that by such ephemeral commonality of candidates, objectives and ideals certain practical advantages could emerge that would enhance the victory of the common ticket, but whatever drawback there might be in such a situation can be overshadowed by the certainty that the voters in their inherent wisdom will not permit the practice to work to their ultimate injury. Besides, those supposed advantages are open to all similarly situated to take and it is not for those

who have failed to act opportunely to complaint against those who are more prompt in acting in the legitimate pursuance of what is good for them.

PREMISES CONSIDERED, the petition is denied due course.

Aquino, Concepcion, Jr., Santos, and Fernandez, JJ., concur.

Castro, C.J., concurs, in view of the environmental circumstances of this case the petition is to be considered as dismissed for lack of merit, and this dismissal as immediately executory.

Guerrero, J., votes for dismissal of the petition.

Makasiar and Antonio, JJ., in the result.

Fernando, J., concurs and dissents in a separate opinion.

Teehankee, J., dissents in a separate opinion.

Muñoz Palma, J., did not take part.

APPENDIX "A"

ANNEX "A"

MINUTES OF THE ORGANIZATIONAL MEETING OF THE BAGONG LIPUNAN KILUSAN NG NAGKAKAISANG NACIONALISTA -LIBERAL. ATBP.

The National Directorate of the Nacionalista Party, a listing of the members of which is attached herein as Annex No. I, was called to a meeting by his Excellency. President Ferdinand E. Marcos in his capacity as titular head of the party on February 1, 1978 at Heroes Hall, Malacañang, Metro-Manila.

The meeting was called to order at 10:00 a.m. by President Marcos, who briefly recounted the historic events that led to the declaration of Martial Law and the successful efforts of the national government not only in suppressing the existing rebellion but also in laying the foundations of a New Society. He then called the attention of the National Directorate to the forthcoming elections of the members of the Interim Batasang Pambansa on April 7, 1978 as one of the decisive steps being undertaken to gradually bring back the country to political normalcy. The President explained that it was imperative that the Nacionalista Party now reorganize its ranks in a way that would foster unity among the great majority of our people who adhere to the ideals of the New Society and thereby preserve, if not increase, the gains resulting therefrom.

Three (3) methods of reorganizing the Nacionalista Party were proposed. namely :

- To continue using the name Nacionalista Party and field its candidates for membership in the Interim Batasang Pambansa, except that the party platform as well as its roles and regulations may be changed in the light of present day conditions,

- To change the name of the party to "Bagong Lipunan Nacionalista" with a new set of officers working under a new platform as well as rules and regulations embodying the goals and objectives of the New Society; and
- To organize a coalition movement, united front or umbrella organization that shall include as its members Nacionalistas, Liberals, veterans as well as other political, sectoral and socio-civic aggrupations and individuals who adhere to the ideals and principles of the New Society, and which shall field its own candidates in the Interim Batasang Pambansa elections.

Among the three proposals, the third, made by Ex-Speaker JOSE B. LAUREL, JR.. was supported by the President and recommended for approval or adoption by the Central Committee of the Nacionalista Party.

Consequently, in view of the recommendation of the Central Committee, Ex-Senate President GIL J. PUYAT, elective President of the Nacionalista Party on leave in favor of Ex-President Pro-Tempore Jose Roy, formally presented to the National Directorate of the Nacionalista Party a motion to approve a resolution organizing the aforementioned coalition movement to be denominated as Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp. After the motion was duly seconded, the National Directorate unanimously approved the said resolution, a copy of which is attached herewith as Annex No. 2.

The National Directorate then proceeded to adopt another resolution to authorize the President to perform the following in their behalf, to wit:

- To appoint the interim officers of the Bagong Lipunan Kilusang Nagkakaisang Nacionalista-Liberal, Atbp.;
- To constitute an ad hoc committee to screen and subsequently proclaim the official candidates to be fielded by the said coalition movement in the forthcoming Interim Batasang Pambansa elections; and
- To formulate the platform or program of government of the coalition movement, including rules and regulations to implement the same.

Attached herewith as Annex No. 3 is a copy of the said resolution.

By virtue of the foregoing resolution, the President appointed DLGCD Secretary JOSE A. ROÑO and Honorable LUIS YULO as Secretary-General and Treasurer respectively of the coalition movement. In addition, the following were appointed interim officers in charge of the various regions:

NAMES

REGIONS

CONRADO ESTRELLA

I

JUAN PONCE ENRILE

II

EDUARDO CONJUANGCO

III

IMELDA ROMUALDEZ MARCOS

IV

FELICISIMO SAN LUIS

IV-A

FELIX FUENTEBELL

V

ROBERTO S. BENEDICTO

VI

LORENZO TEVES

VII

BENJAMIN ROMUALDEZ

VIII

VICENTE M. CERILLES

IX

EMMANUEL PELAEZ

X

ANTONIO O. FLOREINDO

XI**ALI DIMAPORO****XII**

Thereafter, to immediately operationalize the coalition Movement, the National Directorate decided to adopt the following courses of action:

- To establish its national headquarters at the Floro Building, Roxas Boulevard, Metro Manila, for which purpose, the Secretary General or his duly authorized representative shall be authorized to negotiate for the lease of the said premises to sign, execute and deliver all documents and papers that shall be necessary and required for the purpose.
- To establish regional headquarters in each of the thirteen(13) regional centers, which shall temporarily be situated at the personal residences or offices of the interim officers of the coalition movement; and
- To form a liaison group composed of DLGCD Secretary JOSE A. ROÑO, DND Undersecretary CARMELO BARBERO and Governor IGNACIO SANTIAGO of Bulacan which shall confer with other political parties, socio-civic and other sectoral organizations, associations, etc. (including independents and individual members of such groups) in order to accommodate them into the membership of the coalition movement, if they so desire.

Finally, the National Directorate authorized DLGCD Secretary JOSE A. ROÑO to prepare the forms of Certificate of Affiliation of the prospective members of the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp.. a copy of which certificate shall be attached herewith as Annex No. 4.

There being no further business to transact, the meeting was adjourned at 2:00 p.m.

Certified Correct:

(Sgd.) CONSTANCIOCASTANEDA

Secretary-General

Nacionalista Party

(Sgd.) JOSE A. ROÑO

Acting Secretary-General

Bagong Lipunan Kilusan ng

Nagkakaisang Nacionalista-Liberal, Atbp.

SUBSCRIBED AND SWORN to before me this 8th day of February, 1978, affiant exhibiting to me his Residence Certificate No. A-0000283, issued on Jan. 3, 1977 at Quezon City.

Doc. No. 29 . (Sgd.) Illegible

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APPENDIX "B"

ANNEX "B"

RESOLUTION CREATING THE BAGONG LIPUNAN KILUSAN NG NAGKAKAISANG NACIONALISTA-LIBERAL, ATBP.

WHEREAS, elections shall be conducted on April 7, 1978 to determine the members of the Interim Batasang Pambansa, the establishment of which being a decisive step towards the orderly and smooth restoration of political normalcy in the country;

WHEREAS, during this crucial period, the country can ill afford direct partisan strife characteristic of elections under the old order, and must instead adhere closely to the course of national unity and brotherhood under the New Society;

WHEREAS, various leaders and individuals, regardless of their affiliations and loyalties to political parties, groups or associations, have indicated their desire to support the President in the pursuit of the goals and objectives of the New Society as well as the reforms initiated by the national leadership under the new order:

WHEREAS, there is a need for a tangible, dynamic and responsive force under which the said followers and supporters of the New Society can be effectively united and mobilized during the forthcoming Interim Batasang Pambansa elections;

WHEREAS, now is the lime to institutionalize in constructive political terms the success of the New Society in strengthening the national identity and independence, developing the economy, promoting social justice and democratizing the base of Philippine democracy;

THEREFORE, on motion of ex-Senate President Gil J. Puyat, President of the Nacionalista Party, duly seconded, and upon the unanimous recommendation of the Central Committee of the Party, BE IT RESOLVED as it is hereby resolved to formally establish a new political movement to be known as the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp. which shall serve as an alliance, united front or umbrella organization for all Nacionalistas. Liberals, veterans and other groups, associations or individuals willing to support the New Society initiated by the President and which shall represent the interests of the said New Society in the forthcoming elections through the fielding of candidates therefor.

Unanimously adopted by the National Directorate of the Partido Nacionalistaon February 1, 1978 at the Heroes Hall, Malacañang, Manila.

APPENDIX "C"

ANNEX "C"

RESOLUTION AUTHORIZING THE PRESIDENT TO APPOINT THE INTERIM MEMBERS OF THE KILUSAN. TO CREATE AN AD HOC COMMITTEE TO SCREEN AND PROCLAIM THE CANDIDATES OF THE MOVEMENT AND TO FORMULATE THE PLATFORM AS WELL AS THE RULES AND REGULATIONS OF THE KILUSAN.

WHEREAS, at the instance of the National Directorate of the Partido Nacionalista, the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp. has been formally established to serve as an alliance, umbrella organization or coalition movement for Nacionalistas and Liberals alike as well as Veterans and other groups, aggrupations or non-affiliated individuals who adhere to the New Society:

WHEREAS, there is a need to determine and constitute the internal organization of the aforementioned coalition movement and to activate the same for the interim Batasang Pambansa elections, for which purpose the Kilusan shall be fielding its own candidates:

WHEREAS, His Excellency President Ferdinand E. Marcos is the titular head of the Nacionalista Party:

THEREFORE, BE IT RESOLVED as it is hereby resolved to authorize His Excellency President Ferdinand E. Marcos to:

- Appoint the interim officers of the Bagong Lipunan Kilusan ng Nagkakaisang Nacionalista-Liberal, Atbp.
- Create an ad hoc screening committee to screen as well as proclaim the official candidates to be fielded by the Kilusan in the forthcoming interim Batasang Pambansa elections.
- Effect the formulation of the platform and program of government of the Kilusan as well as the rules and regulations thereof.

Adopted unanimously by the National Directorate of the Nacionalista Party, February 1, 1978. at the Heroes Hall, Malacañang, Manila.

CONCURRING AND DISSENTING OPINION

FERNANDO, J.:

The ably-written opinion of Justice Barredo for the Court rests on a conception of law that takes into account the realities of the situation and the need for adjusting to the demands of the new forces at work in the political milieu. With due recognition of its force, persuasiveness, and clarity, I would like to view the matter before us in the light of traditional doctrines and what, for me at least, are applicable precedents. While the result reached compels acceptance on my part, I would qualify the dismissal of this certiorari and prohibition petition with instruction to respondent Commission on Elections to consider the words LAKAS and BAYAN in addition to

LABAN as a vote for the slate of the petitioner LAKAS NG BAYAN. That is the extent of my lack of conformity to the decision of this Court.

1. I concur in the dismissal of this certiorari and prohibition petition against the Commission on Elections as under Section 140 of the Election Code, the validity of which has not been challenged and therefore must be given full force and effect, respondent Nacionalista Party is entitled to a place in the ballot, but certainly not a favored place. That deficiency had been remedied. So with the other infirmities imputed to the assailed decision. They were based on the alleged discrimination insofar as its joint candidates with the Kilusan ng Bagong Lipunan, KBL for short, would be entitled: (1) "to two separate advertising spaces (sic) in radio, television, and print media;" (2) "would be able to spend double the amount allowed by the 1978 Election Code, one expended for them by the KBL and the other by the Nacionalista Party;" and (3) "would be entitled to three watchers each in every voting center or a total of six watchers for their joint candidates" as against three for the candidates of petitioner. Commission on Elections Resolution No. 1929, dated March 4, 1978 took care of the matter. It reads: "[Now, therefore], the Commission on Elections, by virtue of the powers vested in it by the Constitution and the 1978 Election Code, promulgates, as it hereby promulgates, the following rules to govern the election expenses, appointment of watchers and use of print and broadcast media by political parties or groups that nominated a common set of candidates in the April 7, 1978 elections: [Section] 1. Limitation upon expenses of political parties or groups with a common set of candidates. - When two or more political parties, groups or aggrupations have nominated a common set of official candidates, the said political parties, groups or aggrupations may jointly spend for their common candidates an amount the aggregate of which shall not exceed fifty centavos for every voter currently registered therein. In case the political parties, groups or aggrupations fail to agree, the political party, group or aggrupation that first nominated the common set of candidates shall have the right to spend for the campaign of the said candidates to the exclusion of the other. [Sec.] 2. Purchase of air time and/or advertising space for campaign purposes. - Political parties, groups or aggrupations supporting a common set of candidates shall be allowed to purchase jointly air time and/or advertising space for the campaign of their common candidates, but the total duration and quality of the air time and the aggregate amount of advertising space purchased shall not exceed that allotted to other political parties, groups or aggrupations that nominated only one set of candidates. As far as practicable, in the case of candidates nominated by more than one political party, group or aggrupation, the sale of air-time and/or advertising space shall be made only to the candidates, the contract for the use of such air-time and/or advertising space being signed by the candidates concerned. [Sec.] 3. Common watchers. Political parties, groups or aggrupations that nominated a common set of candidates shall be entitled to appoint jointly not more than three watchers in every voting center. In case of disagreement, the political party, group or aggrupation that first nominated the candidates shall have the right to appoint the watchers to the exclusion of the other."[1]

2. The crucial issue, to my mind, in any election controversy where an actuation of the respondent Commission on Elections is challenged, is the respect, or lack of it, accorded the fundamental right of suffrage.[2] In the leading case of *Moya v. del Fierro*,[3] a 1939 decision, Justice Laurel stressed its significance in words that even now possess the impress of validity. Thus: "As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read

and appreciated, if not with utmost, with reasonable, liberality. Counsel for both parties have called our attention to the different and divergent rules laid down by this Court on the appreciation of ballots. It will serve no good and useful purpose for us to engage in the task of reconciliation or harmonization of these rules, although this may perhaps be undertaken, as no two cases will be found to be exactly the same in factual or legal environment. It is sufficient to observe, however, in this connection that whatever might have been said in cases heretofore decided, no technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence aliunde. This rule of interpretation goes to the very root of the system."[4]

3. So it is in American constitutional law. This is made clear by the doctrines announced by the United States Supreme Court since "the right to vote," according to *United States v. Bathgate*[5] is "personal." [6] It follows that any impairment of the constitutionally protected right to vote, in the language of *Skinner v. Oklahoma*, [7] the opinion being penned by Justice Douglas, "touches a sensitive and important area of human rights," and "involves one of the basic civil rights of man," presenting questions of "invidious discrimination" [8] offensive to the equal protection clause. Chief Justice Warren gave eloquent expression to such a view in what has been considered as the landmark decision in the apportionment cases, *Reynolds v. Sims*: [9] "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 US 651, 28 L ed 274, 4 S Ct 152, and to have their votes counted, *United States v. Mosley*, 238 US 383, 59 L ed 1355, 35 S Ct 904. * * * And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." [10] Further: "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservation of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." [11]

4. In the light of the foregoing fundamental postulate, it is my considered opinion, as set forth at the outset, that the dismissal of the petition should be without prejudice to respondent Commission on Elections being instructed to include the words LAKAS and BAYAN in addition to LABAN, as indicating the clear and manifest intention of the voter to cast his ballot in favor of LAKAS NG BAYAN. To my mind, this would suffice to remove what otherwise could be an unconstitutional taint as a denial of equal protection, considering that the joint candidates for the KILUSAN NG BAGONG LIPUNAN and the NACIONALISTA PARTY could be voted for, as the petition alleged, [12] in six different ways, unlike the candidates of the petitioner under the optional block voting scheme, which, without the suggested addition, could be voted for in only two ways, LAKAS NG BAYAN and LABAN. It may be stated that even then there is lacking the full measure of similar or identical treatment which ideally is the mandate of the equal protection guarantee. Nonetheless, such failure to attain that degree of full equivalence is inherent in the fact that under Section 140 of the 1978 Election Code, the joint candidates of both the Kilusan and the Nacionalista Party enjoy that advantage. Under such a circumstance, the judiciary can go only so far as to minimize the resulting inequality. It cannot completely eradicate it. Professor Emerson, a constitutionalist of note, had occasion to state that even the adoption of the equal rights amendment, which would ban discrimination based on sex, would not change matters in cases where lack of equality is inherent in a situation. That would be a case of a necessary consequence, not purposeful discrimination. He pointed out that as to wet nurses, only women can qualify, and as to donors in a semen bank, so necessary in these days of artificial insemination, only the men can be expected to volunteer. Yet there is no violation of the guarantee of equal

protection.[13]

5. Nor is there anything unorthodox in this approach. Even with the dismissal of a petition by this Court, an affirmative relief may be granted, especially so where the suit comes under our equity powers, which is intended to avoid the exaltation of legalism at the expense of justice. If it were otherwise, our jurisdiction could be reduced to the level of mere futility. This is not a matter of pure theory. In the leading case of *Colgate-Palmolive Philippines, Inc. v. De la Cruz*,^[14] this Court, through Justice Makasiar, while dismissing an unfair labor practice suit, which ordinarily would have terminated the matter as there was no unfair labor practice proven, recognized the competence of the then Court of Industrial Relations to pay the sum equivalent to the earned but unused sick leave of private respondents, the laborers involved. Justice Makasiar cited with approval an earlier decision, *Philippine Engineers' Syndicate, Inc. v. Bautista*.^[15] The teaching of American Supreme Court rulings in apportionment cases, all election controversies, impressive for their number and unanimity, is to the same effect.^[16] For me, while not controlling, they are of persuasive weight.

6. One other matter. While the petition did not touch on the question of whether or not under Section 140 of the Election Code a candidate is required to be in the ticket of only one political party, group or aggrupation, Senator Francisco Soc Rodrigo, who likewise argued at the hearing, vigorously pressed the contention that since both the Nacionalista Party and the Kilusan ng Bagong Lipunan had a common slate of candidates, everyone included therein should "inform the Commission as to the ticket he chooses to be included," his failure being a sufficient cause for his exclusion from the election. It must be admitted that the point was argued with a great deal of plausibility, but as against such a submission, Solicitor General Estelito P. Mendoza ably pointed out that the requirement, in the language of the law, applies only when the political party, group or aggrupation presents "different sets of candidates." The situation is, therefore, not covered by the provision invoked. It is a case of *casus omisus*. In addition, the Solicitor General, who is himself a candidate and has been facing the rigors of an electoral campaign, stressed that, realistically, the assumption that a candidate of two parties or aggrupations would necessarily be placed at an advantage is not borne out by the experience in past campaigns where due to past loyalties or accumulated resentments, the identification with any of such contending party or aggrupation may even be a handicap. There is, for me at least, lacking that assurance that would justify a finding that, on this particular issue, petitioner has made out a case of grave abuse of discretion, which is the basis of this certiorari and prohibition proceeding.

It is thus clear why, for me at least, this petition for certiorari and prohibition cannot be granted. The assailed decision of respondent Commission on Elections is not just the rationalization of the arbitrary and the irrational. Nor can it be, as seems to be the impression created at the oral argument, merely the cleverly contrived justification of the outrageous. This is not to say that it could be considered impeccable in all respects. Whatever failings may be attributed to it, however, would be due to the novelty and complexity of the problems and the finitude of human vision. Nor, in the light of the authorities that, for me, have relevance, can it be said that respondent Commission on Elections was enslaved by outworn tradition and obsolete concepts. It was not in the grip of the suffocating literalness of provisions that perhaps could have been better phrased to avoid ambiguity. It is no exaggeration to look upon it as an earnest effort to meet the question at issue in terms of what is fair, what is just, and what is legal. Except for the qualification above mentioned, it is my considered opinion, to repeat, that no recourse could be had to the remedies of certiorari and prohibition.

[1] COMELEC Resolution No. 1292 dated March 4, 1978.

[2] According to Article VI, Section 1 of the Constitution: "Suffrage shall be exercised by citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over, and who shall have resided

in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote."

[3] 69 Phil. 199.

[4] Ibid, 204.

[5] 246 US 220 (1918).

[6] Ibid, 227.

[7] 316 US 535 (1942).

[8] Ibid, 541.

[9] 377 US 533 (1964).

[10] Ibid, 544-555.

[11] Ibid, 561-562.

[12] Petition, par. 14.

[13] Cf. Emerson, Brown, Falk, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale Law Journal, 871, 893 (1971).

[14] L-23015, May 30, 1972, 45 SCRA 190.

[15] L-16440, February 29, 1964, 10 SCRA 379.

[16] Cf. *Wesberry v. Sanders*, 376 US 1 (1964); *Wright v. Rockefeller*, 376 US 52 (1964); *Reynolds v. Sims*, 377 US 533 (1964); *WMCA v. Lomenzo*, 377 US 633 (1964); *Maryland Committee v. Tawes*, 377 US 656; (1964); *Davis v. Mann*, 377 US 678 (1964); *Roman v. Sincok*, 377 US 695 (1964); *Lucas v. Colorado General Assembly*, 377 US 713 (1964); *Fortson v. Dorsey*, 379 US 433 (1965); *Burns v. Richardson*, 384 US 73 (1966); *Sailors v. Kent Board of Education*, 387 US 105 (1967); *Dusch v. Davis*, 387 US 112 (1967); *Kirkpatrick v. Preisler*, 394 US 526 (1969); *Wells v. Rockefeller*, 394 US 542 (1969); *Moore v. Ogilvie*, 394 US 814 (1969); *Kramer v. Union Free School District*, 395 US 621 (1969); *Connor v. Johnson*, 402 US 690 (1971); *Ely v. Klahr*, 403 US 108 (1971); *Whitcomb v. Chavis*, 403 US 124 (1971); *Abate v. Mundt*, 403 US 182 (1971); *Connor v. Williams*, 404 US 549 (1972).

SEPARATE DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the majority's denial of the petition and its ruling that "contrary to the contention of petitioner, the adoption by the Nacionalista Party (NP) of all the 21 candidates of the Kilusang Bagong Lipunan (KBL) is not multiplication by that number of the violation of the injunction in Section 140 against a candidate being in the ticket of more than one party."^[1]

I. The main issue at bar is the legality of the questioned Comelec ruling allowing double listing of all 21

government KBL candidates also under the NP in patent violation of the Election Decree's express and unqualified injunction that "a candidate may be in the ticket of only one party, group or aggrupation" and of its mandate that "if he is included in the ticket of more than one political party, group or aggrupation presenting different sets of candidates, he shall inform the Commission as to which ticket he chooses to be included, and if he fails to do so, he shall cease to be considered to belong to any ticket." [2]

1. To ask the question is to answer it. The first sentence of the pertinent provisions of Section 140 of the Election Decree sets forth a plain, complete and absolute prohibition (admitting of no room for administrative or judicial interpretation) against a candidate being in the ticket of more than one political party or group, regardless of whether or not such parties or groups "present different sets of candidates." The second sentence of the cited section provides that where the candidate is included in the ticket of more than one political party or groups "presenting different sets of candidates", he must inform the Comelec as to the ticket under which he chooses to be included under pain of being considered as not belonging to any ticket.

Even read literally in the singular, petitioner has cause to complain that if the decree unequivocally enjoins that "a candidate may be in the ticket of only one political party, group aggrupation", the adoption by the NP of all 21 KBL candidates in Metro Manila multiplies by that number the violation of the decree's injunction against a candidate being in more than one ticket. If a single candidate is prohibited from being in more than one ticket, so must all the government's 21 KBL candidates in Metro Manila as well as the remaining (unopposed) 139 KBL candidates in the rest of the nation be covered by the prohibition.

2. Such a plain and simple view is but to obey the plain and simple letter of the decree as well as its spirit. Such a view accords with the parliamentary system established by the 1973 Constitution which is supposed to be based on the party system and party government under which it is an absurdity for the same candidates to run under or be "adopted" in the tickets of two or more political parties or groups and for the second party to adopt in toto the candidates of another political party or group as the NP has done here, not only with regard to all the 21 candidates of the KBL in Metro Manila or Region IV (who appear to have substantial opposition from petitioner's slate of candidates) but also/as to all the other 139 candidates of the KBL in all the other 12 regions throughout the country who are running practically unopposed. [3] As stressed earlier this month by the majority in the block-voting cases "such a [parliamentary] system implies the existence of responsible political parties with distinct programmes of government" and "the maintenance and development of the party system becomes not only necessary but indispensable for the enforcement of the idea and the rule of government responsibility and accountability to the people in the political management of the country." [4] Such a view is but in consonance with the constitutional injunctions proscribing political opportunism and turncoatism. [5]

3. The arbitrary and oppressive edge given the government's KBL slate of candidates even without their double listing as Nacionalista Party candidates actually amounts to five (5) ways whereby KBL candidates, as per the Comelec official ballot may be voted upon as a block by writing either (1) Kilusang Bagong Lipunan, (2) Kilusan, (3) Bagong Lipunan, (4) KBL or (5) BL as against only two (2) ways for block-voting for petitioner LABAN's candidates, namely, by writing (a) Lakas ng Bayan or (b) Laban. This 5 to 2 edge is now made even heavier and raised to 8 to 2 with the majority's sustaining of the Comelec ruling whereby the KBL candidates may also be voted for as a block by writing (6) Nacionalista, (7) NP or (8) just the letter N. As against the strictly independent candidate who has no party or group, the KBL edge is 8 to 0. Even though the majority in the block-voting cases, *supra*, [6] upheld the block voting device despite the express Constitutional provision that bona fide candidates "shall be free from any form of harassment and discrimination" and the Fajardo committee's official report in the 1971 Constitutional Convention that the said provision was adopted to outlaw block voting "with special reference to unaffiliated or partyless bona fide candidates", such unfair and onerous odds must be held to be

constitutionally impermissible since they are violative of the due process and equal protection guarantees of the Constitution.

4. The majority would sustain the Comelec decision (as supported by the Solicitor General as its counsel) which simplistically ruled that under the provisions of section 140 of the 1978 Election Decree "a candidate nominated by more than one political party or group has the duty to indicate 'to which ticket he chooses to be included' if such political parties or groups have 'presented different sets of candidates.' However, when the political parties or groups have presented a common or identical set of candidates, such commonality of ticket or slate is legal, and the candidate so favored with such dual nomination need not inform the Commission 'to which ticket he chooses to be included.' The candidates shall be common candidates, can continue to run under both nominating party or group (sic) and be voted upon as such."

(a) The Comelec decision is manifestly untenable. It totally disregards the unequivocal and unqualified injunction and mandate in the first provision of the cited section that "a candidate may be in the ticket of only one political party, group or aggrupation." This prohibition against a candidate running in the ticket of more than one party or group is complete, absolute and without qualification (regardless of whether such parties or groups present different sets of candidates) and without exception (regardless of whether such parties or groups enter into a coalition).

What happens if a second party, such as the NP in this case, nevertheless includes the KBL candidate in its ticket by adoption with the written consent of the candidate? The second provision of the cited section requires that the candidate "shall inform the Commission as to which ticket he chooses to be included, and if he fails to do so, he shall cease to be considered to belong to any ticket."

(b) It is neither necessary nor a prerequisite as held by the majority that the two parties or groups must "present different sets of candidates" (which phrase appears only in the second provision) in order that the candidate must be required to indicate "to which ticket he chooses to be included" under pain of not being considered to belong to any ticket. This phrase in the second provision "presenting different sets of candidates" is but a mere descriptive superfluity since the first provision already sets forth the absolute and unqualified injunction that a candidate may be in the ticket of only one political party or group, whether or not such parties or groups present different sets of candidates. Consequently, if the two parties or groups do not present "different sets of candidates" but a common or identical set of candidates", the correct conclusion is not that the candidate can legally run under both tickets without having to choose between them (as erroneously ruled by the Comelec) but that he must nevertheless make such a choice because of the absolute and unqualified first provision which prohibits a candidate from running under more than one ticket whether the tickets be common and identical or present different sets of candidates.

(c) How did the phrase "presenting different sets of candidates" come to be written into the second provision of the cited Decree and which is now availed of to justify the Comelec ruling that a candidate may be in the party of more than one party or group not presenting different sets of candidates despite the absolute and unqualified prohibition to the contrary? During the hearing of March 14, 1978, the Solicitor General manifested that:

"I happen to be the one who wrote it. Maybe it could have been written in a better way. I must say that the reason why it was written this way is that we were endeavoring to finish this Election Code within a brief period of time. I was precisely trying to conceive of all the possible situations to avoid any ambiguity. I must say I was not thinking of shifting between political parties. What was uppermost in my mind was to assure that there would be no difficulty on the part of the voter in deciding to vote for a straight party ticket, and also that there would be no difficulty on the part of the Citizens' Election Committee in appreciating the ballot. That is why, if Your Honor please, there is that first proviso. But the second proviso is an integral part of the whole

thing. x x "[7]

The Solicitor General stressed repeatedly that the second provision requiring the candidate to make a choice was "simply intended to allow party voting to operate without any confusion whatsoever" citing. "For example, you have a candidate in the tickets of two political parties presenting different sets of candidates. How would you credit him, if a voter should vote for one group and also for the other group? It will not seem to be fair."-- unless the candidate made of record his choice "as to which ticket he chooses to be included."

He conceded that if say in the Metro Manila area, the NP merely adopted 18 out of the 21 KBL candidates, or one-half, or only its (NP) members, the NP and the KBL would have had different sets of candidates requiring different listings and the candidates adopted would be required to make their choice of a single ticket.

But with the same identical set of KBL candidates adopted by the NP as actually happened, there would be no possible source of confusion and in such a case the absolute prohibition in the first provision applies, viz, that a candidate may be in the ticket of only one party or group, and therefore the candidates adopted wholesale must likewise make their choice of ticket under pain of not being included in any ticket. Quod erat demonstrandum - showing that the phrase "presenting different sets of candidates" in the second provision is but a descriptive superfluity inserted under time pressure.

(d) To this, the Solicitor General replied that the right of a political party, viz, the NP to support an identical set of candidates should not be denied and that "there is no provision in the 1978 Election Code that proscribes two political units from supporting identical sets of candidates." [8] The majority would uphold him thus: "(W)e are convinced there is no point in reading Section 140 of the Election Code of 1978 in the sense that it is illegal for a political party to adopt the complete set of candidates of another political party, group or aggrupation." [9]

This is not the point at all. The point is that it is not being declared illegal nor prohibited for a political party to adopt another party's candidates wholesale or in part nor for parties to enter into a coalition. The Election Decree precisely recognizes that parties may adopt the same candidates or agree on a coalition but absolutely requires that the candidate "be in the ticket of only one" party or group and further expressly requires him to make of record his choice of ticket under pain of not being included in any ticket. This is but in consonance with the parliamentary system wherein "political parties play vital roles and are therefore sought to be strengthened" in the Comelec's own language [10] as well as with the 1973 Constitution which rules out "election malpractices, political opportunism, guest or nuisance candidacy, or other similar acts." [11] It may be added that requiring the KBL candidates who are NP's to comply with the decree's requirement of making their choice of ticket (to be included and voted for as NP's) would be in line with the main opinion's dictum that "by nominating as its own the candidates of the KBL, the Nacionalista Party merely gave the mass of its loyal and die-hard partymen the opportunity to vote distinctly as Nacionalistas in the coming election." [12]

(e) It would not do then for the main opinion to rule that "(C)ontrary to the contention of petitioner, the adoption by the Nacionalista Party of all the 21 candidates of the KBL is not multiplication by that number of the violation of the injunction in Section 140 against a candidate being in the ticket of more than one party. While indeed it would appear that instead of only one candidate, 21 candidates are in the ticket of more than one party, the truth of the matter is that they actually compose the whole ticket and that ticket is only one." [13] Where KBL candidates are adopted wholesale by the NP, it cannot be said that there is only one ticket. The two parties or groups (NP and KBL) do have a common or identical ticket but each has its own ticket and the official Comelec ballot reflects this. What the decree absolutely and unequivocally enjoins is that a candidate may be in the ticket of only one party or group, whether the tickets be identical or different, and no one disputes that the NP and the KBL are two separate entities or groups.

5. The majority ruling does not quite clearly resolve the other point raised by petitioner as to the peculiar, if not absurd, situation whereby with the NP adoption of the entire KBL slate of 160 candidates (which is unopposed outside of Metro Manila and certain sectors), the NP and the KBL, with a common and identical set of candidates, will for purposes of accreditation under Article XII (C), section 8 of the 1973 Constitution be considered as having obtained the first and second highest number of votes in the April 7, 1978 elections.

The majority opinion would now consider the KBL as an "improvisation" and declares that "(T)he KBL is not a political party." In the block-voting cases decided earlier this month, however, in disposing of the issue that the KBL (and LABAN) could not be registered as political parties under Article XII-C of the 1973 Constitution and section 199 of the 1978 Election Decree, the majority opinion in that case held that while the KBL (and LABAN) did not profess to be political parties, "(I)t does not follow, however, that the KBL and LABAN are not political parties, in a generic sense, since a political party has been generally defined as 'an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles of governmental affairs through officers of like belief.'"[14]

It should be noted, furthermore, that at the March 14, 1978 hearing, Comelec Chairman Leonardo Perez in answer to the interpellations of the writer of the main opinion declared that the KBL has submitted to the Comelec its constitution and by-laws, a complete platform and system of organization and can be considered as political party in the sense that it "acts like a party and works like a party" and "enjoys the status of a party without calling itself a party, because it would involve the problem of affiliation later on."

II. This opinion is rendered by the writer subject to his dissenting opinion in the block-voting cases decided earlier on March 11, 1978, inter alia, that the block-voting device authorized for the scheduled April 7, 1978 elections violates the due process and equal protection clauses of the Constitution, aside from the fact that block-voting has been proscribed and outlawed by the new provision in Article XII C, section 9 (1) of the 1973 Constitution that "Bona fide candidates for any public office shall be free from any form of harassment and discrimination." As was stressed during the hearings then, block voting was outlawed in the 1973 Constitution because of the massive frauds and vote-buying with which it was identified and led to the election of unknowns and incompetents simply because of their inclusion in the ticket of the party in power so much so that even the late great opposition leader Juan Sumulong could not be elected to the Senate in 1940 over a last hour replacement in the ticket of the party in power -- until the system was finally repudiated by the people which abolished it through Congress in 1951.

I wrote then that the so-called optional block-voting scheme adopted for the coming April elections is just as bad as the so-called pre-war compulsory block-voting scheme, for then, the written party's name was counted over the individual candidates' names (whether of the same or opposing parties) whereas now, the writing of the name of the party where individual candidates from other parties or independents have also been written and voted for invalidates the whole ballot and no candidate receives any vote. This is in contrast to the post-war block voting scheme (used in 1947 and 1949) wherein the individual candidates' names as written (whether from mixed parties or not) prevailed and were counted even though the party's name was also written.

It is to be noted that as late as last March 17, the newspapers reported Comelec Chairman Perez as saying that "block voting is an intricate system and the electorate is not yet fully familiar with its mechanics" and citing fieldsmen's reports "that unless the current information drive is intensified there is possibility that about 30 per cent of the votes to be cast would be declared stray and null." [15]

Since then, the Comelec has caused to be published daily in the newspapers a set of three rules to Vote Right, as follows:

"VOTE RIGHT or your vote will be nullified. Follow these rules strictly:

"1. For 'straight' voter: Write name of the party or group in the space provided. After that, do not write any name on the spaces for individual voting, for if you do, your vote will be nullified.

"2. For 'individual' voter: Write names of your choice in the space provided. After that, do not write anything in the space for party/group voting, or else your vote will also be nullified.

"3. For 'mixed' voter: Here, the party or group did not nominate a full ticket. Only in such case, you can 'mix' party or group with individual candidates."

In the interest of a better understanding of the rules since we are faced with the reality of block voting now having been resurrected since its abolition in 1951 and after 5-1/2 years of no political activity, the following deficiencies and inaccuracies in the Comelec Rules should be pointed out: -

Re Rule 1. For "straight" voter - only the writing of the names of candidates from another party or group will nullify the vote.[16] If the voter, to be sure, writes in also the names of some or all of the candidates from the same party or group for which he has voted "straight," the ballot is not nullified and in such case, all candidates of the party or group voted for shall receive one vote each.[17]

Re Rule 2. For "individual" voter. - Here again, only the writing of the name of another party or group to which the individual candidates voted for do not belong will nullify the vote. If the voter (to be sure that his ballot is not nullified by the writing of the name of another party or group) writes in also the name of the same party as the individual candidates he has voted for, the ballot is not nullified and will be considered as a "straight" vote for all candidates of the same party, as in Rule 1 above.[18]

Re Rule 3. For "mixed voter. This is of no real relevance for it is generally conceded that the KBL and petitioner LABAN are the principal protagonists in the Metro Manila area. They both have full tickets of 21 candidates and the "mixing" of one party with any candidate(s) of the other party nullifies the ballot. But the voter can validly "mix" the candidates from both KBL and LABAN by choosing and voting for them individually.

What appears to be of more relevance and importance to the voter who votes straight or individual is that his ballot be not invalidated by unauthorized persons "mixing" and nullifying the same by writing in the names of a candidate from the other party in his straight ballot or by writing in the name of another party to which the candidates in his individual ballot do not belong.

What the Comelec should make clear and add to its Rules being published daily, as brought out by Comelec Chairman Perez at the March 14th hearing, is that a voter who votes straight may cross out the remaining spaces for individual candidates (by circles, crosses or plain lines) to indicate his desistance from voting individually; and that a voter who votes for individual candidates may likewise cross out the top space for party voting to indicate his desistance from party voting and where he has not voted for all candidates, he may further cross out the remaining spaces for individual names to indicate his desistance from further voting.

This is plainly stated in Instruction 19 of the Comelec Instructions for the Citizens Election Committee, and should properly be disseminated for the guidance of all voters, as follows:

"19. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting but shall not invalidate the ballot.[19]

"Example: After writing the names of five candidates in the proper spaces, the voter crossed out the remaining space or spaces. The ballot is valid."

[1] Main opinion, at page 13, emphasis supplied.

[2] Sec. 140, P.D. 1296 (1978 Election Code or Decree).

[3] Main opinion of Justice Barredo, at page 8.

[4] Peralta vs. Comelec, L-47771 et al. March 11, 1978, Main opinion at page 15.

[5] Art. XII-C, sec. 10, 1973 Constitution provides:

"SEC. 10. No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six months immediately preceding or following an election."

[6] Peralta vs. Comelec, et al, see fn. 4.

[7] See also main opinion, at pages 9-10.

[8] Main opinion, at page 6.

[9] Idem, at page 10.

[10] Comelec decision, Annex E, petition, at page 7.

[11] Art. XII-C, sec. 2(6).

[12] Main opinion, at page 12.

[13] Main opinion, at page 13, emphasis supplied.

[14] Peralta vs. Comelec, supra, fn. 4, at pages 24-25.

[15] Times Journal issue of March 17, 1978.

[16] This is Situation No. IV in the Comelec Rule on appreciation of ballots under party/group or individual voting as based on Rule 28, section 155, P.D. 1296 (1978 Election Decree). Comelec Instructions for the Citizens Election Committee, page 20.

[17] Situation No. III of Comelec Instructions at page 19, based on Rule 27, section 155, P.D. 1296.

[18] This is also in effect covered by Situations Nos. III and IV of Comelec instructions.

[19] Text copied from Rule 19, section 155, P.D. 1296, emphasis supplied.

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