

## FRANCISCO I. CHAVEZ, PETITIONER, VS. COMISSION ON ELECTIONS, RESPONDENT.

*G.R. No. 105323. July 03, 1992*

Ponente: BIDIN, J.

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### **BIDIN, J.:**

This case was originally an urgent petition ad cautelam praying, among others, for the issuance of a temporary restraining order enjoining respondent Commission on Elections (Comelec) from proclaiming the 24th highest senatorial candidate.

The antecedents facts are as follows:

On May 5, 1992, this Court issued a Resolution in GR No. 104704, entitled "Francisco Chavez v. Comelec et al.," disqualifying Melchor Chavez, private respondent therein, from running for the Office of Senator in the May 11, 1992 elections.

The above-mentioned resolution was received by respondent Comelec on May 6, 1992. On the same day, petitioner filed an urgent motion with the Comelec praying that it (1) disseminate through the fastest available means this Court's Resolution dated May 5, 1992 to all regional election directors, provincial election supervisors, city and municipal election registrars, boards of election inspectors, the six (6) accredited political parties and the general public; and (2) order said election officials to delete the name of Melchor Chavez as printed in the certified list of candidates, tally sheets, election returns and "to count all votes cast for the disqualified Melchor Chavez in favor of Francisco I. Chavez x x x."

On May 8, 1992, the Comelec issued Res. No. 92-1322 which resolved to delete the name of Melchor Chavez from the list of qualified candidates. However, it failed to order the crediting of all "Chavez" votes in favor of petitioner as well as the cancellation of Melchor Chavez name in the list of qualified candidates.

According to petitioner, the Comelec failed to perform its mandatory function under Sec. 7, RA 7166 which states that if a candidate has been disqualified, it shall be the duty of the Commission to instruct without delay the deletion of the name of said candidate.

Thus, the name of Melchor Chavez remained undeleted in the list of qualified candidates on election day.

Confusion arose, allegedly nationwide, as the "Chavez" votes were either declared stray or invalidated by the Boards of Election Inspectors (BEIs).

On May 11, 1992, Commissioner Rama of respondent Comelec issued a directive over radio and TV ordering all "Chavez" votes to be credited in favor of petitioner. Petitioner contends that the radio and TV announcements did not reach the BEI at the 170,354 precincts nationwide. As a result, "Chavez" votes were not credited in favor of petitioner.

On May 12, 1992, Comelec issued another Resolution directing all municipal and city election registrars

throughout the country to examine the minutes of voting submitted by the BEIs and to credit all the "Chavez" votes, which have been declared stray or invalidated by the BEIs, in favor of petitioner.

Petitioner maintains that the said resolution proved futile because it did not reach all the various BEIs of the 170,354 election precincts throughout the country on time for implementation and that the minutes of voting did not indicate the number of "Chavez" votes which were declared stray or invalidated.

On May 14, 1992, petitioner sent a letter to the Comelec requesting the latter to devise ways and means in crediting "Chavez" votes in his favor but the respondent Commission failed to act on said letter/complaint.

On May 23, 1992, petitioner filed an urgent petition before the respondent Comelec praying the latter to (1) implement its May 12, 1992 resolution with costs de officio; (2) to re-open the ballot boxes in 13 provinces including the National Capital Region involving some 80,348 precincts (p. 9 of petition) and to scan for the "Chavez" votes for purposes of crediting the same in his favor; (3) make the appropriate entries in the election returns/certificates of canvass; and (4) to suspend the proclamation of the 24 winning candidates.

Dissatisfied with the failure of respondent Comelec to act on his petition, petitioner filed, as aforesaid, this urgent petition for prohibition and mandamus, with prayer for the issuance of a temporary restraining order, enjoining the Comelec from proclaiming the 24th highest senatorial candidate, without first implementing respondent Comelec's resolution of May 12, 1992 and acting upon petitioner's letter/complaint dated May 14, 1992 and urgent petition dated May 22, 1992.

It is the submission of petitioner that assuming only ten (10) "Chavez" votes were invalidated per precinct, he would have lost at least 1.7 million votes (considering that there are more than 170,000 precincts nationwide); the result of which will affect the 24 ranking senatorial candidates.

Petitioner alleges that respondent Comelec acted capriciously and whimsically and with grave abuse of discretion and therefore prays that the Comelec be enjoined from proclaiming the 24th winning senatorial candidate until after his petition before the Commission is resolved.

On June 4, 1992, the Court issued a Temporary Restraining Order enjoining respondent Comelec from proclaiming the 24th winning senatorial candidate and set the case for hearing on June 9, 1992.

On the same day (June 4, 1992), petitioner filed a manifestation stating that on May 30, 1992, his urgent petition dated May 22, 1992 was dismissed by respondent Comelec and prayed that the petition ad cautelam at bar be considered a regular petition.

On June 8, 1992, Senator Agapito Aquino\* filed a Motion for Leave to Intervene with Comment in Intervention praying for the dismissal of the instant petition on the ground that the law does not allow pre-proclamation controversy involving the election of members of the Senate.

After hearing the arguments of the parties on June 9, 1992, the Court resolved to lift the temporary restraining order in the afternoon of the same day (June 9, 1992).

Coming now to the merits, We find the petition devoid of any.

As stated earlier, petitioner's urgent petition dated May 22, 1992 was dismissed by respondent Comelec on May 30, 1992. Had it not been prayed that the proclamation of the 24th winning senatorial candidate be suspended; which this Court granted on June 4, 1992, the instant petition would have been dismissed outright for having become moot and academic. But even then, this Court could not have acted favorably on petitioner's plaint.

The alleged inaction of respondent Comelec in ordering the deletion of Melchor Chavez's name in the list of

qualified candidates does not call for the exercise of the Court's function of judicial review. This Court can review the decisions or orders of the Comelec only in cases of grave abuse of discretion committed by it in the discharge of its quasi-judicial powers and not those arising from the exercise of its administrative functions. Respondent Commission's alleged failure to implement its own resolution is undoubtedly administrative in nature, hence, beyond judicial interference (See *Filipinas Engineering Co. v. Ferrer*, 135 SCRA 25 [1985]; *Aratuc v. Commission on Elections*, 88 SCRA 251 [1979]; see also *Pungutan v. Abubakar*, 43 SCRA 1 [1972]). As aptly observed by the Solicitor General, respondent Comelec can administratively undo what it has administratively left undone (Manifestation, p. 2). Moreover, respondent Comelec has in fact, on May 6, 1992 to be exact, ordered the deletion of Melchor Chavez's name not only on the official list of candidates, but also on the election returns, tally sheet and certificate of canvass (Comment, p. 7). Hence, petitioner's allegation that respondent Comelec failed to implement Res. No. 92-132 does not hold water.

Be that as it may, there are other compelling reasons why the instant petition is bound to fail.

A simple reading of the petition would readily show that petitioner has no cause of action, the controversy presented being one in the nature of a pre-proclamation\*.

While the Commission has exclusive jurisdiction over pre-proclamation controversies involving local elective officials (Sec. 242. Omnibus Election Code), nevertheless, pre-proclamation cases are not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives.

Sec. 15 of Republic Act 7166 provides:

"Sec. 15. Pre-proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, and Member of the House of Representatives. -- For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificate of canvass, as the case may be. However, this does not preclude the authority of the appropriate canvassing body motu proprio or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it. (underscoring supplied)

x x x

"Any objection on the election returns before the city or municipal board of canvassers, or on the municipal certificates of canvass before the provincial boards of canvassers or district board of canvassers in Metro Manila Area, shall be specifically noted in the minutes of their respective proceedings."

It is clear from the above-quoted provision of the law that "pre-proclamation cases (are) not allowed in elections for President, Vice-President, Senator and Member of the House of Representatives." What is allowed is the correction of "manifest errors in the certificate of canvass or election returns." To be manifest, the errors must appear on the face of the certificates of canvass or election returns sought to be corrected and/or objections thereto must have been made before the board of canvassers and specifically noted in the minutes of their respective proceedings.

In the case at bar, however, petitioner prays not only for a restraining order enjoining "the proclamation of the 24th highest ranking senatorial candidate without first acting upon petitioner's letter/complaint dated May 14, 1992 and urgent petition dated May 22, 1992" but also prays that judgment be rendered requiring the Comelec to re-open the ballot boxes in 80,348 precincts in 13 provinces therein enumerated (Petition, p. 9) including Metro Manila, scan the ballots for "Chavez" votes which were invalidated or declared stray and credit said scanned "Chavez" votes in favor of petitioner.

It is quite obvious that petitioner's prayer does not call for the correction of "manifest errors in the certificates of canvass or election returns" before the Comelec but for the re-opening of the ballot boxes and appreciation of the ballots contained therein. Indeed, petitioner has not even pointed to any "manifest error" in the certificates of canvass or election returns he desires to be rectified. There being none, petitioner's proper recourse is to file a regular election protest which, under the Constitution and the Omnibus Election Code, exclusively pertains to the Senate Electoral Tribunal.

Thus, Sec. 17, Art. VI of the Constitution provides that "(t)he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x" (underscoring supplied). The word "sole" underscores the exclusivity of the Tribunals jurisdiction over election contests relating to their respective Members (*Co v. Electoral Tribunal of the House of Representatives*, 199 SCRA 692 [1991]; *Lazatin v. House of Representatives Electoral Tribunal*, 168 SCRA 391 [1988]; *Angara v. Electoral Commission*, 63 Phil. 139 [1936]). It is therefore crystal clear that this Court has no jurisdiction to entertain the instant petition. It is the Senate Electoral Tribunal which has exclusive jurisdiction to act on the complaint of petitioner involving as it does, contest relating to the election of a member of the Senate. As aforesaid, petitioner's proper recourse is to file a regular election protest before the Senate Electoral Tribunal after the winning senatorial candidates have been proclaimed.

Petitioner argues, on the other hand, that a recount before the Senate Electoral Tribunal where he would be forced to shell out the expenses imposes not only a property requirement for the enjoyment of the right to be voted upon but also a price on the right of suffrage which would ultimately stifle the sovereign will.

The argument, however, is beside the point. The law is very clear on the matter and it is not right for petitioner to ask this Court to abandon settled jurisprudence, engage in judicial legislation, amend the Constitution and alter the Omnibus Election Code. The mandatory procedures laid down by the existing law in cases like the one at bar must be faithfully followed lest we allow anarchy to reign. The proper recourse is for petitioner to ask not this Court but the Legislature to enact remedial measures.

Finally, the instant petition falls squarely with the case of *Sanchez v. Commission on Elections* (153 SCRA 67 [1987]) and the disposition arrived therein finds application in the case at bar, *mutatis mutandis*:

"Sanchez anchors his petition for recount and/or reappreciation on Section 243, paragraph (b) of the Omnibus Election Code in relation to Section 234 thereof with regard to material defects in canvassed election returns. He contends that the canvassed returns discarding "Sanchez" votes as stray were "incomplete" and therefore warrant a recount or reappreciation of the ballots under Section 234. x x x

"x x x The fact that some votes written solely as Sanchez" were declared stray votes because of the inspectors' erroneous belief that Sanchez had not been disqualified as a candidate, involves an erroneous appreciation of the ballots. It is established by the law as well as jurisprudence x x x that errors in the appreciation of ballots by the board of inspectors are proper subject for election protest and not for recount or reappreciation of ballots.

"2. The appreciation of the ballots cast in the precincts is not a 'proceeding of the board of canvassers' for purposes of pre-proclamation proceedings under Section 241, Omnibus Election Code, but of the boards of election inspectors who are called upon to count and appreciate the votes in accordance with the rules of appreciation provided in Section 211, Omnibus Election Code. Otherwise stated, the appreciation of ballots is not part of the proceedings of the board of canvassers. The function of ballots appreciation is performed by the boards of election inspectors at the precinct level. (Underscoring supplied)

"3. The scope of pre-proclamation controversy is limited to the issues enumerated under Sec. 243 of the Omnibus Election Code. The enumeration therein of the issues that may be raised in pre-proclamation

controversy is restrictive and exclusive. In the absence of any clear showing or proof that the election returns canvassed are incomplete or contain material defects (sec. 234), appear to have been tampered with, falsified or prepared under duress (sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents, Sanchez' petition must fail. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

x x x

"7. The ground for recount relied upon by Sanchez is clearly not among the issues that may be raised in pre-proclamation controversy. His allegation of invalidation of "Sanchez" votes intended for him bear no relation to the correctness and authenticity of the election returns canvassed. Neither the Constitution nor statute has granted the Comelec or the board of canvassers the power in the canvass of election returns to look beyond the face thereof, once satisfied of their authenticity (Abes v. Comelec, 21 SCRA 1252, 1256)."

In the case at bar, petitioner's allegation that "Chavez" votes were either invalidated or declared stray has no relation to the correctness or authenticity of the election returns canvassed. Otherwise stated, petitioner has not demonstrated any manifest error in the certificates of canvass or election returns before the Comelec which would warrant their correction. As the authenticity of the certificates of canvass or election returns are not questioned, they must be prima facie considered valid for purposes of canvassing the same and proclamation of the winning candidates (Sanchez v. Comelec, supra).

Premises considered, the Court Resolved to DISMISS the instant petition for lack of merit.

### **SO ORDERED.**

Narvasa, C.J., (Chairman), Gutierrez Jr., Cruz, Paras, Feliciano, Padilla, Griño-Aquino, Medialdea, Regalado, Davide Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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\* Ranked as the 24th winning senatorial candidate in the official canvass of Comelec

\* Pre-proclamation controversy is defined as "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." (Sec. 241 Omnibus Election Code)

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