

**AMELITO R. MUTUC, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.***G.R. No. L-32717. November 26, 1970*

Ponente: FERNANDO, J.

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The invocation of his right to free speech by petitioner Amelito Mutuc, then a candidate for delegate to the Constitutional Convention, in this special civil action for prohibition to assail the validity of a ruling of respondent Commission on Elections enjoining the use of a taped jingle for campaign purposes, was not in vain. Nor could it be, considering the conceded absence of any express power granted to respondent by the Constitutional Convention Act to so require and the bar to any such implication arising from any provision found therein, if deference be paid to the principle that a statute is to be construed consistently with the fundamental law, which accords the utmost priority to freedom of expression, much more so when utilized for electoral purposes. On November 3, 1970, the very same day the case was orally argued, five days after its filing, with the election barely a week away, we issued a minute resolution granting the writ of prohibition prayed for. This opinion is intended to explain more fully our decision.

In this special civil action for prohibition filed on October 29, 1970, petitioner, after setting forth his being a resident of Arayat, Pampanga, and his candidacy for the position of delegate to the Constitutional Convention, alleged that respondent Commission on Elections, by a telegram sent to him five days previously, informed him that his certificate of candidacy was given due course but prohibited him from using jingles in his mobile units equipped with sound systems and loudspeakers, an order which, according to him, is "violative of [his] constitutional right \* \* \* to freedom of speech." [1] There being no plain, speedy and adequate remedy, according to petitioner, he would seek a writ of prohibition, at the same time praying for a preliminary injunction. On the very next day, this Court adopted a resolution requiring respondent Commission on Elections to file an answer not later than November 2, 1970, at the same time setting the case for hearing for Tuesday, November 3, 1970. No preliminary injunction was issued. There was no denial in the answer filed by respondent on November 2, 1970, of the factual allegations set forth in the petition, but the justification for the prohibition was premised on a provision of the Constitutional Convention Act, [2] which made it unlawful for candidates "to purchase, produce, request or distribute sample ballots, or electoral propaganda gadgets such as pens, lighters, fans (of whatever nature), flashlights, athletic goods or materials, wallets, bandanas, shirts, hats, matches, cigarettes, and the like, whether of domestic or foreign origin." [3] It was its contention that the jingle proposed to be used by petitioner is the recorded or taped voice of a singer and therefore a tangible propaganda material, under the above statute subject to confiscation. It prayed that the petition be denied for lack of merit. The case was argued, on November 3, 1970, with petitioner appearing in his behalf and Attorney Romulo C. Felizmeña arguing in behalf of respondent.

This Court, after deliberation and taking into account the need for urgency, the election being barely a week away, issued on the afternoon of the same day, a minute resolution granting the writ of prohibition, setting forth the

absence of statutory authority on the part of respondent to impose such a ban in the light of the doctrine of ejusdem generis as well as the principle that the construction placed on the statute by respondent Commission on Elections would raise serious doubts about its validity, considering the infringement of the right of free speech of petitioner. Its concluding portion was worded thus: "Accordingly, as prayed for, respondent Commission on Elections is permanently restrained and prohibited from enforcing or implementing or demanding compliance with its aforesaid order banning the use of political jingles by candidates. This resolution is immediately executory." [4]

1. As made clear in our resolution of November 3, 1970, the question before us was one of power. Respondent Commission on Elections was called upon to justify such a prohibition imposed on petitioner. To repeat, no such authority was granted by the Constitutional Convention Act. It did contend, however, that one of its provisions referred to above makes unlawful the distribution of electoral propaganda gadgets, mention being made of pens, lighters, fans, flashlights, athletic goods or materials, wallets, bandanas, shirts, hats, matches and cigarettes, and concluding with the words "and the like." [5] For respondent Commission, the last three words sufficed to justify such an order. We view the matter differently. What was done cannot merit our approval under the well-known principle of ejusdem generis, the general words following any enumeration being applicable only to things of the same kind or class as those specifically referred to. [6] It is quite apparent that what was contemplated in the Act was the distribution of gadgets of the kind referred to as a means of inducement to obtain a favorable vote for the candidate responsible for its distribution.

The more serious objection, however, to the ruling of respondent Commission was its failure to manifest fealty to a cardinal principle of construction that a statute should be interpreted to assure its being in consonance with, rather than repugnant to, any constitutional command or prescription. [7] Thus, certain Administrative Code provisions were given a "construction which should be more in harmony with the tenets of the fundamental law." [8] The desirability of removing in that fashion the taint of constitutional infirmity from legislative enactments has always commended itself. The judiciary may even strain the ordinary meaning of words to avert any collision between what a statute provides and what the Constitution requires. The objective is to reach an interpretation rendering it free from constitutional defects. To paraphrase Justice Cardozo, if at all possible, the conclusion reached must avoid not only that it is unconstitutional, but also grave doubts upon that score. [9]

2. Petitioner's submission of his side of the controversy, then, has in its favor obeisance to such a cardinal precept. The view advanced by him that if the above provision of the Constitutional Convention Act were to lend itself to the view that the use of the taped jingle could be prohibited, then the challenge of unconstitutionality would be difficult to meet. For, in unequivocal language, the Constitution prohibits an abridgment of free speech or a free press. It has been our constant holding that this preferred freedom calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage. What respondent Commission did, in effect, was to impose censorship on petitioner, an evil against which this constitutional right is directed. Nor could respondent Commission justify its action by the assertion that petitioner, if he would not resort to a taped jingle, would be free, either by himself or through others, to use his mobile loudspeakers. Precisely, the constitutional guarantee is not to be emasculated by confining it to a speaker having his say, but not perpetuating what is uttered by him through tape or other mechanical contrivances. If this Court were to sustain respondent Commission, then the effect would hardly be distinguishable from a previous restraint. That cannot be validly done. It would negate indirectly what the Constitution in express terms assures. [10]

3. Nor is this all. The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our

system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or dis-regard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.

To be more specific, the competence entrusted to respondent Commission was aptly summed up by the present Chief Justice thus: "Lastly, as the branch of the executive department – although independent of the President -- to which the Constitution has given the 'exclusive charge' of the 'enforcement and administration of all laws relative to the conduct of elections, ' the power of decision of the Commission is limited to purely 'administrative questions.'"[11] It has been the constant holding of this Court, as it could not have been otherwise, that respondent Commission cannot exercise any authority in conflict with or outside of the law, and there is no higher law than the Constitution.[12] Our decisions which liberally construe its powers are precisely inspired by the thought that only thus may its responsibility under the Constitution to insure free, orderly and honest elections be adequately fulfilled.[13] There could be no justification then for lending approval to any ruling or order issuing from respondent Commission, the effect of which would be to nullify so vital a constitutional right as free speech. Petitioner's case, as was obvious from the time of its filing, stood on solid footing.

WHEREFORE, as set forth in our Resolution of November 3, 1970, respondent Commission is permanently restrained and prohibited from enforcing or implementing or demanding compliance with its aforesaid order banning the use of political taped jingles. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Barredo, and Villamor, JJ., concur.

Teehankee, J., concurs in a separate opinion.

Dizon and Makasiar, JJ., on official leave.

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[1] Petition, paragraphs 1 to 5.

[2] Republic Act No. 6132 (1970).

[3] Section 12 (E), Ibid.

[4] Resolution of Nov. 3, 1970.

[5] Section 12 (E), Constitutional Convention Act.

[6] Cf. *United States v. Santo Niño*, 13 Phil. 141 (1909); *Go Tiaoco y Hermanos v. Union Insurance Society of Canton*, 40 Phil. 40 (1919); *People v. Kottinger*, 45 Phil. 352 (1923); *Cornejo v. Naval*, 54 Phil. 809 (1930); *Ollada v. Court of Tax Appeals*, 99 Phil. 605 (1956); *Roman Catholic Archbishop of Manila v. Social Security Commission*, L-15045, Jan. 20, 1961, 1 SCRA 10.

[7] Cf. *Herras Teehankee v. Rovira*, 75 Phil. 634 (1945); *Manila Electric Co. v. Public Utilities Employees Association*, 79 Phil. 409 (1947); *Araneta v. Dinglasan*, 84 Phil. 368 (1949); *Guido v. Rural Progress Administration*, 84 Phil. 847 (1949); *City of Manila v. Arellano Law Colleges*, 85 Phil. 663 (1950); *Ongsiako v.*

Gamboa, 86 Phil. 50 (1950); Radiowealth v. Agregado, 86 Phil. 429 (1950); Sanchez v. Harry Lyons Construction, Inc., 87 Phil. 532 (1950); American Bible Society v. City of Manila, 101 Phil. 386 (1957); Gonzales v. Hechanova, L-21897, Oct. 22, 1963, 9 SCRA 230; Automotive Parts and Equipment Co., Inc. v. Lingad, L-26406, Oct. 31, 1969, 30 SCRA 248; J. M. Tuason and Co., Inc. v. Land Tenure Administration, L-21064, Feb. 18, 1970, 31 SCRA 413.

[8] Radiowealth v. Agregado, 86 Phil. 429 (1950).

[9] Moore Ice Cream Co. v. Ross, 289 US 373 (1933).

[10] Cf. Saia v. People of the State of New York, 334 US 558 (1948).

[11] Abcede v. Hon. Imperial, 103 Phil. 136 (1958). The portion of the opinion from which the above excerpt is taken reads in full: "Lastly, as the branch of the executive department - although independent of the President - to which the Consti-tution has given the 'exclusive charge' of the 'enforcement and administration of all laws relative to the conduct of elections,' the power of decision of the Commission is limited to purely 'administrative questions.' (Article X, Sec. 2, Constitution of the Philippines) It has no authority to decide matters 'involving the right to vote. 'It may not even pass upon the legality of a given vote (Nacionalista Party v. Commission on Elections, 47 Off. Gaz., [6], 2851). We do not see, therefore, how it could assert the greater and more far-reaching authority to determine who - among those possessing the qualifications prescribed by the Constitution, who have complied with the procedural requirements, relative to the filing of certificates of candidacy - should be allowed to enjoy the full benefits intended by law therefore. The question whether in order to enjoy those benefits - a candidate must be capable of 'understanding the full meaning of his acts and the true significance of election,' and must have - over a month prior to the elections (when the resolution complained of was issued) 'the tiniest chance to obtain the favorable indorsement of a substantial portion of the electorate,' is a matter of policy, not of administration and enforcement of the law, which policy must be determined by Congress in the exercise of its legislative functions. Apart from the absence of specific statutory grant of such general, broad power as the Commission claims to have, it is dubious whether, if so granted - in the vague, abstract, indeterminate and undefined manner necessary in order that it could pass upon the factors relied upon in said resolution (and such grant must not be deemed made, in the absence of clear and positive provision to such effect, which is absent in the case at bar) - the legislative enactment would not amount to undue delegation of legislative power. (Schechter vs. U.S., 295 US 495, 79 L. ed. 1570.)" pp. 141-142.

[12] Cf. Cortez v. Commission on Elections, 79 Phil. 352 (1947); Nacionalista Party v. Commission on Elections, 85 Phil. 149 (1949); Guevara v. Commission on Elections, 104 Phil. 268 (1958); Masangcay v. Commission on Elections, L-13827, Sept. 28, 1962, 6 SCRA 27; Lawsin v. Escalona, L-22540, July 31, 1964, 11 SCRA 643; Ututalum v. Commission on Elections, L-25349, Dec. 3, 1965, 15 SCRA 465; Janairo v. Commission on Elections, L-28315, Dec. 8, 1967, 21 SCRA 1173; Abes v. Commission on Elections, L-28348, Dec. 15, 1967, 21 SCRA 1252; Ibuna v. Commission on Elections, L-28328, Dec. 29, 1967, 21 SCRA 1457; Binging Ho v. Mun. Board of Canvassers, L-29051, July 28, 1969, 28 SCRA 829.

[13] Cf. Cauton v. Commission on Elections, L-25467, April 27, 1967, 19 SCRA 911. The other cases are Espino v. Zaldivar, L-22325, Dec. 11, 1967, 21 SCRA 1204; Ong v. Commission on Elections, L-28415, Jan. 29, 1968, 22 SCRA 241; Mutuc v. Commission on Elections, L-28517, Feb. 21, 1968, 22 SCRA 662; Pedido v. Commission on Elections, L-28539, March 30, 1968, 22 SCRA 1403; Aguam v. Commission on Elections, L-28955, May 28, 1968, 23 SCRA 883; Pelayo, Jr. v. Commission on Elections, L-28869, June 29, 1968, 23 SCRA 1374; Pacis v. Commission on Elections, L-29026, Sept. 28, 1968, 25 SCRA 377; Ligot v. Commission on Elections, L-31380, Jan. 21, 1970, 31 SCRA 45; Abrigo v. Commission on Elections, L-31374, Jan. 21, 1970, 31

SCRA 27; Moore v. Commission on Elections, L-31394, Jan. 23, 1970, 31 SCRA 60; Ilarde v. Commission on Elections, L-31446, Jan. 23, 1970, 31 SCRA 72; Sinsuat v. Pendatun, L-31501, June 30, 1970, 33 SCRA 630.

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## CONCURRING OPINION

### TEEHANKEE, J.:

In line with my separate opinion in *Badoy vs. Ferrer*[1] on the unconstitutionality of the challenged provisions of the 1971 Constitutional Convention Act, I concur with the views of Mr. Justice Fernando in the main opinion that "there could be no justification .... for lending approval to any ruling or order issuing from respondent Commission, the effect of which would be to nullify so vital a constitutional right as free speech." I would only add the following observations:

This case once again calls for application of the constitutional test of reasonableness required by the due process clause of our Constitution. Originally, respondent Commission in its guidelines prescribed summarily that the use by a candidate of a "mobile unit - roaming around and announcing a meeting and the name of the candidate ... is prohibited. If it is used only for a certain place for a meeting and he uses his sound system at the meeting itself, there is no violation." [2] Acting upon petitioner's application, however, respondent Commission ruled that "the use of a sound system by anyone be he a candidate or not whether stationary or part of a mobile unit is not prohibited by the 1971 Constitutional Convention Act" but imposed the condition - "provided that there are no jingles and no streamers or posters placed in carriers."

Respondent Commission's narrow view is that "the use of a 'jingle,' a verbally recorded form of election propaganda, is no different from the use of a 'streamer' or 'poster', a printed form of election propaganda, and both forms of election advertisement fall under the prohibition contained in sec. 12 of R. A. 6132, " and "the record disc or tape where said 'jingle' has been recorded can be subject of confiscation by the respondent Commission under par. (E) of sec. 12 of R. A. 6132. " In this modern day and age of the electronically recorded or taped voice which may be easily and inexpensively disseminated through a mobile sound system throughout the candidate's district, respondent Commission would outlaw "recorded or taped voices" and would exact of the candidate that he make use of the mobile sound system only by personal transmission and repeatedly personally sing his "jingle" or deliver his spoken message to the voters even if he lose his voice in the process or employ another person to do so personally even if this should prove more expensive and less effective than using a recorded or taped voice.

Respondent Commission's strictures clearly violate, therefore, petitioner's basic freedom of speech and expression. They cannot pass the constitutional test of reasonableness in that they go far beyond a reasonable relation to the proper governmental object and are manifestly unreasonable, oppressive and arbitrary.

Insofar as the placing of the candidate's "streamers" or posters on the mobile unit or carrier is concerned, respondent Commission's adverse ruling that the same falls within the prohibition of section 12, paragraphs (C) and (E) has not been appealed by petitioner. I would note that respondent Commission's premise that "the use of a 'jingle' ... is no different from the use of a 'streamer' or 'poster' " in that these both represent forms of election advertisements - to make the candidate and the fact of his candidacy known to the voters - is correct, but its

conclusion is not. The campaign appeal of the "jingle" is through the voters' ears while that of the "streamers" is through the voters' eyes. But if it be held that the Commission's ban on "jingles" abridges unreasonably, oppressively and arbitrarily the candidate's right of free expression, even though such "jingles" may occasionally offend some sensitive ears, the Commission's ban on "streamers" being placed on the candidate's mobile unit or carrier, which "streamers" are less likely to offend the voters' sense of sight should likewise be held to be an unreasonable, oppressive and arbitrary curtailment of the candidate's same constitutional right.

The intent of the law to minimize election expenses as invoked by respondent Commission, laudable as it may be, should not be sought at the cost of the candidate's constitutional rights in the earnest pursuit of his candidacy, but is to be fulfilled in the strict and effective implementation of the Act's limitation in section 12(G) on the total expenditures that may be made by a candidate or by another person with his knowledge and consent.

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[1] L-32546 & 32551, Oct. 17, 1970, re: sections 8(A) and 12(F) and other related provisions.

[2] Petition, page 9.

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