

**NICETAS A. SUANES, PETITIONER VS. THE CHIEF ACCOUNTANT,
ACCOUNTING DIVISION, SENATE, AND THE DISBURSING OFFICER,
DISBURSEMENT AND PROPERTY DIVISION, SENATE, RESPONDENTS.**

G. R. No. L-2460. October 26, 1948

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for mandamus filed by Nicetas A. Suanes to compel the Chief Accountant and the Disbursing Officer of the Senate of the Philippines to pay him his salary as secretary to Senator Ramon Diokno, member of the Senate Electoral Tribunal, in accordance with his appointment issued by the Chairman of said tribunal.

The facts are as follows:

In a resolution dated June 28, 1948, the Senate Electoral Tribunal "resolved unanimously to propose the appointment" of "nine secretaries, one for each member of the Tribunal at P3,600.00 each."

On July 1st, 1948, the Secretary of the Senate, with the approval of the President of the Senate, issued to petitioner Suanes an appointment as Secretary to Senator Ramon Diokno "with compensation at the rate of P200 per month, the appointment to take effect on July 1, 1948, to continue until the electoral protest cases pending consideration by that body are finally disposed of, but not beyond June 30, 1949, unless sooner revoked."

On July 12, 1948, petitioner Suanes took an oath of office as Secretary to Senator Diokno, member of the Senate Electoral Tribunal.

On August 20, 1948, the Chairman of said Tribunal issued an appointment to petitioner as "Secretary to Senator Ramon Diokno, member of the Senate Electoral Tribunal, with compensation at the rate of P3,600.00 pesos per annum, the appointment to take effect July 1, 1948."

On August 27, 1948, petitioner Suanes presented for payment to the Chief Accountant and to the Disbursing Officer of the Senate, respondents in this case, a general voucher certified by the Secretary of the Senate Electoral Tribunal and approved by its Chairman, covering petitioner's salary from July 1, 1948, to August 15, 1948, at the rate of P300 per month. The respondents refused to honor said voucher and alleged that they were authorized to pay petitioner Suanes only the salary fixed in the appointment issued by the Secretary of the Senate and approved by the President of the Senate, namely, at the rate of P200 per month.

It appears that in Republic Act No. 320, in the appropriation for the Senate there is included the sum of P180,000.00 for the expenses of the Electoral Tribunal for the Senate. The President of the Senate has the power to appoint the employees of the Senate according to sections 79 and 88 of the Administrative Code. Upon the other hand, in the rules approved and promulgated by said Electoral Tribunal for the effective performance of its constitutional functions, the power of appointment of its subordinate personnel is lodged in its chairman with the approval of the Tribunal. There seems to be no question as to the authority of the Tribunal to promulgate said rules as is expressly recognized by section 182 of the Election Code.

The question before the court is—which of the two appointments should prevail, whether the appointment issued by the President of the Senate or that issued by the Chairman of the Electoral Tribunal. This question depends upon the broader issue of whether the Electoral Tribunals, as created by the Constitution, are mere agencies of the Philippine Congress, or they are entities distinct from and independent of the Philippine Congress to the extent of possessing complete control of their internal affairs.

Our Constitution has unqualifiedly reposed upon the Electoral Tribunal the responsibility of being the sole judge of contests relating to the election, returns and qualifications of the members of the legislative houses. We have ruled unequivocally in the case of *Angara v. Electoral Commission*, 63 Phil. 139, that the Electoral Tribunals are independent constitutional creations with specific powers and functions to execute and perform and the avowed purpose in creating them is to have independent constitutional organs pass upon all contests relating to the election, returns and qualifications of members of the Congress, devoid of partisan influence or consideration, which object would be frustrated if Congress were to retain that power. The purpose of the Constitution—we said—was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests devoid of partisan considerations which prompted the people, acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court. And the Court concluded that an electoral tribunal "is a body separate from and independent of the Legislature."

Considering then that the Electoral Tribunals are constitutional creations, designed as bodies distinct from and independent of the Congress, so that they may carry out their constitutional mission, with independence and impartiality, it follows that within the precise sphere of their functions, they are as sovereign over their internal affairs as each of the other powers of government over their respective domains. Consequently, the employees of an Electoral Tribunal are its own, and not of the Senate nor of the House of Representatives nor of any other entity, and it stands to reason that the appointment, the supervision and the control over said employees rest wholly within the Tribunal itself. The President of the Senate may have the power to appoint the employees of the Senate, but there is no existing provision of law, even in the Appropriation Act, which vests in him the power to appoint the employees of an Electoral Tribunal. Upon the other hand, in paragraph k of the Rules of the Electoral Tribunal for the Senate, approved in 1947, it is provided, among other things, that the Chairman thereof shall have the power to appoint the employees of the Tribunal "with the approval of the Tribunal, and in accordance with the provisions of the Civil Service Law." The adoption of said rules is in conformity with section 182 of the Election Code and in harmony with the intention of the framers of the Constitution in creating independent Electoral Tribunals.

The fact that the appropriation for the Senate Electoral Tribunal is included in the budget corresponding to the Senate, does not and cannot mean that the employees of the Electoral Tribunal are also employees of the Senate, for both institutions are separate and independent of each other under the Constitution. Such inclusion is due merely to section 182 of the Election Code which provides that expenses of the Electoral Tribunals shall be paid from the funds of the respective houses of the Congress, not because said tribunals are dependencies of Congress, but because as separate and independent bodies they are designed to try and settle issues for the benefit of Congress.

This view was supported by the late president Manuel A. Roxas who had been a prominent member of the

Constitutional Convention. Mr. Justice Paras recounted the following in his speech delivered during the necrological services for the late President Roxas -

"Very shortly before his death, in a conference wherein the matter relating to the administrative personnel of the Senate Electoral Tribunal was taken up, President Roxas supported the stand that said personnel should be named by, and under the control of, the members of the Tribunal with a view to making it an independent constitutional body in all respects. He accordingly recommended the inclusion in the next Budget of an appropriation for the Electoral Tribunals, unattached to and separate from the outlays for the Congress. As this recommendation was made some thirty-six hours before President Roxas died, it may well be treated as his last will, unmistakably expressive of the kind of judiciary he wanted his country to have."

Respondents proffer section 3 of the Appropriations Act for 1948 (Republic Act No. 320) in support of their argument that "the intention of Congress is to place the Electoral Tribunal under the control and supervision of the heads of the two bodies of Congress not only with regard to its administrative functions but specially with regard to the disbursement and disposition of the funds appropriated for it." The pertinent section reads as follows:

"3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, economy and efficiency in the service, whenever in his judgment the public interest so requires." (Special Provisions, No. 3, Appropriation for the Senate, Rep. Act No. 320, p. 10).

Whatever power is conferred upon the President of the Senate under this provision of law is specifically qualified and confined "within the limits of the appropriations authorized in this Act for the Senate." But the appropriation for the Senate Electoral Tribunal is not for the Senate but for such Electoral Tribunal as an independent and distinct entity. Therefore, those funds do not come within the payer granted to the President of the Senate by section 3 of Republic Act No. 320. There is no other logical conclusion. The mere fact that the funds of the Senate Electoral Tribunal are to be taken from the funds of the Senate do not make those funds for the Senate. Precisely, when the law (Revised Election Code, sec. 182) provides that the expenses of the Senate Electoral Tribunal are to be paid from the funds of the Senate, it separates the amount of those expenses and takes it out of the Senate funds and, therefore, out of the control of the President of the Senate. If the Senate President can control the appropriated funds for such expenses, he can control those expenses. If he can control such expenses, he can influence the actuations and command the very subsistence of the Tribunal, thus defeating its independence and its existence in violation of the Constitution.

Respondents maintain that the constitutional provision creating the Electoral Tribunals and defining their powers appears in section 11 of Article VI of the Constitution which refers to the Legislative Department, and from this they infer that said tribunals are thus intended as parts of the Legislature. And this is alleged to be corroborated by the language of said section 11 of Article VI of the Constitution which provides that the Senate and the House of Representatives shall each have an Electoral Tribunal. * * * Since these tribunals, as elsewhere adverted to were created by the Constitution as separate and independent organs so that they may perform their constitutional functions with independence and impartiality completely devoid of partisan influence or consideration, the topographical location of section 11 in Article VI of the Constitution becomes innocuous and immaterial and the words "shall each have" above referred to can have no other meaning than that the houses of Congress are each provided with independent constitutional organs to settle issues pertaining to Congress which, in the eyes of the Constitution, Congress cannot adequately decide. It may be said furthermore that the inclusion of the provision creating the Electoral Tribunals in Article VI of the Constitution, may be attributed to the circumstance that the settlement by said tribunals of contests relating to the election, returns and qualifications of the members of the Legislature, being a matter vitally concerned with the organization and membership of the Legislative

Department, should be placed in the very same article relating to that body. Such inclusion does not mean that the Electoral Tribunals are dependent upon the Legislative Department, in the same manner that the non-inclusion of the Civil Service in Article VII relating to the Executive Department does not mean that the Civil Service is independent from the executive branch of the Government.

The fundamental purpose of the Constitution in creating impartial and fearless Electoral Tribunals must not be defeated by doubtful conclusions founded on mere matters of form, such as inferences from the location of certain provisions in the Constitution and from the use of possessive words which do not necessarily imply superiority. Such inferences which are vague and uncertain must yield to the vital purpose of the Constitution of safeguarding such impartiality and independence in the actuations of the Electoral Tribunals as are necessary for the effective and faithful performance of their constitutional function of ascertaining the true will of the sovereign people in connection with the true membership of the Legislative Department of the Government.

Respondents maintain that the constitutional independence of the Electoral Tribunals has reference only to their judicial functions, but not to the selection of their administrative personnel. This distinction finds absolutely no support either in the provisions of the Constitution or in our statutes. As above indicated, under the Constitution, the electoral tribunals must be independent because they are created to settle with absolute impartiality partisan issues between members of Congress. If it is conceded that their actuations should be absolutely free from partisan considerations, it must follow that the electoral tribunals must be independent not alone when they are deciding cases before them, but also when they are selecting their personnel which will aid them in the performance of their duties and when they are disposing of their funds for their necessary expenses. The selection of such personnel and the disposition of such funds have a substantial bearing upon the judicial functions of the electoral tribunals. If they may be forced to accept employees who deserve no trust from them and they may be dictated to in the disposition of their funds, the integrity of their proceedings and the correctness of their decisions may easily be impaired and defeated.

Respondents compare the status, of the electoral tribunals with that of the Courts of First Instance which, although pertaining to the Judicial Department, are nevertheless administratively subject to the Executive Department through the Secretary of Justice. The comparison is not right, though the inferior courts are to a certain extent under the control and supervision of the Secretary of Justice who is truly designated as one of the high officers of the Executive Department, yet the nature of the position of Secretary of Justice is not necessarily nor solely political. He need not be a party man. He may belong to the majority or to a minority party, or even to no party whatsoever, and there would be nothing legally anomalous in such selection. In his actuations on the administration of justice in the country, he is deemed a part and a member of our judicial system. In fact, he is usually chosen from the ranks of the judiciary, particularly from members of the Supreme Court, in order to promote confidence in his actuations with regard to the courts and to keep the impartial administration of justice with a minimum of political taint. It is true that, from time to time, this situation of an Executive official being burdened with direct intervention, in the administration of the courts, has been the object of appraisal and criticism by certain members and groups of the legal profession who offer the remedy of transferring the administration of courts to the Supreme Court. Whatever may be the merits of such criticism and proposal, which we do not in the least consider in this case, it must be noted, however, that the tendency is towards assuring the independence of judicial tribunals.

On the other hand, none of these considerations apply to a head of the Legislative Department who holds an essentially political position. He is a member of Congress by virtue of a political election and he is elected head of a house of Congress by virtue of an election by his colleagues. He is first and foremost a man, of the party which has raised him to that position and he is legitimately expected to keep vigil over the interests of his party.

Commendable as is this trust bestowed upon him, nevertheless, this is precisely the reason why his influence and control must be barred from an impartial and independent judicial body such as the electoral tribunal. Absolutely all the cases before such electoral tribunals constitute party interests, and it is obvious that it would be unfair to a majority party to demand aloofness and impartiality of its head in Congress in the settlement and outcome of these electoral cases, as it would be doubly unfair to a judicial entity to be under any control or supervision whatsoever of a political party head in its sacred trust of dealing impartial, untainted justice in the decision of these same cases. It is the essence of judicial bodies that they be kept from the undue influence and control, not alone of the Legislative Department, but from all departments of the Government as well.

It may be stated, in this connection, that the Chief Justice, in the exercise of his constitutional power to designate associate justices as members of the electoral tribunals, has established the policy in conformity with what he believes to be the true meaning of the Constitution, that associate justices thus designated cannot be changed by him during the periods of their incumbency except in cases of vacancy. The evident purpose is to maintain the independence of each associate justice in the performance of his duties as a member of an electoral tribunal.

In closing, it may be stated that this Court deplores the fact that some issues in this case have been personalized. We highly disapprove all such statements and remarks and we have completely ignored them in the consideration of the case. This Court will be the last, if ever, to cast aspersions on the dignity, the office and the personality of any responsible official of our government, whether of an elective or appointive office.

In view of all the foregoing, the appointment issued to Petitioner by the Chairman of the Electoral Tribunal, "at the rate of P3,600 per annum," should prevail. The Writ of Mandamus is hereby granted and the respondents are ordered to honor and to pay the voucher issued in favor of Petitioner as certified by the Secretary of the Senate Electoral Tribunal and approved by its Chairman. No costs.

Feria, Pablo, and Bengzon, JJ., concur.

Perfecto and Briones, JJ., concur., besides their separate opinions.

Montemayor, J., concurs in the result.

Ozaeta, J., abstaining:

This case having been argued and voted before I became a member of the Court, I had no opportunity to take part in the deliberation and to express an opinion.

CONCURRING

PERFECTO, J.:

Petitioner seeks the collection of his salaries in arrears as private secretary to Senator Ramon Diokno, one of the members of the Senate Electoral Tribunal. He has been duly appointed by Mr. Justice Paras, Chairman of the Tribunal, which authorized the appointment and fixed the salary for the position at P300.00 a month.

Under the rules of the Tribunal, the power to issue the appointment is lodged in its Chairman. The rules have been adopted in virtue of the powers held since 1936 to be inherent in the Tribunal *Angara v. Electoral Commission*, 63 Phil. 1395 and expressly recognized by Section 182 of the Election Code, which provides that the Tribunal shall have the power of making the necessary rules for the effective performance of its constitutional functions.

Petitioner's salaries are charged against the sum of P180,000, set aside by the current appropriation act for the expenses of the Senate Electoral Tribunal.

Respondents refused and are refusing to pay the salaries. Their ground is that said salaries are not authorized by the Senate President who, according to them, is the official authorized to handle and dispose of all the appropriation for the Tribunal.

The amount in question has been included among the appropriations of the Senate, although specifically earmarked for the Tribunal, in line with the provision of Section 182 of the Election Code, that all the expenses of the Tribunal and its members "shall be paid from the funds" of the Senate.

The appropriation of P180,000 in question is the first of four items for "Special Purposes" in the appropriations for the Senate, which read:

"IV. SPECIAL PURPOSES

"1. For the personnel and expenses of the Senate Electoral Tribunal, its members, commissions, delegates and helpers

P180,000

"2. For traveling and other expenses of the President of the Senate, the Senate Committees and subordinate personnel when authorized, by, the President, of the Senate to undertake studies in and outside of the Philippines

150,000

"3. For other services, including transportation and additional secretarial services for the members of the Senate, or expenses incurred by direction of the President of the Senate

160,000

"4. For the alteration, repair and maintenance of the offices of Senators in the City Hall, including the maintenance of one elevator

70,000

"Total for special purposes

P560,000"

(Italics supplied.)

A comparison of the four items will show right away that, when the intention of the law is to grant the Senate President the power over the expenditure, it says so expressly', as can be seen from the underlined words in items 2 and 3. That intention does not appear in item 1, the one for the Senate Electoral Tribunal.

Par. 3 of the Special Provisions of the Appropriations for the Senate is invoked by respondents in support of their theory upholding the Senate President's authority over the item in question. Said special provision reads as follows:

"3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, economy and efficiency in the service, whenever in his judgment the public interest so requires."

Without entering into any discussion of the validity of the tremendous delegation of legislative powers involved, to our mind, the delegation is clearly unconstitutional, everybody may see that the scope of the provision is limited to the appropriations of the Senate, which does not include the Electoral Tribunal, a body that, in the contemplation of the framers of the Constitution, is separate and independent from all other departments of government.

According to the Constitution, the Tribunal shall be the "sole judge" of the protests under its exclusive jurisdiction. The exclusiveness implied in the adjective "sole" is self-evident.

All parties agree that in its judicial functions, the Tribunal is completely independent. The performance of judicial functions needs means, in personnel and in material. Judicial functions have to be recorded, and paper is indispensable for their recording. Judicial functions entail processes that need to be executed by officers and employees of the Tribunal. Because such means are necessary for the performance of judicial functions, they have to partake of their judicial nature. The function of authorizing or ordering expenditures from the appropriation for the Senate Electoral Tribunal is judicial in character. As such, it has to belong exclusively to the Tribunal.

The functions of the Tribunal which are strictly judicial, cannot be separated from the executive, administrative, or financial functions indispensable for the exercise of those which are strictly judicial. When the Constitution granted the Tribunal the power of a "sole judge", it gave it that power complete, including the executive, administrative and financial powers which are accessory and complementary to the power to judge.

The silence of the Appropriation Act as to who has the power to authorize expenditures against the item of P180,000 for the Senate, must be interpreted in line with the Constitution and in a way that will not defeat its purposes. That interpretation cannot be other than to give the Tribunal the exclusive power as to how the funds in question must be used and spent.

The interpretation that respondents propose to adopt is violative of the fundamental law. It is elementary in statutory construction that such interpretation must be avoided when there is another compatible with the Constitution.

The authority that they would give to the Senate President to control the funds in question is expressly described by the respondents as a function executive in nature. It is already settled by the decision of this Supreme Court in *Government v. Springer* (50 Phil. 259) that the presiding officers of legislative chambers cannot exercise executive or judicial functions without violating the fundamental law.

To give to the Senate President power to control the use and expenditure of the appropriation for the Senate Electoral Tribunal is contrary to the very nature of things highly inimical to public interest, to principles of good government, to the tenets of elemental morality. Respondents admit that it is possible for the Senate President to be one of the protestees in a case before the Senate Electoral Tribunal. There is no more effective control by any person or body of persons than control in the money they need. No Tribunal can render efficient judgment in a case where one of the parties has the power over the funds of the Tribunal, over the means by which it has to perform its judicial functions, over the, personnel rendering the necessary official help. No one can deny that an outsider controlling the funds of the Tribunal may cripple it at his will at any time, or block it effectively from the exercise of its judicial functions.

Congress, by its power on the purse of the nation, is duty bound to appropriate funds for the support and functioning of all the departments and offices of the government. It has the duty of providing funds, not only for its two houses, but for the executive and judicial departments, not only for one office but for all the offices of the government, without any exception. One of the permanent bodies created by the Constitution in the government setup is the Senate Electoral Tribunal. Congress must provide it with funds in the same way that it has to appropriate funds for the Supreme Court.

Through Section 182 of the Election Code, the legislative will imposes on the Senate and on the House of Representatives respectively the duty of supplying funds to the Two Electoral Tribunals. The duty of the Senate to provide funds to the Senate Electoral Tribunal is to be ministerially performed by the financial officers of the Senate, on orders of the Tribunal. They have the ministerial duty of paying the salaries of the personnel of the Tribunal and all the expenses that the Tribunal may provide. Respondents are such financial officers.

The conclusion is inevitable that petitioner's prayer must be granted and that respondents should be ordered to pay, without delay, petitioner's salaries as fixed in his appointment issued by the Chairman of the Senate Electoral Tribunal, pursuant to the authority given by said body. Respondents shall pay the costs.

The present Electoral Tribunals have been created through constitutional amendment introduced by the Second National Assembly and duly ratified by the country's electorate. They were created as a necessary consequence of the constitutional amendment creating Congress, the present bicameral legislature composed of the Senate and House of Representatives, in substitution of the unicameral National Assembly created in the original text of the Constitution and which has functioned from 1935 up to 1941. They are the successors of the Electoral Commission which functioned during the existence of the national Assembly.

The Second National Assembly could have aptly named the two tribunals as the Senate Electoral Commission and House Electoral Commission, because their composition, organization and functions are substantially the same as those of the Electoral Commission which they have replaced. But the Second National Assembly, with complete deliberation, accepted the proposition of some members, one of them the writer of this opinion, that each one of the new bodies be named Electoral Tribunal, for the evident connotation of the last word. As correctly stated by Mr. Justice Abad Santos, later Chief Justice, in his concurring opinion in *Angara v. Electoral Commission* (63 Phil., 184), the power vested in the Electoral Commission by the Constitution "is judicial in nature". The Electoral Commission was a veritable tribunal. Its functions, were essentially the same as those entrusted to any court of justice with limited jurisdiction. But, why did the Constitutional Convention name it Electoral Commission instead of Electoral Tribunal?

As truthfully stated by authors of books on Philippine Constitution, the members of the Constitutional Convention were divided by two schools of thought. One side was conservative, and wanted to retain in the legislative chambers the power to judge contests on the election and qualifications of their respective members. The other

side was progressive and urged the transfer of said power to tribunals. We belonged to the last, lie were convinced that the traditional, system of legislative administration of justice was fundamentally, wrong and had to be discarded if we were to eliminate one of the strongest causes of revolution.

Since we took interest in public affairs, we learned that injustice, partiality, blind partisanship were the rule in the disposal of protests by legislative bodies. That knowledge was only strengthened by our personal and direct experience, when, in the practice of the law profession, we handled legislative protests in the pre-Commonwealth Senate and House of Representatives, and during our membership in the latter for two consecutive terms. Of course, the minority members have always insisted on the impartial appraisal of the facts and the application of the law, and that justice should be the only consideration to be taken, but the majority members found always pretexts to defeat, in the sacred name of justice, the true will of the people and to want only trample down the rights of the minority. Even now we cannot avoid shuddering upon the mere memory of the iniquities that have been committed and how with the same rulings, the majority candidates were usually proclaimed triumphant and the minority candidates declared defeated.

As a matter of justice, we may state that there had been magnificent exceptions, in which real justice has been administered. The whole country may yet remember how the election contest affecting the sixth senatorial district was disposed of by the pre-Commonwealth Senate, under the courageous and dramatic leadership of President Quezon. No one could then complain of the annulment of one of the most scandalous elections. Again, when the election of Senator Alejo Mabanag, member of the opposition Democrata Party, was contested, and the majority was about to railroad his ouster, to be replaced by the majority candidate who was defeated by him at the polls, to stop impending injustice, Senate President Quezon, as he himself recounted to us the dramatic incident, upon receiving the information from Senator Veloso, rushed from his sickbed to the Senate to successfully frustrate the iniquity.

These two outstanding exceptions served only to emphasize the unbearable general situation, prompting us to stage a relentless campaign through the press and public meetings for the transfer of the power to judge legislative protests to the Supreme Court, then the only Tribunal from which justice could be expected in litigations involving powerful politicians and the political party controlling the government.

We could not propose that the cases be transferred to the cognizance of inferior courts, which were subject to political influence that deprived them of the independence indispensable for an impartial, upright and courageous administration of justice. They were, as they are now, under the administrative supervision and control of the Secretary of Justice, a political official, who, in turn, was under the direct influence of the majority members, of the most powerful political leaders in the government, the majority of them always bent on seeking to seat their party's candidate without any discrimination as to means.

The conviction we have been entertaining during the last fourth of a century that the administrative control of the Secretary of Justice over inferior courts is not satisfactory, from the point of view of an independent and fearless administration of justice, is fast gaining ground, as shown by the movement started by two prominent majority Senators, seeking the transfer of said administrative control to the Supreme Court.

The clash between the two schools of thought in the Constitutional Convention was long and hard. Finally the two camps entered into a compromise which no one could fail to accept. Those who were advocating for the retention by legislatures of the power to try election protests could not reject a proposal for the creation of a body with a membership two-thirds of which were members of the legislature. Those of us who were in the opposing camp, agreed to the proposal because the six legislative members were to be equally divided between the majority and the minority. Should they happen to vote following party lines, the balance of power would have been placed in

the hands of the three Justices. Were they to act as true judicial officers as it was their duty, there was no harm even if they should out vote the three Justices, because, regardless of the result, all would have acted according to the dictates of their own conscience. Thus we created the Electoral Commission, which, notwithstanding its legislative majority, could and actually function independently from the National Assembly. So as not to hurt the feelings of those of the legislative school, we, of the judicial school, agreed to name it Commission.

The fact that the provision for its creation was placed under the title of the legislative department neither affects its independent character nor made it an integral or organic part of the national Assembly. It is a matter of form that does not affect the substance, the Convention placed the provision creating the Electoral Commission where it was placed because the limited jurisdiction granted to it had a direct bearing with the membership of the National Assembly.

The Constitutional Convention created also two other separate and independent bodies, the Commission on Impeachment and the Commission on Appointments. Each one, in the exercise of the constitutional powers granted to it, was completely independent from the National Assembly. The provisions regarding them were, notwithstanding, placed also under the title of the Legislative Department, because of the intimate relationship regarding their memberships. Because all their members were also members of the National Assembly, they functioned effectively without separate means, which they could have dispensed with entirely in view of the nature of their tasks. It was, therefore, of no moment that their negligible personnel was appointed by the Speaker.

The Commission on Impeachment was abolished with the creation of the bicameral Congress, its functions having been transferred to the House of Representatives. The Commission on Appointments was retained, and it continues to be an independent body, separate from the Senate and from the House of Representatives.

There is no question that the Electoral Tribunals are independent in their judicial functions. Respondents say so in so many words, adding that "such was the intention of the framers of our Constitution in creating the original Electoral Commission for the National Assembly". But they allege, upon inaccurate information or erroneous knowledge of facts, that it never occurred to the members of the National Assembly, many of whom were delegates to the Constitutional Convention, that the independent judicial power granted to the Electoral Commission carried with it complete administrative independence and organic separation from the legislative department. They assert that from the very beginning, the subordinate personnel of the commission were appointed by the Speaker and its expenses were paid out of the Assembly funds, and not a single voice of protest was raised against this state of affairs and everyone concerned or affected acquiesced in the arrangement.

We are in a position to state the truth on the matter. He have been one of the delegates to the Constitutional Convention, one of the members of the two National Assemblies, and one of the members of the Electoral Commission during its existence. From the very beginning we have been trying hard to secure separate appropriations for the Electoral Commission. The National Assembly and, especially, the Committee on Appropriations, of which we were also one of the members, were fully acquainted with our efforts. We failed because of jealousy, the majority of the other members of the National Assembly would not permit that the six assemblymen, members of the Electoral Commission, with the separate appropriations, could enjoy a wider power of patronage with the appointments of the personnel of the Electoral Commission. They insisted on enjoying equal opportunity in obtaining the appointments of their recommendees. They wanted that whatever personnel the Electoral Commission may need, be drawn from persons appointed by the Speaker, who was equally accessible to all the members of the National Assembly. I was assured, notwithstanding, that the Electoral Commission will not suffer for any lack of personnel or of funds for all its expenses, the assurance proved to be true for all practical purposes.

All the expenses of the Electoral Commission were paid with funds from the National Assembly, the commission was provided with all the personnel we needed. The arrangement worked satisfactorily under the special circumstances then prevailing. Although there was still prevailing the division of pros and antis, all the members of the National Assembly belonged to one single national political party. Given by the Assembly administrative control over our personnel, we were able to free all our employees from all undue influence and they performed their duties with complete loyalty to the commission. We enjoined, in this respect, the complete cooperation of Speakers Montilla and Yulo, who presided respectively over the two National Assemblies, and the strictly judicial attitude adopted by the legislative members of the Electoral Commission commanded the respect; even of the other members of the Assembly who were protestees. No one dared to illegally interfere with or influence our employees, because everybody knew that the guilty one would have been punished. As a matter of fact, a protestee who dared to commit an irregularity in the revision of ballots, was denounced by an employee to the commission and, upon the commission's report, said protestee was punished with expulsion by the National Assembly.

Although the arrangement worked satisfactorily, and for said reason no one voiced any protest, it was a known fact that we have never been agreeable to the arrangement. We accepted it as inevitable, but we have always expressed our opinion that separate and independent appropriation should have been voted for the Electoral Commission.

We are not alone to entertain such an opinion. The same was shared by other members of the Electoral Commission, including those who have been delegates to the Constitutional Convention, among them, Mr. Justice Claro M. Recto, the President of the Convention, and Mr. Justice Jose P. Laurel, the Chairman of the Committee on Bill of Rights. President Roxas, who was also a delegate to the Convention and then was also a member of the National Assembly, was also of the same opinion.

At the Roxas necrological service held at Malacañan Palace in April, 1948, the then Acting Chief Justice Ricardo Paras, solemnly said in his oration regarding the late President the following:

"Very shortly before his death, in a conference wherein the matter relating to the administrative personnel of the Senate Electoral Tribunal was taken up, President Roxas supported the stand that said personnel should be named by, and under the control of, the members of the Tribunal with a view to making it an independent constitutional body in all respects. He accordingly recommended the inclusion in the next Budget of an appropriation for the Electoral Tribunals, unattached to and separate from the outlays for the Congress. As this recommendation was made some thirty-six hours before President Roxas died, it may well be treated as his last will, unmistakably expressive of the kind of judiciary he wanted his country to have.

"President Roxas could not have pursued a different course of action towards the Judiciary, because, as he himself postulated in his message to the Congress three months ago, 'We will continue to enjoy our liberties so long as we have independent courts and courageous judges who will relentlessly battle for the preservation of those liberties.' "

In line with the same conviction, since they started to function in 1945 the year of their first organization, we have been working to secure independent appropriations for the two Electoral Tribunals. We even prepared a budget for Commissioner Mathay of the Budget. We wanted it to be submitted by President Osmeña to Congress, but we failed to convince the good commissioner that an independent appropriation should be allotted to the Electoral Tribunal.

There is no sensible ground for respondents' position that, under the Section 182 of the Election Code and the last two Appropriation Acts No. 156 and 320, Congress assumed that the Electoral Tribunals are organic parts of the Senate and of the House of Representatives, respectively, because of the mere fact that the expenses of the

Tribunals are to be taken from the funds appropriated for each chamber. At any rate, Congress is the one organ of government duty bound to provide with funds the Electoral Tribunals as well as all other departments, branches and organs of the government. The Constitution has entrusted to Congress the authority and duty of appropriating public funds for said purpose, a function essentially legislative in nature. But even if Congress had made the assumption attributed to it by respondents, such assumption cannot have any weight because it is violative of the letter and the spirit of the Constitution

Respondent's statement to the effect that since liberation the Electoral Tribunals continued to be treated as organic parts of Congress, under the administrative supervision of their respective presiding officer, may only be based on the subjective personal attitude of said presiding officers, but neither one of the two Electoral Tribunals has ever accepted such administrative supervision. No independent appropriation has been made by Congress for the Electoral Tribunals until the sum of P180,000.00 was lately set aside for the Senate Electoral Tribunal. The two Tribunals had to resign themselves to the use of any personnel that the legislative chamber could lend them, but both tribunals have always resented the scandalous dereliction of national duty committed by Congress, in failing to provide the necessary funds for the efficient function of the Tribunals, so much so that we could not avoid denouncing such dereliction in speeches we delivered months ago.

The allegation that at no time did any one suspect that the Electoral Tribunals would declare their independence from Congress on administrative matters, until the President of the Senate scaled down the proposed salary of the secretary to a member of the Tribunal, is not based on fact. As soon as the appropriation in question had been approved, the Senate President gave assurance to a Senator, member of the Senate Electoral Tribunal, that the latter will enjoy complete free hand in the expenditure of the fund. In line with said commitment, which was communicated to all the members of the Tribunal, the Chairman addressed to the Senate President, a letter dated July 1, 1948, copy of which is attached to the record. Contrary to his commitment, the Senate President refused to give effect to almost all the items proposed in said communication.

Efforts have been made to carry out the resolution of the Tribunal as embodied in the communication sent by its Chairman, but the Senate President insisted in refusing to honor his word.

The difference between the salaries for personnel approved by the tribunal and those which the Senate President would pay, is dismissed by the respondents (who take a narrow point of view) as such a "petty difference" as not to be the rallying point for those who advocate administrative independence for the Electoral Tribunals.

Of course, if the amount of more or less pesos is to be taken as the standard of measurement, its pettiness would easily be manifest, but that would be missing the point. The difference between the Tribunal and the Senate President must be measured in terms of the basic principles involved: judicial independence of the Tribunal, untrammeled administration of justice, unfettered control of the means needed to perform a constitutional function, public trust and confidence in the Tribunal, clean and honest senatorial elections, delimitation of constitutional functions, democracy or dictatorship, effectiveness of the Constitution. Only by taking into consideration the great principles directly involved in the controversy can any one take the proper perspective, and see that the difference cannot be enclosed in a thimble because it would even overflow the vastness of a geographical continent.

Respondents have absolutely no basis to assume that their position can find any support in the attitude of the two National Assemblies or that of the delegates to the Constitutional Convention, or in the attitude of the Electoral Commission or of the Justices of the Supreme Court who had acted as members thereof.

One argument in support of respondents' position is the idea of possessiveness in the words "shall each have" of Section 11, Article VI of the Constitution. But this method of interpretation is violative of the elemental principle

of legal hermeneutics that commands that all the parts of a legal text should be interpreted in relation with the rest, not as isolated and independent units. The main idea in the whole section in question is embodied in the following words: "shall be the sole judge of all contests". That idea is characterized by the exclusiveness implied in the adjective "sole". Reason advises us that to be "sole judge", the Tribunals must have to enjoy complete independence, not only in the direct performance of their judicial functions, but in the control of the means, financial or administrative, they need for the performance of their judicial functions.

Respondents' theory that the Tribunals are organic parts of the Senate and House of Representatives, respectively, may be met by their own reference to the fact that the Electoral Tribunals are jointly mentioned in Section 13 of Article II of the Constitution with the Commission on Appointments, which they describe as "another new constitutional body". Their assumption that the Commission on Appointments is an organic part of the Senate, House of Representatives, or Congress, has no validity in the face of their own admission that the Commission on Appointments is another "new constitutional body", the description being evidently incompatible with that of a mere organic part of other constitutional bodies such as the Senate or House of Representatives.

That the Commission on Elections and the General Auditing Office are created under two separate articles of the Constitution X and XI, does not make the Electoral Tribunal less independent. By their respective nature and functions, the Commission on Elections and the General Auditing Office have no close connection with the two legislative chambers.

Perhaps it would have been better to dedicate separate articles, one to the Electoral Tribunals and the other to the Commission on Appointments. This is a matter of form upon which honest differences of opinion may be legitimately entertained according to the literary culture and tastes of anyone. But because the Constitutional Convention adopted a form with which we may disagree now, that is not a reason for closing our eyes to the realities of the substance, to the ideological contents of the present to what the authors really meant.

The provision in Section 10 (3) of Article VII of the Constitution, permissins Congress to vest by law in the President the power to appoint inferior officers, including subordinate personnel of the judiciary, holds no strength as argument against petitioner's position. The Constitutional Convention entertained no fear that appointments by the President could impair judicial independence, because it had the conviction that the President of the Philippines would not violate the obligations exacted from him by the oath provided by Section 7 of Article VII, to preserve and defend the Constitution, execute the laws and "do justice to every man". Besides, in practice, although the President would attempt to exert an undue influence on the subordinate personnel of the judiciary, it would be impossible for him to achieve such purpose as the magnitude and number of official matters he has to attend to would not give him time to pay attention to so many subordinate personnel.

Respondents allege that the Senate President has not done one single act that has actually prevented the Senate Electoral Tribunals from performing its functions, but do not deny that the Senate President has refused to pay petitioner the salary of P300 fixed by the Senate Electoral Tribunal, because he had reduced it to P200. They also admit that the Senate President has appointed guards for ballot boxes without the consent or knowledge of the Senate Electoral Tribunal. May these acts of the Senate President not be considered as an omen of how he may crime the Tribunal? Respondents admit the possibility of a Senate President being involved as one of the protestees in a contest under the jurisdiction of the Tribunal. They also admit that in the pending protest, where seven of his fellow Liberal Senators are the protestees, the Senate President's leadership in the Senate is involved, as if in case said protestees should lose, he will also lose said leadership. Everybody knows that there are many who resort to fraud and illegality to retain the mayoralty even in the most insignificant town of the country. The position of President of the Senate, being one of the most exalted in the government, second only to the President of the Philippines in the magnitude of political power, would it be surprising that he, without resorting to any

fraud or illegality, should deny the Senate Electoral Tribunal the necessary means for it to proceed with the trial of the pending protest, thus closing all doors to eventuality of the protestees' defeat in the case and his loss of leadership in the Senate?

Legal traditions, the same as social traditions, when running into conflict with the times of progress, had to give way to new concepts that will establish the traditions for the future. Man is not stagnant. It cannot afford to be stagnant. It has to progress if it has to survive.

The traditional tri-partite division of the powers and departments of government has given way to the new legal concepts recognized by the Constitutional Convention that it embodied in the fundamental law, and it our duty to accept such concepts and not to cringe on outworn legal ideas.

The three departments, executive, legislative and judicial, in which Aristotle and Montesquieu had divided and among which distributed all the powers of government, under our constitutional set up, cannot embrace anymore all our government offices and agencies. Profiting by the lessons of national political experience, the drafters of our Constitution could have not held fast to the classical tri-partite division. They created independent bodies, with powers of their own, separate from the three traditional departments. Among them are the Commission on Appointments and the two Electoral Tribunals. These Tribunals do not belong either to the legislative or judicial departments, much less to the executive. They are independent powers by themselves. The majority of their members are members of Congress and their functions are judicial in nature, but they are not subordinate either to Congress or any of its houses or to the Supreme Court. In the official hierarchy, they occupy the same top level in government occupied by the President of the Philippines, Congress and the Supreme Court.

"The judiciary is one of the coordinate branches of the Government. x x x It is preservation in its integrity and effectiveness is necessary to the present form of Government. It is clear that each department is bound to preserve its own existence if up to the duty imposed upon it as one of the coordinate branches of the government. x x x

Therefore, courts have not only the power maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins. The power to interfere is the power to control, and the power to control is the power to abrogate. The sovereign power has given life to the judiciary and nothing less than the sovereign power can take it away or render it useless. The power to withhold from the courts anything really essential for the administration of justice is the power to control and ultimately to destroy the efficiency of the judiciary. Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them." (Borromeo vs. Mariano, 41 Phil. 322, 331, 332.)

Respondents admit that the Senate President may paralyze the work of the Senate Electoral Tribunal, and the paralyzation of the Tribunal means miscarriage of justice and flagrant betrayal of the aims of the Constitution.

Resuming, we hold that the following propositions are in accordance with the Constitution, with applicable statutes, and with the elemental rules of reason and logic;

1. The Senate Electoral Tribunal is an independent constitutional body, separate from all others departments and branches of the government.

2. It is a tribunal in the true and strict sense of the word, with the limited jurisdiction granted to it by the fundamental law, and its functions are properly judicial
3. The necessary means to exercise a power or jurisdiction partake of their nature and are and should, accordingly, be so classified in the legal nomenclature.
4. The means needed by the Senate Electoral Tribunal to perform its judicial functions, such as personnel, material, funds, should be considered as essential part of said judicial functions and, therefore, are judicial in character. No legislative official may control them without violating the Constitution.
5. The power granted by the Constitution to the Senate Electoral Tribunal as the "sole judge" of senatorial contests, is not abstract or as empty as a carcass, but real, positive, with all the attributes for effective manifestation in the external world, and, like all human powers, needs the tools and instruments linking cause and effect.
6. The Senate Electoral Tribunal, like all government organs, has to be provided with public funds for all its expenses, and the power and duty of providing such funds have been lodged by the Constitution in Congress.
7. That constitutional duty has been and is presently recognized by Congress in the provisions of Section 182 of the Election Code.
8. The general constitutional duty of Congress to provide funds to the Senate Electoral Tribunal, by the clear provisions of Section 182 of the Election Code, is specifically entrusted for actual performance to the Senate.
9. The appropriation of P180,000 made in the current Appropriation Act for the expenses of the Senate Electoral Tribunal, after three years of congressional neglect, has been placed among the items of the Senate, in accordance with the provisions of Section 182 of the Election Code.
10. The text of the Appropriation Act, considering the place and wording of the item of P180,000 in question, does not authorize an interpretation that would place said amount under the control of the Senate President, but, even on the contrary assumption, such interpretation should not be entertained because it would be violative of the Constitution.
11. When a statutory provision is susceptible of more than one interpretation, the one that would not make it contravene the Constitution should be adopted.
12. To place the amount in question under the control of the Senate President is contrary to public morals and policy, because it would give to a party directly affected in a pending litigation the power to incapacitate the Tribunal in the performance of its judicial functions.
13. The location of the item in the Appropriation Act is a matter of form that cannot affect the substance and nature of the control over the use and expenditure of the item that is inherent in the Tribunal, in the same way that regardless of the place the appropriations of the Supreme Court may occupy in the Appropriation Act cannot transfer the power of the Supreme Court to control said appropriation to other offices or officers.
14. For the effective performance of its functions the Tribunal should never be placed in the position of subservience to any other department, branch or agency of government, and to transfer the control over the funds appropriated for its expenses to any official and any other offices is to make it subservient to said officials.
15. The power granted by the Constitution to the Tribunal carries with it the power to issue rules for the effective performance of its judicial functions and such power is expressly recognized by Section 182 of the Election Code.
16. The appointments of the personnel of the Tribunal are, according to its rules, to be signed by the Chairman of

said body, and the petitioner's appointment as signed by said Chairman is the one that must be recognized to be valid and not the one issued by the Senate President or by the Secretary of the Senate.

17. The Tribunal is the one empowered to fix the salaries which its officers and employees must receive, the appropriation for its expenses having been made by Congress in a lump sum, and no power can change or revoke the amounts approved by the Tribunal.

18. In virtue of the provisions of Section 182 of the Election Code, the Senate and its officers are to perform only the ministerial duties to faithfully execute the resolutions of the Tribunal regarding payment of salaries and expenses against the item in question.

19. When respondents failed to carry out to the letter the resolutions of the Tribunal, they may be compelled to do their duty by mandamus.

Before ending this opinion, we will devote some space to respondents' move to disqualify three Justices from sitting in this case.

There is no law upon which the move may be based. There is no law providing for any disqualification of members of the Supreme Court and there cannot be any such law until the Constitution shall have been amended to permit its enactment.

The provisions of Rule 126 are not applicable to members of the Supreme Court. They are applicable exclusively to judicial officers of inferior courts.

Rule 126 has been enacted by the Supreme Court in the exercise of its rule-making power granted to it by Sec. 13 of Art. VIII of the Constitution. The qualifications and disqualifications of the members of the Supreme Court are matters beyond the scope of said rule-making power. To contend otherwise is to contend that Congress may legislate on such matters, because it has the power of altering the judicial rules that the Supreme Court has enacted or may enact, and such result will be violative of the clear intention of the framers of the fundamental law to place such matters outside of the power of statutory legislation.

Sec. 8 of Art. VIII of the Constitution empowers Congress to legislate on the qualifications and, consequently, on disqualifications of judges of inferior courts, as can be seen in the following text:

"SEC. 8. The Congress shall prescribe the qualifications of judges of inferior courts, but no person may be appointed judge of any such courts unless he is a citizen of the Philippines and has been admitted to the practice of law in the Philippines."

The constitutional silence with regards to Justices of the Supreme Court places them beyond the reach of the legislative grant. "Inclusio unius est exclusio alterius." When the framers of the Constitution intended to include the members of the Supreme Court with judges of inferior courts in a general provision, they had done it expressly as they did in Sec. 9 of Art. VIII, regarding judicial tenure of office.

The Delegates to the Constitutional Convention had not thought of the need then or in any foreseeable future of any legislation to disqualify Justices of the Supreme Court from sitting in judgment on any case or group of cases. Although they agreed on the necessity of some reforms in the Supreme Court, to correct practices that were not satisfying to the bar or conducive to bolstering public faith and trust in the administration of justice, as can be seen in the revolutionary provisions of Secs. 10, 11, 12 and 13 of Art. VIII of the Constitution, they shared the prevalent general opinion as regards the character of the men elevated to the highest tribunal of the land. They could not have attained the exceptionally coveted honor of sitting therein with it having hurdled the most acid tests as to intellectual and moral fitness and willingness to administer reasonable, impartial and fearless justice.

Many, the Delegates, three-fourths of whom were lawyers, whenever they wanted to mention the highest specimens of human wisdom or to point out paragons of sterling moral character among the living Filipinos, could not avoid looking in the direction of the men sitting in the Supreme Court. As a matter of fact, the judicial dictums of such men had decisively influenced the Constitutional Convention in the adoption of a great number of the clauses of the fundamental law.

The Delegates believed that on the matter as to whether or not a Justice of the Supreme Court should take part in the cognizance, deliberation, and decision of a case, there is no better law than his own conscience. Many of them knew of the case of a Chief Justice who, when still presiding over an inferior court, refused to inhibit himself from trying a criminal case in which his own son was the accused and, finding him guilty on the evidence, sentenced him, as provided by law to imprisonment. When in a case, to break a deadlock, on a legal question, we voted to convict the accused, defended by our son, and in another case we joined the majority in imposing upon the same son a fine of P50.00 for contempt (*People v. Guillen*, L-1477)[1], we have only done what we believed should be expected from all judicial officers. It was not necessary to bring to memory the examples of sternness of the pater familias of Roman history, who had not the least compunction of exercising to the limit of cruelty the power granted to them by the Twelve Tables on the life and death of their offspring.

Consonant with the Constitution, this Supreme Court declared null and void per se the provision of the People's Court Act (Commonwealth Act No. 682) disqualifying the seven Justices, including the Chief Justice, who held positions in the puppet governments during the Japanese occupation, from taking cognizance of collaboration cases, criminal cases of treason on appeal, where the accused also held positions in said puppet governments, our far-reaching resolution having been rendered in the leading case of *Vargas v. Rilloraza*[1] (L-1612) and promulgated since February 26, 1948, 45 Off. Gaz., 3847.

We held invalid the legislative disqualification because, under the Constitution, Congress lacks the power to legislate on such matter. We also declared in the same decision that no person or officer, whether Justice of the Court of Appeals or judge of any other inferior court, may sit even temporarily in the Supreme Court, that privilege and right being reserved exclusively to Justices of the Supreme Court regularly appointed in accordance with the provisions of the Constitution, and that such sitting by an outsider is also unconstitutional.

It is true that it was necessary for us to insist for two years in the invalidation of the unconstitutional provisions of the People's Court Act before the decision in the *Vargas* case was rendered and that during those two years the Supreme Court, with our consistent and repeated dissenting votes, had been giving effect in a great number of cases to the unconstitutional provisions, but such long reluctance or hesitancy to overthrow them, instead of weakening the effect of the vital decision, gives it rather the rock strength and permanence of primary doctrines that, because of their essential truth and justice, withstand the corroding action of the ages. The length of time for the collective mind to reach a definite conclusion measures the magnitude of the mature deliberation that usually precedes and characterizes the ultimate in human actions.

Human complexes do not and should not enter in the actions of the dispensers of justice, much less when destiny has placed them in the Supreme tribunal, the highest pedestal attainable for the ambitions of the most sanguine lawyer. Having reached the last goal in their legal career, in the performance of their official duties, they should not act with a weaker attitude than the person giving an ante-mortem declaration; the attitude of a man facing the infinite mystery of eternity, into which he will soon plunge in a final dive from which there is no possible return and for which he will not be allowed to carry any mortal baggage, earthly possessions, or temporary riches, and human relations cannot offer him anymore the terrors of hate or the promises of love or *vanitas vanitatis* any allurement.

On the other side, all those appearing before us should rather base their causes on the superior reasons that they may offer, than on any other factor, such as trying to eliminate members of this Supreme Court. They should not follow the example of those persons, in public office or in private life, including highest officials in the judiciary and in Congress, that use to end their arguments against the stand are have taken on controverted issues of public interest by suggesting or asking us to resign from our position as Justice of the Supreme Court. The attitude constitutes a confession that they recognize the inherent weakness of their arguments. Unable to invalidate our reasons with better ones, they would eliminate us in the false hope of suppressing the reasons they cannot destroy. Unable to destroy the ideas, they would destroy the man expressing them. Their hope is false, because our elimination will not eliminate all the sponsors of our ideas. If they are based on truth, if they are supported by justice, if they are in accordance with the laws of the universe, sooner or later, others will take our place and raise the standard to expose the sham and crush the pretensions of error and evil. Men are perishable but ideas are not. Men are ephemeral, but ideas are eternal.

Coming to the instant case, perhaps the disqualification of three members of this Court is sought in obedience to the inner violitions of subconsciousness, based on the recognition of the inherent strength of petitioner's cause. When on September 15, 1948, one day after it was argued, are started to deliberate on the case, the correct decision was so evident right away, that almost all the members reacted as a single individual, and the written memoranda of the parties only served to ratify and fortify the unanimous reaction. The Supreme Court seldom has considered a clearer case.

The petition shall be granted.

[1] 47 O.G. 3433.

[1] 80 Phil., 297.

CONFORME

BRIONES, M.:

Tenemos otra vez ante Nos un caso que ofrece. Una singular oportunidad para una interpretacion verdaderamente transcendental y canstructiva de la Constitution uno de esos casos que hacen epoca porque someten a dura prueba la solidez de las instituciones y determinan de una vez para siempre ora la flojedad de su estructura, ora su aptitud definitiva para resistir la prueba del tiempo y de las vicisitudes. Place ver que esta Corte Suprema, colocfindose a la altura de su deber y cometido como supremo interprete de la Constitucion, acepta el reto con calma pero con firmeza, manteniendo inclnulnies ciertos contornos y bases de la ley fundamen cyonforme los concibiera el genio e inventiva de nuestra Asamblea Constituyente de 1934. Al autor de estas lineas le cupo el privilegio de pertenecer a aquella augusta asamblea; se comprendera, por tanto, que no logre aisimilar su futima satisfaccion al ver que una obra en la cual tuvo su parte, modestisima como suya, sale ahora de los crisoles de la suprema justicia con caracteres, con temple q,ue parece de eternidad por lo solido e indestructible.

El "issue", el punto controversial en el presente asunto se reduce sencillamente a lo siguiente: Los recurridos, en su concepto de funcionarios del Senado de Filipinas relacionados con el desembolso de los fondos oorrespondientes a diciio alto cuerpo colegislador, se niegan a pagar los sueldos devengados del recurrente por la razon de que este trata de cobrarlos no en virtud de su nombramiento expedido por el Presidente del Senado, sino del expedido por el chairman del Tribunal Electoral del Senado. La teorla de los recurridos es que

administrativamente este tribunal no es mas que un comite o agencia del Senado y que, por tanto, su chairman carece de facultad para expedir nombramientos a favor del personal, perteneciendo exclusivamente esta facultad al Presidente del Senado. Por su lado, el recurrente sostiene que tanto ajo la Constitucion como bajo las leyes y reglamentos pertinentes el tribunal electoral es un cuerpo absolutamente autdnomo e independiente no solo en lo, judicial sino tambien en lo administrativo y que estos dos conceptos no pueden disociarse, de suerte que a la independencia judicial tiene que ir necesariamente ligada la independencia administrativa. El Procurador General, en representacdn de los recurridos, admite sin reservas la independencia judicial (Angara vs. Electoral Commission, 63 Phil. 139), pero niega la independencia administrativa.

Constituye un grave error el creer que los tribunales electorales son simples agendas del Congreso del Senado o de la Camara de Representantes, segun sea el caso. Los que opinan de esta manera parecen no darse cuenta de que la creacidn constitucional no meramente legislativa de los tribunales electorales representa, en realidad, una verdadera revolucion sin sangre en nuestro sistema politico parlamentario; de que esta reforma transcendental nos coloca decididamente a la vanguardia de los pueblos democraticos mas progresivos, inclusive mas adelante toda vaque los mismos Estados Unidos de America. Antes de la Constitucion del Commonwealth nuestras cfimaras legislativas, al igual que las americanas, eran los ilnicos jueces de las protestas electorales contra las actas o credenciales de sus miembros. El procedimier to entonces consistla en lo siguiente: Formulada la protesta, la misma se endosaba al comite de elecciones, A veces se organizaban varios comites de elecciones, segun el numero de protestas presentadas. La organizacion de estos comite's segula el patron general de organizacion de los otros comites, es decir, que el chairman y la inayorla de los miembros pertenecian al partido gobernante, asignfindose una pequena participacion a la xuinoria. Naturalmente, todo personal de los, escribientes, mensajeros, etc. era parte do la maquinaria administrativa de cada camara, sujeto al Presidente del amado o al Speaker de la Camara Baja, segun fuera el caso. Los nombramientos se hacian por los presidentes de las camaras.

El comite o comits de elecciones enjuiciaban laa protestas, sometiendo despues su inforrae a la camara en pleno. La camara era la que en illtima instancia decidla la protesta, confirmando el acta protestada o rechazondola.

Ahora bien; a la vista de estos antecedentes resulta obligado preuntar: puede concebir que los padres fundadores, los autores de la Constitucion hayan quitado de las camaras la facultad exclusiva de enjuiciar las protestas electorales contra las actas de sus iniembros, tan so1o para alojar esa facultad en una agenda legislative que a lo mas serla un comity de elecoiones lorificado? diferencia habria entonces entre el antiguo y nuevo sisteraa? No liubiera sido mejor continuar con los antiguos comits de slecciones, reteniendo en las camaras la facultad Ultima de controlar la accion de dichos comits, ya aprobando, ya rechazando gus inforraea? Si de todas maneras el nuevo cuerpo no habia de sex mas que un amente, un mandatario; ino es acaso la esencia de la teorla del mandato, de la agenda, el que el mandante, el principal, ejerza un poder illtimo y residuario sobre el amente o mandatario?

No La reforma es mucho mas profunda, mias radical, que ese cambio superficial, epidimico, entrevisto por los recurridos y los que sostienen la tesis de estos. Los autores de la Constitucion hicieron una revolucion de verdad, no una revolucion a medias. En el ruidoso asunto de Yera contra Avelino, ya tuve ocasion de oomentar amplianiente esta revolacion. Estimo propio y pertinente reproducir ahora lo que entonces dije, a saber:

"Pero, en realidad, los casos de Fuentebella y pueden citarse para un efecto completamente opuesto al perseguido nor los abogados de los recurridos cuando se analizan y discuten toplia y objetivamente los motivos, circunstancias y designios que indujeron a nuestra Asamblea Constituyente a abandonar la bien arraigada tradicion americana de liacer de las odmaras legislativas los unicos jueces de la eleccion, actas y califioacionea de sus miembros, trasladando la jurisdiccion a un organismo constitucional completamente separado e independiente. Un analisis de este enero viene a ser altamente revelador y expresivo. Lo primero que embarga la atencion del observador es que cuando se adoptd esta reforma fundamental y original por la Asamblea Constituyente dominaca en Filipinas un partido politico fuerte, denso, acaudillado por Una

personalidad genial, brillante, dinfimica y poderosa Manuel L. Quezon. Ese partido acababa de ganar en unas elecciones apasionadissimas y muy reflidas una victoria espectacular, abruraadora, que le daba el doianio y control de todos los resortes de la vida politica no solo en la nacion sino hasta en las provincias y municipios. Ese partido dominaba naturalmente tambien la Convencion Constitucional, la Asamblea Constituyente hizo ese partido en medio de su omnipotencia? Le emborraco ese peligroso lioor de los eloses el licor de la victoria, el licor del poder? No ese partido, sus caudillos, resolvieron ser generosos, ser justos, ser prudentes, ser democriticos, y lo fuerou; determinaron pensar en terminos de hunianidad, en terminos de nacion, en de justicia pero justicia de verdad, en terlainos de libertad y democracia, y lo hicieron tal como lo pensaron. Podlan haber escrito una constitucion a su talante una constitucion que sirviese sus propios fines, que asegurase su perpetuidad en el poder. No lo hicieron. Y no solamente no lo hicieron, sino que hicieron algo extraordinario, inconoebible, juzgado a la luz y segun la norma usual del egoismo de los partidos. Teniendo en sus manos un poder enorme, formidable, aumamente tentador, el poder de resolver las controversias electorales sobre las actas de los miembros de la Legislatura, renunciaron a ese poder para alojarlo en un cuerpo constitucional separado e independiente, el cual es practicamente un tribunal de justicia: la Comision Electoral, hoy Tribunal Electoral. La determinacion de hacer este cuerpo lo mas posible se denota en el decho de que sus miembros leyislativos esten distribuidos en igual numero, 3-3, de suerte que los 3 Magistrados componen el factor decisivo.

"Por que" los redactores de la Constitucion, y, sobre todo, por que el partido politico mayoritario pudo hacer esta renuncia de la que pocos ejemplos hay en la historia politica del mundo? No parece dificil imaginarse los motivos, las causas, sobre todo para uno que como el autor de esta opinion tuvo algo que ver, siquiera muy modestamente, con las tareas de la Asamblea Constituyente. El pueblo filipino estaba empeñado en una suprema, altisiria tarea la de estructurar el Estado, la de escribir el codigo fundamental de la nacion no solo para los 10 años del Commonwealth sino para la Republica que se proclamarla despues de dicho periodo de tiempo. Todo el mundo sabfa que la saerte de la democracia en Filipinas dependfa principalmente de la Constitucion que se escribiera, no solo en su letra sino en su espiritu, y, sobre todo, de la forma y manera como ella moldearia, penetrarla e influirfa en la vida cotidiana del pueblo y del individuo. Desde luego no ramos unos ilusos, utopistas, perfeccionistas; no aspir bamos ni mucho manos a crear un trasunto de la republica ideal de Platon; pero desefiteamos hacer lo mejor posible dadas nuestras cirounstancias y limitaciones, dadas nuestra liistoria y tradiciones, y dado el teraperamento y genio politico y social de nuestro pueblo. Se habla acunado y popularizado por aquel tiempo la frase "justicia politica" para denotar la clase de justicia convencional que cabla esperar en relacion con las protestas electorales planteadas ante las camaras legislativas. No solo se aceleraba o demoraba el despacho de las misiaas a ritmo con los dictados de ciertas conveniencias de taifa o grupo, sino que no pocas veces el complejo politico o personal era el factor deterininante en las resoluciones y decisiones que se tomaban. Todo esto lo sablan los delegados a la asamblea constituyente, lo sablan los lidere de los partidos, lo sablan los eacritores y pensadores dedicados al estudio de las ciencias pollticas y sociales.

"En la Convencion laabla delegados que eran miembros actuales y pasados de la Legislatura, hombren que sablan por propia experiencia como se resolvian las protestas electorales en las canaras legislativas y que, ademos, sablan por sus lecturas lo que sobre el particular ocurría en otros paises. Alli estaba, como delegado, Nicolas Rafols-actor del drama politico que determínd uno de los precedentes parlamentarios que se citan acaso ruraiando todavla en su fuero interno el agravio contra lo que reputara arbitrariedad cometida por la mayorla en su caso. Que de extrafio habla que en medio de tal "background", en medio de tal ambiente ideologico se formara una fuerte opinion en favor de un cambio de sistena, en favor de un arbitrio constitucional que sustituyera la llamada "justicia politica" con una justicia de verdad, una "justicia judicial". Asi se creo la Comision Electoral. Nada mejor que las siguientes palabras del malogrado Magistrado Abad Santos en su luminosa opinion concurrente en el celebrado asunto de Angara contra Comision Electoral, para definir el caracter del sistema: El objeto que se trataba de obtener con la creacion de la Comision Electoral no era crear un cuerpo que estuviera por encima de la ley, sino el elevar las elecciones legislativas de la oategoria de ouestidnes politicas a la de justiciables.' Angara contra Comision Electoral (63 Jur. Fil., 200). Y el ponente en dicho asunto el Magistrado Sr. Laurel se explaya mas todavia con los siguientes pronunciamientos que no

tienen desperdicio:

'Los miembros de la Convencion Constitucional que planearon nuestra ley fundamental eran, en su mayor parte, hombres de edad madura y de experiencia. A buen seguro muchos de ellos estaban familiarizados con la historia y desarrollo politico de otros paises del raundo. Por tanto, cuando creyeron conveniente crear una Comision Electoral como un or anismo constitucional y lo invistieron con la exclusiva funcidn de conocer y fallar las controversias electorales, actas y condiciones de los raiembros de la Asamblea Naoional, debieron de haberlo hecho asi, no solamente a la luz de su propia experiencia, sino tambien teniendo en cuenta la experiencia de otros pueblos ilustrados del mundo. La creacion de la Comision Electoral fue planeada para remediar ciertos males que conoclan los autores de nuestra Constitucion. No obstante la tenaz opoacidn de algunos miembros de la Convencidn a 311 creacifin, el proyecto, coino antes se ha diclio, fue, aprobado por ese cuerpo mediante una votacidn de 98 contra 53. Todo cuanto se puede decir aliora sobre la probacion de la Constitucion, la creacion de la Comision Electoral es la expresion de la sabidurla y la justicia esencial al pueblo. (Abraham Lincoln, First Inaugural Address, Harzo 4, 1861.)

'De las deliberaciones de nuestra Convencion Constitucional resulta evidente que el objeto era traspasar en su totalidad toda la facultad previamente ejercitada por la Legislatura en asuntos pertenecientes a protestas electorales de sus miembros, a un tribunal independiente e imparcial. Sin embargo, no ful tanto el conocimiento y apreciacion de predeedentes constitucionales contemporfineos coiuo la ha tiempo sentida necesidad de fallar protestas legislativas, libres de prejuicios partidistas lo que impulso al pueblo, obrando por medio de sus delegados a la Convencion, a establecer este Cuerpo que se conoce por Comision Electoral. Con estas miras, se crea un cuerpo en el que tanto el partido de la mayoria como el de la minorla estdn igualmente representados para contrarrestar la influencia partidista en sus deliberaciones, y dotado, ademfis, de caracter judicial mediante la inclusion entre sus miembros de tres magistrados del Tribunal Supremo.

La Comision Electoral es una creacifin constitucional, investida de las facultades necesarias para el cumplimiento y ejecucion de las funciones limitadas y especificas que le ha asignado la Convencion. Aunque no es un Poder en nuestro Gobierno tripartito, es, para todos los fines, cuando obra dentro de los limites de su autoridad, tin organismo independiente. Se aproxima mas, ciertamenlie, al Departamento Legislativo que a cualquiera oto. El lugar que ooupa la disposibidn legal (articulo 4) que crea la Comision Electoral en el Titulo VI, titulado Departamento Legislativo de nuestra Constitucion, es muy significativo. Su composicion es tambien significativa por ouanto este constituida por una mayorla de miembros de la Legislatura. Pero es un cuerpo separado e independiente de la Legislatura.

" 'La concesion de facultades a la Comision Electoral para conocer de todas las controversias relativas a las elecciones, actas y condiciones de los miembros de la Asamblea Nacional, tiene por objeto hacer que esas facultades sean tan completas y queden tan incllumes como si hubieran continado originalmente en la Legislatura. El haber expresamente investido de esas faaultades a la Comision Electoral, es una negativa tacita del ejercicio de esas facultades por la Asamblea Nacional. Y esto es una restriccion tan eficaz a las facultades leqislativas oomo una prohibicion expresa contenida en la Constitucion (Ex parte Lewis, 45 Tex. Grim. Rep., 1; State vs. Whisman, 36 S. D., 260; L.R.A., 1917 B, 1.) * * * Angara contra Comision Electoral (63 jur. Fil., 151, 188-190).

"Acaso se pueda decir algo mas todavia acerca de los motivos que indujeron la creacion de la Comision Electoral; acaso se pueda aventurar la afirmacion de que con este cuerpo los redactores de la Constitucion, los caudillos de los partidos se propusieron asegurar por todos los medios y garantlas la vida y crecimiento de la democracia en Filipinas. Democracia es esencialmente libre discusion de los asuntos publicos, de los problemas de la comunidad; libre expresidn del pensamiento y de la opinidn. De esto se sigue necesariamente un regimen basado en la existencia de una mayoria que gobierna y de una minorla que aspira a gobernar entretanto que vigila los actos del gobierno en su doble papel de censor y de aspirante al poder. La mejor piedra de toque para apreciar y juzgar la calidad de un regimen politico es la manera y forma como trata a las minorlas oposiciones. Un gobierno

totalitario, despetico, las liquida, las ahoga; un gobierno democratico no solo Mas respeta, sino que crea para Silas un clima vital propicio. Miradd en este sentido el Tribunal Electoral es un instrumento de minorlas por antonomasia: la idea basica de su creacion es el desposeer a las mayorias del poder de destruir, de aniquilar a las minorlas mediante lo que dinicamente se ha denominado justicia politica, e impartir a las minorlas las mfiximas garantlas de una justicia de verdad una "justicia judicial". El delegado Vicente J. Francisco, ahora "Floor-Leader" de la mayoria en el Senado, pronunciando su discurso a favor de la reforma en la Asamblea Constituyente, dijo entre otros conceptos las siguientes significativas palabras: "Many have criticized, many have complained against the tyranny of the majority in electoral cases * * *" (Aruego, *The Framing of the Philippine Constitution*, tomo I, pag. 263). Por eso es un absurdo sostener que la facultad de suspender utilizada mediante la Resolucion Pendatun haya quedado en el Congreso como residuo, independientemente de la jurisdiccidn exclusiva del Tribunal Electoral para resolver protestas electorales legislativas. Ello equivaldria a sostener que los redactores de la Constitucion pusieron un remedio para derrotarloal propio tiempo mediante una puerta reservada y trasera por la en, los lidere de los partidos que tuvieron alguna responsabilidad en la redacion de dicho docuniento. * * *

El argumento de q.ue una cosa es la autonomla judicial que los recurridos le reconocen al tribunal electoral y otra cosa es la autonomla administrativa qua se la niegan carece enteramente de merito. Es verdad que la Constitucion, que por su naturaleza tiene que ser necesariamente esquemfetica, no contiene mas que lineamientos generales de la organizacion de ambos triv bunales electorales del Senado y de la Camara pero wen el terreno de la realidad, en la practica, esa generalizacion se ha suplementado con disposiciones legales y reglamentarias que establecen fuera de toda duda la autonomia o independencia, administrativa que se cuestiona. Asl vemos aue el art. 182 del Codigo Electoral Revisado (Ley No. 180 de la Republica que a su vez trae su origen de la ley del Commonwealth No. 357, art. 176), entre otras facultades asigna a los tribunales electorales la de "adoptar las reglas necesarias para el desempeño efectivo de sus funciones constitucionales", y a renglon seguido dispone quo "todos los gastos de dichos tribunales y de sus respectivos miembros se sufragaran de los fondos de la camara del Congreso a la cual per benece cada tribunal, todos sus telegramas y correspondencia seran transmitidos sin derechos postales. (Codigo Electoral Revisado o ley No. 180 de la Republica, articulo 182; ley del Commonwealth No. 357, articulo 176; Resolucion No. 73 sobre enmlendas a la Constitucion con respecto a la legislatura bicameral.) En el ejercicio de la facultad de que se ha heclio merito cada tribunal electoral ha adoptado y promulgado su propio reglamento. El reglamento vigente del tribunal electoral del Senado se aprobo el 7 de Junio de 1946 y contiene reglas convcernientes no so1o al desempefio de las funciones judiciales del tribunal, sino tambien a la organizacion y futicionamiento administrativo. Asl vemos que el art. 4 inciso (f) de dicho reglamento dispone que el chairman presidente del tribunal tiene, entre otros poderes, con la aprobacion del tribunal y de acuerdo con las disposiciones de la ley del servicio civil el de nominar o separar del servicio a cualquier empleado del tribunal. Y, bajo el eplgrafe de Control de sus propias funciones, el art. 5 provee que "el tribunal electoral del Senado tendra el control, direccion y supervision exclusivos de todas las materias correspondientes su propia operacion interna."

Parece superfluo decir que habie endose adoptado dicko reglamento en virtud de autorizacion expresa de la ley y tacita, por lo menos, de la Constitucion, de la cual dicha ley no es mas que complemento necesario, tal reglamento tiene fuerza de ley ys y solo puede ser abrogado mediante legislacion o regulacion posterior que no fuere contraria a la Constitucion.

El art. 182 del Codigo Electoral Revisado es como sigue:

"SEC. 182. Contests before the Electoral Tribunals of Congress. In contests under their respective jurisdiction, the Electoral Tribunals of the Senate and the House of Representatives; if shall have and exercise the same powers which the law confers upon the courts, including that of summarily punishing contempts, ordering the taking of depositions, the arrests of witnesses for the purpose of compelling their appearances and the production of documents and other evidence, and the compulsory payment of costs and expenses which it may

have assessed against the parties and their bondsmen; of giving notices of its decisions, resolutions, and orders and the enforcement of judicial orders; and of making the necessary rules for the effective performance of their constitutional functions. All the expenses of the said Tribunals and of their respective members shall be paid from the funds of the House of Congress to which each Tribunal pertains, and their telegrams and correspondence shall be transmitted free of charge."

Y los arts. 4 y 5 del reglamento del tribunal electoral del Senado disponen lo siguiente:

"THE CHAIRMAN

"4. The powers and duties of the Chairman of the Senate Electoral Tribunal shall be as follows:

- (a) Issue calls for the meetings of the Tribunal;
- (b) Preside at the hour previously fixed for the meeting;
- (c) Preserve order and decorum during the session and for that purpose take such steps as may be convenient or as the Tribunal may direct;
- (d) Pass upon all questions of order, but from his decision, any Member may appeal to the Tribunal;
- (e) Enforce the orders, resolutions, and decisions of the Tribunal;
- (f) With the approval of the Tribunal and In accordance with the provisions of the Civil Service Law, appoint or remove any employee of the Tribunal.

"CONTROL OF OWN FUNCTION

"5. The Senate Electoral Tribunal shall have the exclusive control, direction, and supervision of all matters pertaining to its own internal operation."

Ahora bien; a la vista de tales disposiciones legales y reglamentarias (estas ultimas con fuerza de ley, como queda dicho) es otra vez obligado preguntar; ipueden darse disposiciones mas catesicas y terminantes que esas para establecer la autonomla administrativa de un cuerpo u organismo? Si eltribunal electoral del Senado tiene el control, direocidn, y supervision exolusivos de todas las materias concernientes a supropia opera.

Conste que estas disposiciones estaban en pleno Vigor cuando se aprobo la ley de la republica No. 320 que es la ley de presupuestos del presente ano fiscal, 1948. Hay algo en esta ley, o en otra ley cualquiera fuera de la presupuestal, que modifique, altere o derogue tales disposiciones? Nada de lo uno, ni de lo Otro; y si lo hubiera, ello seria a todas luces anticonstitucional.

Se arguye que la disposicion especial No. 3 de la ley de presupuestos de 1948, que autoriza al Presidente del Senado a efeotuar traslados de partidas dentro del marco presupuestal de diclio alto cuerpo colegislador, inclusive a consolidar puestos y hasta suprimirlos, tiene el efecto de conferir a dicho Presidente un control si no expreso, por lo menos ta cito, sobre el personal administrativo del tribunal electoral. He aqui el texto literal de dicha disposicion:

"SEC. 3. Any provision of existing law to the contrary notwithstanding, the President of the Senate is hereby authorized, within the limits of the appropriations authorized in this Act for the Senate, to transfer items of appropriations, to abolish or consolidate items or positions, and to create new items or positions as may be necessary to effect simplification, economy and efficiency in the service, whenever in his judgment the public interest so requires. (Special Provisions, No. 3, Appropriation for the Senate, Republic Act No. 320, p.10.)"

Como se ve, no hay en esta disposicidn especial una referencia directa al personal del tribunal electoral. El ligamen se tiene que buscar deducie ndolo del hecho de que la consignacion de P180,000 para el tribunal electoral

figura dentro de la casilla presupuestal del Senado. Efectivamente, entre las apropiaciones para el Senado se lee lo siguiente:

"IV. SPECIAL PURPOSES

"1. For the personnel and expenses of the Senate Electoral Tribunal, its members, commissions, delegates and helpers

P180,000

Resulta evidente, de lo transcrito, que ni la fraseología de la disposición especial No. 3, ni la de la partida de P180,000 para el tribunal electoral, justifica la interpretación de que estas disposiciones de la ley presupuestal modifican, alteran o derogan expresa o citamente la autonomía administrativa del tribunal estatuida en el art. 182 del código electoral revisado y en el reglamento del tribunal de que se ha hecho mérito. Se puede sostener, con buen fundamento, que la partida de P180,000 consignada ahora específicamente en la de presupuestos para el tribunal electoral, ya no forma parte de los fondos del Senado, sino que constituye un fondo particular y concreto para dicho tribunal, siendo indiferente e inmaterial el que figure entre las apropiaciones senatoriales; pero, al suponiendo, que esa partida sigue siendo parte de los fondos del Senado, quiere ello decir que la rama cae bajo las facultades amplísimas, casi totalitarias, otorgadas al Presidente del Senado por la referida disposición especial No. 3 de la ley presupuestal? Borra ello de una plumada la autonomía administrativa del tribunal electoral, consagrada, como queda dicho, en el art. 182 del código electoral revisado y en el reglamento de dicho tribunal ninguna manera. Ya en el citado art. 182 se provee que los gastos de cada tribunal electoral se sufragar de los fondos de la cámara respectiva con todo, bajo los reglamentos adoptados y promulgados en virtud de las disposiciones de dicho art. 182 se provee que el chairman o presidente de cada tribunal electoral tiene, entre otros poderes, el de a cualquier empleado del tribunal, con la aprobación de este y sujeta a las reglas del servicio civil. Es decir, que tanto en las leyes como en los reglamentos jamás se ha considerado incompatible la autonomía administrativa de cada tribunal electoral con la circunstancia de que sus gastos se pagaran de los presupuestos de la cámara respectiva. En otras palabras, el reglamento que faculta expresamente al chairman del tribunal electoral, con la aprobación de este, a nombrar el personal y a suspenderlo o removerlo, se adopte y promulgue a sabiendas y con vista de la disposición expresada en el art. 183 del código electoral de que los gastos del tribunal se pagarán de los fondos del Senado. Luego es forzosa la conclusión de que la disposición especial No. 3 de la ley de presupuestos no se refiere más que a las apropiaciones para el Senado propiamente y de ningún modo a la consignada especialmente para el tribunal electoral. En buena hermenéutica legal esta es la única interpretación posible, pues no solo deja subsistentes el art. 182 del código electoral, los reglamentos de los tribunales electorales y la ley presupuestal, sino que sobre todo pone a salvo aquella parte de la Constitución que crea los tribunales electorales y garantiza su independencia. Es elemental que entre dos interpretaciones, una compatible con la Constitución y otra incompatible, la primera debe prevalecer.

Si la intención del Congreso, al aprobar la ley presupuestos del presente año fiscal, hubiera sido el suprimir o mermar de alguna manera la autonomía administrativa del tribunal electoral del Senado, consagraría, como repetidas veces se ha dicho, en el art. 182 del código electoral revisado y en el reglamento aprobado por dicho tribunal el 7 de Junio de 1946, lo hubiera declarado así expresa y aiente es inconcebible que el Congreso hubiera velado su intención en la penumbra de esa disposición especial No. 3 de la ley presupuestal, cuyo propósito va dirigido indudablemente al personal del Senado y no al personal del tribunal electoral, pues no se pretendera que

los empleados de este tribuna son empleados del Senado. Y se comprende que el Congreso no haya intentado abrogar o mermar de alguna manera la autonomía administrativa de los tribunales electorales, pues no solo sabla que la ley de presupuestos no es el instruaiento apropiado para enmendar o derogar leyes existentes, sino que sabla sobre vtodo que con lo hubiese infringido la Constitucion que garantiza la abaoluta independendencia de dichos tribunales con tanta fuerza, si no mias, que si fuesen parte integrante de la misma judicatura.

Decir que el tribunal electoral es independiente Judicialmente, pero que no lo es administrativamente, es, en realidad, de lo mias candoroso, por no llamarlo iptra cosa. Aqui lo judicial no puede separarse de lo administrativo por la sencilla razfin de que el tribunal is podrfa desempenar eficazmente sus funciones constitucionales sin una adecuada maquinaria adrainistrativa. Si hecno mismo de que el Congreso haya estimado necesario aotar al tribunal electoral del Senado con un presupuesto wide 1180,000 denota claramente que el Congreso se ha dado perfecta ouenta de la necesidad de proporcionar al tribunal un buen equipo admini strativo para que pueda llenar cumplidamente su cometido constitucional importantlaimo 180 mil pesos no esciertamente moco de pavo, usando de un decir vulgar.

Se arguye, sin embargo, que el control de la maquinaria administrativa puede estar en manos del Presidente del Senado y todavla seguir siendo el tribunal autonomo Judicialmente. Este es el busilis de la cuesficion. Entiendo que no pudo haber sido la intencidn de los padres fundadores, de los autores y signatarios de pa Constitucion el vinoular el control administrative en Bianos de una persona o entidad extra al tribunal electoral, menos en el Presidente del Senado. Asi como en organizacion y composicion del tribunal se ha tenido touen cuidado en no dar predominio a ningun parti do politico equilibrando la representacion de los partidos, del mayoritario y la oposicion, mediante el insenioso & original esquema de miembros para cada uno de los dos partidos, situando el fiel de la balanza en manos de los Magistrados de la Corte Suprema que en a formar parte del tribunal, asi creo que tambien la intencion de los autores de la Constitucion imprimir este mismo tono a politico en la fase administrativa del tribunal, haciendo que este mismo sea quien ferganice su personal, lo nombre, lo suspenda o destisehton sea el caso, lo controle y discipline, en palabra esto ezplica por que el Congreso se apreia implementar o suplementar la Constitucion insertando en el codigo electoral revisado el art. 183 de que tantas voces se ha hecho merito. Esto explica tambien por que los tribunales electorales lian adoptado y promulgado, sin obciecion de naflie, mucho menos de las camaras legislativas o de sus presidentes, suspicios reglamentos, los ouales tienen fuerza de ley y establecen fuera de toda duda su autonomia adiaistrativa. Es inconcebible que los autores de la Constitucion se hayan imaginado jamas que la maquinaria administrativa del tribunal electoral estulierra bajo el control del Presidente del Senado o del Speaker de la Camara de Representantes, pues equivaldria practicamente a desnaturaliaar el tribunal, a destruir su caracter a colocandolo bajo el dominio del partido gobemante el partido de la mayorla.

Hay que tener en cuenta que bajo nuestro sistema de gobierno los prosidentes de las camaras legislativas no son meros "presiding officers" corao, el presidente del Senado de los Estados Unidos de America que es al inismo tienipo Vice Presidente de la nacion, o el Speaker de la camara de los comunes de Inglaterra. El caracter de estos "presiding officers" es puramente judicial, presidiendo las sesiones legislativas con la objetiva imparcialidad de arbitros o jueces parlamentarios. Los residentes de nuestras camaras legislativas son iucho mas que eso; son verdaderos jefes y lidere políticos. De hecno, en el caso que nos ocupa es cosa admitida y establecida en autos que el actual Presidente del Senado es el jefe de su partido el partido de la inayorla y file el principal gerente de campaña del mismo er las elecciones congresionales de Noviembre pasado, las mismas elecciones que preciaamente han dado lugar a las protestas en masa contra siete (7) actas senatoriales de dicho partido mayoritario. Esas protestas se esten ventilando ahora ante el tribunal electoral del Senado. Gravisimos cargos de irregularidad, de fraude, de coaccion, de terrorismo y de corrupcion se han formulado por los protestantes sobre la forma como se realizaron aquellas elecciones. Se alega que los censos electorales de algunas provincias se

falsificaron de una manera casi fabulosa, llenándose con miles de nombres de electores imaginarios, los cuales, sin embargo, se contaron como votos efectivos a favor de los protestados. Decenas, centenares de miles de balotas están cuestionadas, además de otros muchos documentos electorales. Toda esa enorme masa de pruebas y evidencias encerradas en centenares de urnas electorales se ha colocado bajo la responsabilidad del tribunal electoral. Tremenda responsabilidad.

Es el caso, sin embargo, que los 9 miembros del tribunal no pueden vigilar y manejar por sí mismos toda esa tremenda balumba de materiales. No se va a esperar, del tribunal que haga milagros. El tribunal necesita de guardias, de comisionados, de "clerks"; en una palabra, necesita ser ayudado por un personal administrativo de lo más idóneo, íntegro, honrado y fiel en el cumplimiento de sus delicadísimos deberes, todo dentro de las posibilidades que ofrece un presupuesto de P180,000. Ese personal tiene naturalmente o puede tener acceso a las urnas, a las batas y a los otros documentos obrantes ante el tribunal. Así que es de absoluta necesidad que tengan o merezcan la confianza de las partes litigantes, de sus jefes, del público, en general. No se debiera permitir en las oficinas del tribunal electoral una situación o un clima moral propicio a la corrupción por la acción deletérea de la influencia caya política, o en que fundada o infundadamente fomenten las suspicacias ("No basta que la mujer del César sea honrada; debe, además, parecerlo") Sin embargo de todo esto, ahora se quiere que toda esa compleja maquinaria administrativa nombramientos del personal, fijación de sus salarios, promociones, suspensiones, destituciones, disciplina, control, compra de equipos y mobiliario, etc., etc. se coloque en manos de quien? Pues bien; parece increíble, fantástico; se quiere colocar precisamente en manos del que fue jefe de campaña de los protestados en las elecciones en que estos obtuvieron su triunfo ahora controvertido, el tribunal electoral; en manos del jefe del partido político que se está suscitando su suerte y su vida política en esas protestas, pues el resultado de las mismas puede afectar a la balanza del poder en el Senado; en manos de caudillo político que también se juega su vida y su suerte política en tales protestas; pues el resultado de las mismas puede afectar igualmente a la tenencia del alto cargo que ahora desempeña; en manos de un líder político que, por lo menos, moral e indirectamente, se halla envuelto en los graves cargos de irregularidad, fraude y corrupción política formulados con o sin razón por los protestantes; en una palabra, en manos de un caudillo político que ya puede ser un ángel, un dechado de virtudes, pero que en un mundo de humanos como el nuestro tiene necesariamente que provocar en la mente de sus adversarios y simpatizadores de estos, no por nada, sino por las especiales circunstancias en que le han colocado sus obligaciones y compromisos políticos y, sobre todo, su condición de jefe de su partido se puede concebir que los padres fundadores los autores de la Constitución se hayan figurado jamás que en tal situación y en tales circunstancias se entregara el control de la maquinaria administrativa del tribunal electoral al sírfe de uno de los partidos que litigan ante dicho tribunal y se juegan precisamente en dicho litigio su vida y fortuna política? Perdado que el simple planteamiento de la cuestión y de los hechos provoca ya una instintiva repugnancia y excluye la posibilidad de que uno pueda conformarse con un plan tan contrario a las reglas y normas elementales del "fair play", de la imparcialidad judicial e inclusive de la decencia política?

Se arguye, con énfasis, que no hay razón para dudar de la buena fe de los motivos del Presidente del Senado; el contrario, se debe presumir que el mismo cumplirá honradamente sus deberes como jefe administrativo del personal administrativo del tribunal electoral; y que así como en el pasado, bajo dicho plan, no hubo incidentes que deplorar en las relaciones entre el Presidente del Senado y el tribunal, acogiendo aque, al parecer, todas las sugerencias y recomendaciones de carácter administrativo del tribunal, así también es de esperar que estas buenas relaciones entre ambas partes continúen bajo el mismo plan. El argumento tiene un serio inconveniente, a saber; que sacrifica los principios, las leyes, inclusive la Constitución, al completo personal; hace depender el expedito funcionamiento del tribunal en un momento dado de las cualidades personales del que en ese momento estuviere desempeñando la presidencia del Senado la contestación al argumento es que en una bien ordenada democracia la mejor salvaguardia de la justicia y de los intereses públicos es un "gobierno de leyes no de hombres"; que los

autores de la Constitucion no pudieron menos de tener en cuenta este principio de buen estadisno al redactar el precepto que crea el tribunal electoral; y que lo tuvieron igualmente en cuenta los legisladores al incorporar en el codigo electoral revisado el art. 182 y los miembros de los dos tribunales electorales al aprobar los reglamentos de que tantas veces se ha liecho mencion.

La mejor prueba de que un gobierno impersonal de leyes es siempre mejor que un gobierno de hombres basa, do en el complejo personal, es lo ocurrido en el presente caso. El modus vivendi entre el Presidente del senado y el tribunal electoral oper bien mientras no diferencias ajufi ocurrio, sin embargo, al surgir primer conflicto? El modus vivendi se vino abajo como un Castillo de naipes. No habla entonces mis que una altemativa o el Presidente del Senado se salla con la suya, como suele decirse, o el tribunal se aferraba a su posicion. Si lo primero, el tribunal perofa su independendencia garantida por la Constitucion y las leyes; si lo segundo, se paralizaban las funciories del tribunal por falta de inaquinaria administrativa, en ambos oasos con grave detrimento de los intereses de la justicia.

Es que loa hombres, por alto que esten, no quedan inmunea al capricho, al mal hiuaor, al rencor, en Una palabra, a caas pequefias pasionea que auelen perturbar a loa mortales. Tambien pueden dividirae por diferenciaa honradas de opinion y no estar diapuestoa a ceder, a tranaigir, parallzando toda accidn. Asi que la mejor politica, la medida mda segura de buen gobierno es trazar normas y adoptar reglas que sujeten er encaucen la accion y conducta oficial reglas normas que en casos de conflicto entre las interesadas deben ser interpretadas y aplicadas nor honores colocados en situacion de administrcar justicia sin raiedo ni favor. Esata es la esencia del gobierno de leyes, en contraposicion al gobierno de hombres. Esta es la esencia tambien de otro famoso lema democratico. "Perezcan los hombres fero solvensen los principios".

Con lo dicho queda asimismo contestada la insinuacaion de qae en el pasado el tribunal electoral tolerd fel control del Presidente del Senado sobre su personal administrativo, dejando que este hiciese los nombramientos y fijase inclusive la cuantfa de los salarios. No hay estoppel en cuestiones de derecho, rafixime cuando de por medio va la Constitucion. As que cualquier tiempo era bueno para que el tribunal electoral declarase su emancipacion, y ahora que esa emancipacion se ha declarado el pais tiene todos los iaotivos para acoserla con jubilo como un aconteciniento que selala ana epoca decisiva en los anales de nuestra historia constitucional y politica. Hay acontecimientos que merecen los honores de la piedra miliaria y este es indudablemente uno de ellos.

En realidad, queda todavia un paso, de indole legislativa, para esa total emancipacion, y es que se de Clare categorioa e inequivocamente en la ley, mediante una enmienda al art. 182 del codigo electoral revisado, en el sentido de que de hoy en adelante se sufraguen los gastos de los tribunales electorales con fondos propios, en vez de que se tomen de los fondos de cada camara legislativa. Es arriba he dicho que la parti da de P180,000 para el tribunal electoral del Senado, tal como este consignada en la ley de presupuestos de este afio, es practicamente una consignadcn especflica y ya no forma parte de los fondos del Senado a pesar de que material mente figura dentro del marco presupuestal de este alto cuerpo colegislador; pero para disipar toda duda serla mejor que en adelante el presupuesto de cada tribunal electoral se particulariaara (earmark) inequivocamente. Esto tendria el efecto de redondear el desenvolvimiento constitucional.

Ningun esfuerzo debe escatimarse para rodear el sufragio de las mas firmes y solidas garantlas de limpieza, sinoeridad y eficacia. Tequisito primario del sincera exito de las democracias es la elecoin libre incorrupt a de los funcionarios y oficiales que por la constitucion y la ley tienen el eno anso de administrar los asuntos de la nacion, de la provincia y del municipio. Con razon se ha dicho que la diferencia entre la bala y la balota electoral es la naedida del trayecto que media entre el orden y la estabilidad de un aobierno fundado en el sufragio libre, sincero e incorrupto de los ciudadanos y las turbulenciaa de una revolucion resultantes del escamoteo y fraude electoral.

De ahí la tremenda importancia que implica el establecimiento cabal y definitivo de la autonomía completa judicial y administrativa de los tribunales electorales del Congreso esa autonomía entraña la reafirmación de una ma estad, de una supremacía; la inajestad y supremacía de la balota electoral símbolo de paz, orden, estabilidad, justicia y democracia.

Writ granted.

RESOLUTION ON MOTION FOR RECONSIDERATION

December 2, 1948.

MORAN, C.J.:

Respondents seek the reconsideration of the decision of this Court wherein a writ of mandamus was issued directing them to pay to petitioner his salary as Private Secretary to Honorable Ramon Diokno, member of the Electoral Tribunal for the Senate, in accordance with the appointment issued by the Chairman of said tribunal.

All the points raised in the motion for reconsideration, including that of jurisdiction, had been fully considered by the Court before rendering its decision. However, in view of the several unwarranted assertions and abstract interpretations tendered by respondents, some points of the decision must be reiterated.

Respondents allege that this Court "denies that the Senate has anything to do with the Senate Electoral Tribunal, but in effect, makes the disbursing officer of the Senate the disbursing officer of the Senate Electoral Tribunal" and that "this Honorable Court cannot take away the funds of the Electoral Tribunal from the custody of the respondents and in the same breadth order them to make payments from the same funds." Evidently, respondents failed to understand the decision of the Court. There is absolutely no ground for the frantic accusation that this Court has taken away the funds of the Electoral Tribunal from the custody of respondents. This Court held that the Electoral Tribunal is an entity independent of and distinct from the Legislature and entrusted with a specific mission. In order that this entity may function and may carry out its mission, the Election Code (section 182) provided that the expenses for the Electoral Tribunal shall be paid from the funds of the respective Houses of Congress. In pursuance of this mandate, the Appropriations Act set aside from the funds of the Senate the sum of P180,000 for the Senate Electoral Tribunal. Hence, we ruled that this sum of P180,000 belongs to the Senate Electoral Tribunal and not to the Senate nor to any other entity. The custody of said funds may still be, technically at least, with the officers of the Senate, but the funds no longer belong to the Senate but to the Electoral Tribunal. What remains with respondents is their ministerial duty of disbursing the funds for the Electoral Tribunal whenever that entity so requests. Since the Appropriations Act set aside the sum of P180,000 from the funds of the Senate and gave it to the Electoral Tribunal for the Senate, said sum must be kept and may be disbursed only for the purposes provided for by law, namely, for the Electoral Tribunal.

For the first time respondents allege in their motion for reconsideration that this Court has no jurisdiction to issue a writ of mandamus against respondents because it would in effect constitute a compelling act against the Senate. There is a misconception of the doctrine laid down by this Court on this matter. "Mandamus will not lie against the legislative body, its members, or its officers to compel the performance of duties purely legislative in their character which rightly pertain to their legislative functions and over which they have exclusive control * * *", thus is the rule reiterated by this Court in the case of *Alejandrino vs. Quezon*, 46 Phil., 88. In the case at bar, there is no pure or exclusive legislative function involved. The instant action relates to the performance of respondents' ministerial duty to disburse to the Electoral Tribunal the funds that rightly belong to it. "The Courts will not interfere by mandamus proceedings with the legislative department of the government in the legitimate exercise of its powers, except to enforce mere ministerial acts required by law to be performed by some officer there-of."

(55 C.J., S; sec. 130, p. 215; see also 34 Am. Jur., pp. 910-911; 95 A.L.R. 273, 277-278.) Thus, the writ has been granted, upon the application of a member of the house of representatives of a State, to compel the Speaker of the house to certify to the Comptroller of Public Accounts the amount to which the member was entitled as compensation for mileage. (See High's Extraordinary Legal Remedies, section 136, pp. 151-152.)

It is maintained by respondents that there is no specific provision of law granting to the Chairman of the Electoral Tribunal for the Senate the power to appoint its subordinate officers. What is true, however, is that there is no specific provision of law giving said power to the President of the Senate. It is a well-settled rule that when jurisdiction is conferred by law on a court or tribunal, that court or tribunal, unless otherwise provided by law, is deemed to have authority to employ all writs, processes and other means necessary to make its power effective. In the instant case, the Electoral Tribunal was created by the Constitution to perform a specific mission. That Tribunal cannot accomplish its mission without subordinate personnel. Consequently, in the absence of any specific provision of law to the contrary, the Tribunal may, either by rules or by specific orders, provide for the manner of selecting its employees. And in this case, the Electoral Tribunal, by rule, provided that the power of appointment is lodged in its Chairman with the approval of the Tribunal. This rule, having the force of law, is valid, there being no provision of law against it and it being necessary for the proper accomplishment of the purposes for which the Tribunal was created by the Constitution.

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The main burden of respondents' motion for reconsideration consists in the argument that in the past, the Electoral Tribunals had submitted themselves administratively to the Legislature. Perseverance in error is no reason for perpetuation of error.

For all the foregoing, the motion for reconsideration is denied.

Feria, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

Montemayor, J., concurs in the result.

Motion denied.

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