

JOKER P. ARROYO, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) AND AUGUSTO L. SYJUCO, JR., RESPONDENTS.

G.R. No. 118597. July 14, 1995

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Congressional candidate private respondent Augusto L. Syjuco, Jr., filed an election protest before public respondent House of Representatives Electoral Tribunal (HRET) five days after the Makati board of canvassers proclaimed petitioner Joker P. Arroyo the duly elected congressman for the lone district of Makati in the May 11, 1992 synchronized national and local elections. Essentially premised on alleged irregularities/anomalies in the tabulation and entries of votes and massive fraud, private respondent Syjuco sought the revision and recounting of ballots cast in 1,292 out of the total 1,714 precincts of Makati from which result he aimed to be declared as the duly elected congressman of Makati. Petitioner filed a counter-protest questioning the residence qualification of private respondent Syjuco, but the same was dismissed by public respondent HRET.

As prayed for by private respondent, revision of the ballots was undertaken, but not without serious irregularities having been unearthed in the course thereof. Tasked by public respondent HRET to investigate on the matter, now retired Supreme Court Justice Emilio Gancayco confirmed the irregularities and anomalies engineered by some HRET officials and personnel.[1] The findings contained in Justice Gancayco's Report and Recommendation were aptly summarized in the "Dissenting Opinion" of Justice Bidin in this wise:

"In his Report and Recommendation, Justice Gancayco found, in essence, that the respondent HRET employees, while taking advantage of their official authority and control over the operational details of the revision of ballots, and for corrupt motives, subverted the revision exercise in at least three (3) protest cases, including this case (HRET Case No. 92-019), by maintaining a pool of individuals subject to their control which were offered or foisted upon party litigants as their revisors. Once functioning as party--revisors, these individuals implemented instructions given by the respondent HRET employees to pilfer, dump (i.e., place ballots voted for one party with other ballots which do not indicate votes for either party such as unclaimed, stray, spoiled or unused ballots, or ballots for other candidates), and mark (in order to spoil) or fill-in ballots of one or the other of the litigants.

"At the core of Justice Gancayco's findings and evaluation are protested precincts in this case which exhibited cases of dumping, consistent reduction in Arroyo votes, falsification of revision reports and pilferage of ballots, as testified on by the prosecution witness, principally, Atty. William Chua and Mr. Ritchillier M. Matias."[2]

On this point, Justice Gancayco declared:

"x x x Arroyo votes were consistently reduced at the revision and the deducted votes were found and included in the stray ballots, while Syjuco was always constant" and "there were instances where ballots were deducted from the protestee (Arroyo)" and that "another modus operandi is to falsify the revision reports by

intercalation, false entries or simply switching of true results of the counting. Congressman Joker Arroyo is the classic victim of this unlawful exercise."[3]

At or about the time the revision was completed and with three precincts left unaccounted for, private respondent Syjuco moved for the withdrawal of these remaining unrevised protested precincts on the ground that he has presumably overtaken petitioner Arroyo's lead of 13,559 votes.

With neither private respondent Syjuco nor petitioner Arroyo availing of their right to move for a technical examination after completion of revision, as provided for under Rules 42-49 of the HRET Rules, reception of their respective evidence followed.

Private respondent's evidence were all documentary and voluminous at that consisting of over 200,000 pages. These exhibits, however, and which private respondent as well as public respondent HRET[4] does not seriously dispute are in general, "mere photocopies and not certified or authenticated by comparison with the original documents or identification by any witness x x x"[5] and were formally offered by merely asking that they be marked. On the other hand, petitioner's evidence consisted of certified true copies of the Revision Reports and election returns.[6] Despite the vigorous objection raised by petitioner with respect to the admission of and the probative value of private respondent's exhibits, public respondent HRET admitted the evidence for whatever they may be worth.[7]

Thereafter, pursuant to Rule 66 of the HRET Rules,[8] petitioner and private respondent filed their respective memoranda simultaneously. In his memorandum cum addendum, private respondent veered away from his original posture that his protest should be decided on the basis of a revision and recounting of ballots, and instead called upon public respondent HRET to decide the case on the basis of what private respondent himself expressly admits as a "truly innovative and NON--TRADITIONAL process" — the PRECINCT-LEVEL DOCUMENT-BASED EVIDENCES. Private respondent thus averred, among others, that:

"2.3. Scope and Emphasis of the Instant Protest case.

"2.3.1. Protestant implores the Tribunal to take special and careful NOTE of the fact that while one cannot deny that adjudication of the REGULAR protest case generally rests on the result and outcome derived from the revision and subsequent appreciation of the BALLOTS which are disputed and contested by the parties in the course of the revision proceedings — in this particular instance, the protestant has opted to resort to a truly innovative and NON-TRADITIONAL process, by undertaking . . . our most concerted efforts in identifying and presenting such extensive numbers of . . . what protestant has denominated as PRECINCT-LEVEL DOCUMENT-BASED EVIDENCES (sic)."

"2.3.2. Thus, readily discernible, not only from the comprehensive ADDENDUM of protestant, but more so from the volumes of documentary exhibits presented, adduced and admitted, is the relentless pursuit undertaken by protestant to locate most relevant electoral documents used not only during the actual balloting/voting stage, but also those availed of even much earlier, as early (as) the time of the registration of voters. Such resourcefulness had undoubtedly resulted in the accumulation of what has now been appropriately coined by protestant as 'Precinct-Level, Document-Based Evidences.'

x x x x x x x x

"2.3.5. However, significant and material as they are, the results gathered from the ordinary and traditional BALLOT revision process, do not constitute the ONUS of protestant('s) case. From protestant's point of view, 'the ballot(s) themselves bear only incidental significance in our chosen approach, because, in our world of cause and effect, the ballots are mere effects of the document-based anomalies.....' [ADDENDUM, D-3; Presentation, Part 2, Revision of Ballots]. For truly, the CONCENTRATION . . . the emphasis is on the Precinct-Level Document-Based Evidence.

"2.3.6. And in so concentrating, the Tribunal should realize that the protestant, even as early as the filing of the protest soon after protestee's proclamation, was full aware that in disputing the sham victory of protestee, the anticipated/expected results of the regular, traditional and normal process of REVISION of ballots, would, by itself, be unavailing, and insufficient to overturn protestee's supposed victory.

"2.3.7. Hence, when in the ADDENDUM, there is a continuing reference to the GRAND PATTERN OF MASSIVE DOCUMENT-BASED FRAUDS (sic) AT PRECINCT LEVEL, such is simply in support of the initial allegation and pronouncement contained in the original protest, where protestant has asserted most strongly that 'There was massive fraud in the above-protested precinct.' x x x and that the protest was instituted precisely' in order that the massive fraud perpetrated against the protestant shall be corrected' x x x.

x x x x x x x x

"[iv] Protestee most definitely failed to comprehend the very CORE of protestant's electoral protest. His was devoted to the traditional and normal BALLOT-BASED procedure, where protestee pounds recklessly and incessantly on alleged irregularities and anomalies in the ballots during the REVISION, completely blocking his mind to the fact that protestant's action is founded principally and mainly on electoral anomalies which occurred long BEFORE the revision was ever conducted; ANOMALIES in the precinct level, committed even before the elections of May 11, 1992, like in the voters' registration process; and also ANOMALIES during the election day, at the actual balloting.

x x x x x x x x

"[vii] On the other hand, as the proponent of the electoral protest, herein protestant was well-aware from the moment of commencement of the protest that to overcome a substantial margin of well over 12,000 votes, the revision of the ballots alone would not suffice.

x x x x x x x x

"4.2. Besides, as discussed in detail above, protestant's protest case rests NOT on the results of the revision, which is categorized as 'incidental'; but mainly on the broader and more equitable NON-TRADITIONAL determination of the existence of the PRECINCT-LEVEL DOCUMENT-BASED ANOMALIES, minutely detailed in the ADDENDUM, and its supporting evidence. (underscoring supplied; Ibid., pp. 14-16)"[9]

By reason of private respondent's new allegations, public respondent HRET ordered him to show cause why his protest should not be dismissed. The "show-cause" order reads in part:

"It appearing from the memorandum and addendum filed by protestant Syjuco, after revision of the ballots case in the 1,292 protested precincts as prayed for in his Amended Protest, that inter alia, herein protestant was well-aware from the moment of the commencement of the protest that to overcome a substantial margin of well over 12,000 votes, the revision of ballots alone, would not suffice, and that the electoral protest case rests 'NOT' on the results of the revision which he considers as merely 'incidental' to the broader and more equitable NON-TRADITIONAL determination of the existence of the PRECINCT-LEVEL DOCUMENT-BASED ANOMALIES' (pp. 14-15; 16), without, however, demonstrating any legal basis or implementing procedures therefor; it appearing further that protestant Syjuco's memorandum and addendum appear to incorporate substantial amendments which broaden the scope of his protest, change his theory of the case at this stage of the proceedings or introduce additional causes of action in violation of Rule 28. Revised Rules of the Tribunal, x x x". (Res. No. 93-277)[10]

However, by a 6-3 vote (the six Congressmen-members as against the three Justices-members), public respondent HRET resolved not to dismiss the protest, to continue with the examination and evaluation of the evidence on record, and thereafter to decide the case on the merits. The Resolution was issued on February 15, 1994. In their dissenting opinion, the three (3) Justices-members had this to say:

"x x x that protestant's radical shift in his cause of action from the original and traditional ballot revision process to his "innovative and non-traditional process", which he now calls precinct-level document-based anomalies, has no legal precedent; it constitutes a substantial amendment, which if considered, will broaden the scope of the electoral protest or introduce an additional cause of action in violation of Rule 28 of the Revised Rules of the Tribunal."

x x x x x x x x

"Since the allegation of the protest and its prayer calls for recounting and revision of the ballots in order that the alleged massive fraud perpetrated against protestant shall be corrected, the instant protest should be decided in accordance with the tradition process of recounting and revision (and ultimately appreciation) of ballots as provided by the Rules of the Tribunal and not by any innovative and non-traditional process denominated as precinct-level document-based evidence alleged in protestant's memorandum.

"Nonetheless, protestant was candid enough to admit in his memorandum 'that to overcome a substantial margin of well over 12,000 votes, the revision of ballots alone would not suffice.' However, to keep his protest alive, after the adverse result of the revision, protestant has to devise the broader and (allegedly) more equitable non-traditional determination of the existence of precinct-level document-based anomalies' even if the same is not authorized by law nor even alleged in his protest." [11]

Petitioner moved to dismiss the protest but to no avail. No hearings were conducted thereafter.

Then on January 25, 1995, public respondent HRET, by the same vote of six Congressmen-members against three Justices-members, rendered its now assailed Decision annulling petitioner Arroyo's proclamation and declaring private respondent Syjuco as the duly elected congressman. The dispositive portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered:

"1. ANNULLING and SETTING ASIDE the proclamation of Protestee JOKER P. ARROYO.

"2. DECLARING Protestant AUGUSTO L. SYJUCO, JR. as the duly elected Representative, Lone District of Makati, National Capital Region, for having obtained, after due revision and appreciation, a plurality of 1,565 votes, over the second placer Protestee Joker P. Arroyo, and for not being disqualified from holding said office.

"In view of the seriousness of the massive frauds, irregularities and violations of election laws found in this case and in conformity with the constitutional mandate of the Commission on Elections "to prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices" (par. (6), Sec. 2, ART. IX-C, 1987 Constitution), the Tribunal, Resolved to REFER this case to the Commission on Elections for appropriate actions, including but not limited to, investigation of any and all parties concerned, or who may have participated in said violations or frauds committed.

"On any irregularities or offenses in this case, found to have been committed by any public officers and employees, during the May 11, 1992 electoral processes, involving misuse of public office, in violation of the constitutional provision that "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." (Sec. 1, ART. XI, 1987 Constitution), the Tribunal also Resolved to REFER to the Office of the Special Prosecutor (SEC 2. ART. XI, 1987 Constitution) for appropriate actions, including but not limited to, investigation of any and all public officers and employees concerned who may have participated in said irregularities or offenses, or who may have been negligent in the performance of their duties.

"For the foregoing purposes, and if requested by the Commission on Elections and/or the Office of the Special Prosecutor, records or copies of this case shall be made available or forwarded to them for their reference or

evidence.

"Costs are charged against Protestee Arroyo, pursuant to Rule 36 of the Tribunal.

"As soon as this Decision becomes final, notice and copies thereof shall be sent to the President of the Philippines, the House of Representatives through the Speaker, and the Commission on Audit, through its Chairman, pursuant to Rule 73 of the Revised Rules of the House of Representatives Electoral Tribunal.

"SO ORDERED." [12]

Without filing a motion for reconsideration of public respondent HRET's decision, petitioner Arroyo filed the instant petition setting forth the following issues:

"A. Whether or not public respondent acted with grave abuse of discretion and without jurisdiction when it refused to dismiss HRET Case No. 92-109 after Syjuco had belatedly changed the theory of his case and introduced new issues and, thereafter, when it proceeded with the protest.

"B. Whether or not the HRET's Decision in Case No. 92--019 dated 25 January 1995 was rendered in violation of petitioner's right to due process.

"C. Whether or not public respondent acted capriciously, arbitrarily, and with grave abuse of discretion when it:

- (1) Rejected long standing legal doctrines and precedents on elections and annulment;
- (2) Disregard the people's right to suffrage;
- (3) Ignored the basic rules of evidence and breached the internal procedures of the Tribunal; and
- (4) Gravely and/or deliberately misapprehended the facts. [13]

Briefly stated, the crucial question involved in this case is: Did public respondent HRET commit grave abuse of discretion in (1) proceeding to decide the election protest based on private respondent's "precinct level document based anomalies/evidence" theory; (2) rendering judgment on the kind of evidence before it and the manner in which the evidence was procured, and (3) annulling election results in some contested precincts?

I. The "precinct level document based anomalies/evidence" theory

However guised or justified by private respondent, this innovative theory he introduced for the first time in his memorandum cum addendum indeed broadened the scope of the election protest beyond what he originally sought—the mere revision of ballots. From his initial prayer for revision which lays primary, if not exclusive emphasis on the physical recount and appreciation of ballots alone, private respondent's belated attempt to inject this theory at the memorandum stage calls for presentation of evidence (consisting of thousands of documents) aside from, or other than, the ballots themselves. By having done so, private respondent in fact intended to completely abandon the process and results of the revision and thereafter sought to rely on his brainchild process he fondly coined as "precinct-level document-based evidence." This is clearly substantial amendment of the election protest expressly proscribed by Rule 28 of the HRET internal rules which reads:

"After the expiration of the period for filing of the protest, counter-protest or petition for quo warranto, substantial amendments which broaden the scope of the action or introduce an additional cause of action shall not be allowed. x x x."

The majority members of the Tribunal in fact had already sensed the impropriety of private respondent's belated shift of theory when it issued its "show-cause" order requiring the latter to explain why his election protest should not be dismissed. But the majority violated with open eyes its own rules when they resolved not to dismiss the

protest - a clear indication of grave abuse of discretion. The least that public respondent HRET could have done thereafter was to conduct further hearing so that petitioner Arroyo may have examined, objected to and adduced evidence controverting private respondent Syjuco's "precinct-level document-based evidence" despite the time within which the parties are allowed to present their evidence has already lapsed.[14] But nothing in the records indicates that one was conducted. Petitioner's right to due process was clearly violated at this particular stage of the proceedings.

Granting that private respondent's change in theory (being a substantial amendment) is merely disallowed and not a valid ground for the outright dismissal of his election protest, nonetheless it has been consistently held that substantial amendments to the protest maybe allowed only within the same period for the filing of the election protest[15] which, under Rule 16 of the HRET Rules, is ten (10) days after the proclamation of the winner. Private respondent's "precinct-level document-based anomalies/evidence" theory having been introduced only at the homestretch of the proceedings, he is bound by the issue which he essentially raised in his election protest and that is, a revision of the ballots will confirm his victory and the irregularities/anomalies and massive fraud foisted upon him during the 1992 synchronized elections. For the rule in an election protest is that the protestant or counterprotestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for the filing of protest or counter protest[16] (underscoring supplied) Private respondent is therefore bound by the final results of the revision confirming petitioner's victory over him by a plurality of 13,092 votes.[17] Petitioner's inevitable victory in the revision was even conceded to by private respondent himself when he stated in his memorandum cum addendum that:

'x x x in disputing the sham victory of protestee, the anticipated/expected results of the regular, traditional and normal process of REVISION of ballots, would, by itself, be unavailing and insufficient to overturn protestee's supposed victory" (quoted on p. 6 of this decision).

This statement is clearly an admission against private respondent's own interest equally binding and conclusive upon him, there being no showing that he made it through palpable mistake (Section 4, Rule 129, Rules of Court).

Thus, the final results of the revision and the admission of his eventual loss therein were sufficient reasons to confirm at a much earlier time petitioner Arroyo's victory over private respondent Syjuco. These are the offshoots of the theory and cause of action private respondent Syjuco originally banked on (revision). Private respondent cannot escape its adverse effects by later on contriving unprecedented and wholly untested processes or theories such as the "precinct-level document-based anomalies/evidence", the applicable and well-settled principle being "a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal".[18] This is in essence putting private respondent in estoppel to question the revision. In this connection, what the Court said in "Lucero vs. De Guzman" (45 Phil. 852,871-872), becomes meaningfully relevant:

"When the boxes are opened and the truth concerning an election made accessible, considerations of public policy require that the proof thus supplied should be accepted. The public at large has the deepest concern in the integrity of elections, and this public interest must be regarded as well as the technical rights of the litigants themselves. It would be most scandalous for us to sanction a practice under which a party to an election contest could be permitted to force an examination of the ballots and when the result is found unfavorable to himself require the court to cover up the wrong, with consequences injurious to the cause of justice. When boxes are opened at the instance of the parties to the contest, they are estopped from questioning the true result of the revision whatever that result may be. The plain duty of the court, under the circumstances presented in this case, was to proceed to a revision of the count, with the report of the commissioners before him, and assisted by the facts appearing in those documents."

II. The kind of evidence used and how they were procured

a) The majority members of public respondent HRET undisputedly admitted and appreciated as evidence mere photocopies of election-related documents when there is not even the slightest showing that the original or even certified true copies thereof cannot be reasonably produced before the Tribunal. These photocopies violate the best evidence rule[19] which is simply meant that no evidence shall be received which is merely substitutionary in its nature so long as the original evidence can be had.[20] They should have been rejected altogether unworthy of any probative value at all, being incompetent pieces of evidence.

b) Certain vital election documents (such as certified xerox copy of the number of registered voters per precinct and photocopies of statements of votes) were procured at the sole instance of the ponente of the majority decision[21] which, as the Tribunal readily admitted, were never offered in evidence by either of the parties.[22] Aside from that, acting upon the self-serving allegation of private respondent Syjuko supported by mere photocopied election documents that around 12,075 signatures of voters scattered in 777 precincts were forged or falsified, the majority congressmen-members of the Tribunal by themselves without the participation of any of the three (3) remaining Justices-members, declared that 10,484 of the contested signature are fake.[23] This course of action grossly violates not only Rule 68 of the Tribunal's own rules which requires that all questions shall be submitted to the Tribunal as a body, but also Rule 5 thereof which further requires the presence of at least one (1) Justice-member to constitute a valid quorum. In order, therefore, that any and all matters presented before it can be properly addressed and considered, the Tribunal is mandated to act as a collegial body. And without collective effort as enjoined by Rule 68 but qualified by Rule 5 in this particular and most crucial stage of the proceedings, any resulting action purporting to be the official act the Tribunal should be, as it is hereby, struck down as highly irregular. The Court in "Free Employment and Workers Association (FEWA) vs. CIR" (14 SCRA 781, 785) held that:

"x x x the Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. (United States v. Baltimore & O.S.W.R. Co., 226 U.S. 14, ante, 104, 33 Sup. Ct. Rep. 5.)"

III. Nullification of election results

The power to annul an election should be exercised with the greatest care as it involves the free and fair expression of the popular will. It is only in extreme cases of fraud and under circumstances which demonstrate to the fullest degree a fundamental and wanton disregard of the law that elections are annulled, and then only when it becomes impossible to take any other step.[24] Thus, as a guide for the exercise of this power, no less than public respondent Electoral Tribunal itself has laid down two mandatory requisites for the annulment of election returns based on fraud, irregularities or terrorism, namely (1) that more than fifty percent (50%) of the total number of votes in the precinct or precincts were involved, and (2) that the votes must be shown to have been affected or vitiated by such fraud, irregularities or terrorism.[25] Public respondent HRET proceeded to annul 50,000[26] votes without a dint of compliance with these requisites as it annulled the results on the basis of lost or destroyed ballots despite the presence and availability of election return and other competent secondary evidence whose authenticity were never questioned,[27] and on the basis of alleged forged signatures which were never competently proved and substantiated by private respondent.[28] Further, the tribunal nullified the 10% margin in several contested precincts with alleged substitute voting which the dissenting opinion correctly observed as "a far

cry from the existing 50% rule".[29] What is even worse is that the nullification of these votes was based on inadmissible documents some of them not offered in evidence by private respondent. The Court cannot countenance such blatant nullification of votes as it fails to comply with the established standard on annulment. Elections should never be held void unless they are clearly illegal; it is the duty of the court to sustain an election authorized by law if it has been so conducted as to give a free and fair expression of the popular will, and the actual result thereof is clearly ascertained.[30]

Additionally, public respondent HRET disregarded election results on several precincts on the basis of omissions committed either through mere oversight or plain negligence on the part of election officials or employees. The bulk of these omissions consisted of lack or absence of the signature of the chairman of the Board of Election Inspectors on the voter's affidavits or lists of voters/voting records, absence or excess of detachable coupons, number of detachable coupons not tallying with the number of ballots, and missing voter's lists. We find that these omissions, mainly administrative in nature, cannot be used as a ground to nullify election results in the absence of a clear showing of fraud. Voters duly registered and who have exercised their right of suffrage should not be penalized by disregarding and junking their votes due to omissions not of their own making. The settled rule is that in the absence of fraud, mere irregularities or omissions committed by election officials which do not subvert the expression of popular will, as in this case, cannot countenance the nullification of election results.[31] Corollarily, the misconduct of election officers or irregularities on their part will not justify rejecting the whole vote of a precinct (as was done in this case) where it does not appear that the result was affected thereby, even though the circumstances may be such as to subject the officers to punishment.[32] These omissions are not decisive since actual voting and election by registered voters had taken place in the questioned precincts.[33] The Court, therefore, cannot stamp with approval the conduct exhibited by public respondent HRET as it was attended by arbitrariness.

From the above findings, it now becomes apparent why private respondent's argument that the petition should be dismissed for failure to first file a motion for reconsideration of public respondent HRET's majority decision, is untenable. Indeed, the general rule is that a tribunal rendering a decision must be given an opportunity to rectify its error through a motion for reconsideration. However, the partiality of the majority of the members of the Electoral Tribunal having been shown through their concerted action to disregard tribunal rules and the basic rules on evidence, recourse for a reconsideration of its decision becomes nugatory and an immediate recourse to this Court can be had based on the fundamental principle of due process. And it is well-settled that a prior motion for reconsideration can be dispensed with if, as in this case, petitioner's fundamental right to due process was violated.[34]

All told, the procedural flaws which marred the proceedings in the public respondent HRET from the time private respondent's "precinct-level document based anomalies/evidence" theory was embraced by the majority members up to the rendition of judgment suffice in themselves to render the public respondent HRET's majority decision declaring private respondent Syjuco as the duly elected congressman of the then lone district of Makati a complete nullity. The persistent and deliberate violation of the Tribunal's own governing rules and of even the most basic rules of evidence cannot be justified by simply invoking that procedural rules should be liberally construed. For even if Rule 2 of the Tribunal's internal rules states that:

"In case of reasonable doubt, these rules shall be liberally construed in order to achieve a just, expeditious and inexpensive determination and disposition of every contest brought before the Tribunal",

Rule 80 of the very same internal rules expressly makes the Rules of Court, Supreme Court decisions, and Electoral Tribunal decisions of suppletory application. In fact, public respondent HRET quite consistently in the past ultimately relied on the rules of evidence established by the Rules of Court in disposing election cases

brought before it. To name a pertinent few: "Cuneta vs. Claudio" (HRET Adm. Case No. 92-010, Feb. 24, 1994); "Hernandez vs. Sanchez" (HRET Case No. 92-012, July 27, 1993); "Loyola vs. Dragon" (HRET Case No. 92-026, Jan. 31, 1994); and "Claver vs. Bulut" (HRET Case No. 92-015, Nov. 23, 1993). More specifically, in the "Cuneta" case, the HRET struck down certain foreign documents presented by petitioner Cuneta as being inadmissible under the best evidence rule (Section 4, Rule 130, Rules of Court) and for failure to meet the requirements for the admissibility in evidence of foreign documents under Sections 24 and 25, Rule 132 of the Rules of Court as applied in the "Hernandez" case and in "De Leon vs. Sanchez" (HRET Case No. 92-013). In the "Loyola" case, certain pictures presented by protestant Loyola depicting the unlawful display of protestee Dragon's streamer outside the authorized areas were not given any probative value by the HRET for their lack of identification and authentication by any witness other than protestant Loyola who presented the pictures by himself. And in the "Claver" case, the HRET said that it can only consider documents formally offered in evidence, a ruling made apparently pursuant to Rule 60 of the HRET internal rules which provides that:

"Evidence not formally presented shall be deemed waived and shall not be considered by the Tribunal in deciding the case",

and as likewise provided in Section 35, Rule 132 of the Rules of Court which reads:

"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

But why the change of heart and open defiance in this case when the very same objections raised by public respondent HRET in these cases squarely apply to the entirety of private respondent's massive documentary evidence?

If the Court, in striking down the majority decision of public respondent HRET, pays unwavering reverence to the rules of evidence as provided by the Rules of Court and jurisprudence, it is because they have been tested through years of experience as the most effective means of ferreting out the truth in any judicial controversy. And the Court will not allow even the slightest diminution of, much less a complete and brazen departure from these time-honored rules especially when the will of the electorate as expressed through the ballot, is at stake. Rules and uniformity of procedure are as essential to procure truth and exactness in elections as in anything else.[35] Thus, with the patent nullity of the entire proceedings before the public respondent HRET and its majority decision in the election protest filed by private respondent, petitioner's proclamation as the winning congressman of the then lone district of Makati is deemed not to have been challenged at all.

And finally, in a Resolution dated March 14, 1995 the Court required private respondent to explain why he should not be held for indirect contempt since his statements in his Addendum which he prepared without aid of counsel appear to seriously undermine the integrity of some members of the Court, to wit:

"xxx xxx xxx

"Despite Mr. Arroyo's unconscionable barrage on the six (6) congressional membership in the HRET, records will show that I have not questioned the integrity of any of the three (3) Justices, despite the fact that on various occasions, I have been convinced, in my heart, that at least two (2) of them were working for protestee Arroyo in HRET deliberations and the resultant delays therein." (p. 2)

xxx xxx xxx

"There may also be linkages between protestee Arroyo and Justice Florida Ruth Romero, about whom unkind rumors are rife that Her Honor is 'gumagapang' in the Supreme Court, for Arroyo." (p. 2)

xxx xxx xxx

"x x x we submit that like Caesar's wife this case at bar should be handled by magistrates who have not 'shared a bed' with protestee Arroyo, at one time or another." (p. 3)

xxx xxx xxx

"If Arroyo had been a stranger to Justice Bidin, could Arroyo have moved Justice Bidin, through a mere phone call, to violate HRET Rule 38? (p. 10)"

The Court notes that even a Justice who is not a member of the HRET has been made the object of calumny in extremely vulgar language by imputing linkages between her and petitioner, although a thinly veiled attempt was made by private respondent to absolve himself by ascribing such imputation to "unkind rumors".

In compliance thereto private respondent filed an explanation dated March 25, 1995. In his explanation, private respondent averred that he merely expressed a simple citizen's grievance in accordance to his observations and based on his firm convictions and beliefs and that his statements were not aimed at seriously undermining the integrity of some Members of the Court. Private respondent, in closing, offered his apology. We find the explanation unsatisfactory. Implicit in his statements is the notion that aforesaid Justices are insensible and partial in the adjudication of the case which could make their actuation suspect. The statements make it plain that said Justices were not free from appearance of impropriety as it emphasized that the Justices must be above suspicion at all times like Caesar's wife. Indeed, the above statements manifest the idea that the dispensation of justice can be compromised through unsubstantiated linkages. These statements not only undermine the integrity of some members of this Court but also degrade the administration of justice.

"To be proscribed then is the use of unnecessary language which jeopardizes high esteem in courts, creates or promotes distrust in judicial administration, or which could have the effect of "harboring and encouraging discontent which, in many cases, is the source of disorder, thus undermining the foundation upon which those who are aggrieved turn for protection and relief".[36]

Want of intention to undermine the integrity of the Court is no excuse for the language employed by private respondent for it is a well-known and established rule that derogatory words are to be taken in the ordinary meaning attached to them by impartial observers (Paragas v. Cruz, 14 SCRA 809, 812; In re Franco, 67 Phil. 313, 316; Rheem of the Philippines v. Ferrer, supra at p. 446). Finding private respondent's statements contemptuous and uncalled for he is hereby declared guilty of indirect contempt.

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED, and public respondent HRET's majority decision dated January 25, 1995 is SET ASIDE. Private respondent Augusto L. Syjuco, Jr., having been found guilty of indirect contempt, is hereby fined the amount of one thousand pesos (P1,000.00) to be paid within five (5) days from receipt of this decision.

SO ORDERED.

Narvasa, C.J., Romero, Quiason, and Kapunan, JJ., concur.

Feliciano, J., no part, took part in the assailed HRET decision.

Padilla, J., see dissenting opinion.

Regalado, J., no part as hereinafter indicated.

Davide, Jr. J., no part, took part as a dissenter in the assailed decision of the HRET.

Bellosillo, J., on official leave.

Melo, J., joins the dissent of J. Padilla.

Puno, J., see concurring opinion.

Vitug, J., see separate opinion.

Mendoza, J., joins in the majority opinion of J. Francisco and in the concurring opinion of J. Puno.

[1] Atty. Federico U. Cruz, then Clerk of the Tribunal; Benjamin B. Generican, then OIC, General Services Division; Alberto de Vera, then Private Secretary to the Clerk of the Tribunal; and Gregorio T. Castro, Sr., then Records Clerk, Records and Information Division, detailed to the Office of the Clerk.

[2] Dissenting Opinion, Bidin, J. pp. 14-15, rollo p. 472-473.

[3] Reply, p.4.

[4] Decision, p. 7, rollo p. 48.

[5] Bidin, J. Dissenting, p. 16, rollo p. 474.

[6] Decision p. 8, rollo p. 49; Bidin, J., Dissenting Opinion, p. 17, rollo p. 475.

[7]Memorandum for the Petitioner p. 7; Justice Bidin's Dissenting Opinion, p. 17.

[8] RULE 66. When Submitted; Contents. — Within ten (10) days from receipt of the Tribunal's ruling on the last offer of evidence by the Protestee, the parties shall each submit their respective Memoranda simultaneously, setting forth briefly:

- (1) The facts of the case;
- (2) A complete statement of all the arguments submitted in support of their respective views of the case;
- (3) Objections to the ballots adjudicated to or claimed by the other party in the revision of ballots; and
- (4) Refutation of the objections of the other party to the ballots adjudicated or claimed in the revision of ballots.

All evidence, as well as objections to evidence presented by the other party, shall be referred to or contained either in the memorandum or in an appendix thereto.

[9] Bidin, J., Dissenting Opinion p.18-20, rollo pp. 476-478.

[10] Majority Decision, p. 9.

[11] Dissenting Opinion, Bidin, J., pp. 21-22.

[12] HRET Majority Decision, pp, 89-90.

[13] Petitioner's memorandum, pp. 12-13.

[14] Rule 59, HRET Rules.

[15] Ticao vs. Nanawa, 116 Phil. 97, 102 citing Valenzuela vs. Carlos, 42 Phil. 428, Orenca vs. Araneta, 47 Phil. 830.

[16] Ticao vs. Nanawa, *supra*.

[17] Justice Bidin's Dissenting Opinion, p. 81.

[18] Bashier vs. COMELEC, 43 SCRA 238, 266.

[19] Section 3, Rule 130, Rules of Court, as amended.

- [20] Government of the P.I. vs. Martinez, 44 Phil. 817, 827.
- [21] p. 29, Majority Decision.
- [22] p. 4, Majority Decision.
- [23] p. 64, Justice Bidin's Dissenting Opinion.
- [24] Capalla v. Tabiana, 63 Phil. 95, 106; Estrada v. Navarro, 21 SCRA 1514, 1519-1520.
- [25] Davide, J., Dissenting Opinion p. 7, rollo p. 546 citing Nograles v. Dureza, 1 HRET Reports 138, 170 (1989); Espaldon v. Bandon, 2 HRET Reports 55 (1990).
- [26] Bidin, J. Dissenting Opinion p. 1, rollo p. 459; Davide J., Dissenting Opinion p. 1, rollo p. 540; Syjuco Addendum to Counsel's Comment p. 5, rollo p. 1154, averred that the actual figure is 26,688.
- [27] Dissenting Opinion, Bidin, J. p. 38, rollo p.
- [28] Id., pp. 64-65.
- [29] Id., p. 67.
- [30] Demetrio v. Lopez, 50 Phil. 45, 59.
- [31] Gardiner v. Romulo, 26 Phil. 521, 552, 560-561; Luna v. Rodriguez, 39 Phil. 208, 215.
- [32] Demetrio vs. Lopez, supra.
- [33] Anni v. Izquierdo, 57 SCRA 692, 704.
- [34] Luzon Surety v. De Marbella, 109 Phil. 734, 740.
- [35] Jones vs. The State, 1 Kan., 273, 279, and approved on Gilleland vs. Schyler, 9 Kan., 569.
- [36] Rheem of the Philippines v. Ferrer, 20 SCRA 441, 445.

CONCURRING OPINION

PUNO, J.:

The ponencia of Mr. Justice Francisco catalogues the many violations of the right to substantive and procedural due process of the petitioner, a minority member of the House of Representatives known for his caustic criticisms of the ruling party. The Court cannot refuse to uphold the constitutional right of petitioner without being dismissed by our people as a cobweb court - good alone in catching the puny but not the powerful.

I wish to limit my opinion to the more enduring issue involving the jurisdiction of this Court to review decisions of our electoral tribunals. Let me fast forward the history of the Court's certiorari jurisdiction vis-a-vis the power of Electoral Tribunals to act as "sole judge" of contests involving their members. Under the Philippine Bill of 1902, legislative power was vested in the Philippine Assembly and the Assembly as a body was the judge of the election, returns, and qualifications of its members.[1] Then came the Act of Congress of August 29, 1916, commonly known as the Jones Law. Its section 18 provides: "x x x the Senate and the House of Representatives, respectively, shall be the sole judges of the election, returns, and qualifications of their elective members." [2] Early in the case of Veloso vs. Boards of Canvassers of Leyte and Samar, [3] this Court, stressing the use of the word "sole" before "judges" held that the grant of power to the Senate and the House of Representatives is "full,

clear and complete." [4]

In 1935, a change was made on the body that will judge the election of members of Congress. Our Constitution of 1935 transferred "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." [5] In the 1936 benchmark case of *Angara vs. Electoral Commission, et al.* [6] this Court observed: "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." [7] Thus, section 11 of Article VI of our 1935 Constitution provides:

"Sec. 11. The 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. Each Electoral Tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate, or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman."

In *Angara*, the Court already ruled in language too lucid to misunderstand that while "x x x the Electoral Commission may not be interfered with in the exercise of its legitimate power, it does not follow that its acts, however illegal or unconstitutional, may not be challenged in appropriate cases over which courts may exercise jurisdiction." [8]

Angara was followed in 1938 by the case of *Morrero vs. Bocar, et al.*, [9] where this Court specified the ground upon which it may review decisions of the Electoral Commission. In said case, *Morrero* protested the election and proclamation of *Bocar* as assemblyman of the third district of Samar. Allegedly, *Bocar* lacked the age qualification. The Electoral Commission heard the protest and dismissed it. *Morrero* filed with this Court an original action of prohibition against *Bocar* and the Auditor General. Initially, the Court had to determine the legal ground upon which it could pass upon the decision of the Commission. It ruled as follows:

"x x x x x x x x x x"

"The real object of the present petition is to have this court review the decision of the Electoral Commission and issue an order prohibiting the respondent Auditor General from passing in audit or authorizing in any way the disbursement of funds of the National Assembly as emoluments for the respondent, *Juan L. Bocar*, and declaring that the latter is without right to continue holding the office of member of the National Assembly from the 3rd district of Samar."

"Section 4 of Article VI of the Constitution provides that 'x x x. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.' The language of this provision is clear. It vests in the Electoral Commission exclusive jurisdiction to pass upon the qualifications of a member of the National Assembly. The judgment rendered by the commission in the exercise of such an acknowledged power is beyond judicial interference, except, in any event, 'upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law.' (*Barry vs. United States ex rel., Cunningham*, 279 U. S. 597; 73 Law. ed., 867." (Italics supplied)

Using this standard of arbitrariness, the Court noted that *Morrero's* protest was duly heard by the Electoral Commission and then dismissed his petition for prohibition.

Our constitutional odyssey took a new turn in 1973, when we adopted the 1973 Constitution which installed a modified form of parliamentary government and a unicameral legislature, the *Batasang Pambansa*. Its Article XII

(c) section 2 (2) vested the COMELEC with the power to "be the sole judge of all contests relating to the election, returns, and qualifications of all members of the Batasang Pambansa x x x" In accord with this grant of power, COMELEC did act as sole judge of these contests and aggrieved parties challenged its decisions in this Court by invoking its certiorari jurisdiction, the traditional remedy against acts constitutive of grave abuse of discretion.[10]

Finally, in 1987, we adopted the present Constitution as an aftermath of the EDSA revolution. Among others, the 1987 Constitution restored the two houses of Congress and their Electoral Tribunals. Its section 17, Article VI provides:

"SEC. 17. The 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. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman."

In 1988, this Court had the occasion to reiterate the established rule that it has the jurisdiction to review decisions and orders of the House Electoral Tribunal on a showing of grave abuse of discretion. We held in *Lazatin vs. House Electoral Tribunal, et al*, viz: [11]

"x x x x x x x x x x"

"Private respondent in HRET Case No. 46 prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin petitioner herein from discharging his functions and duties as the Representative of the first district of Pampanga during the pendency of the protest. However, on May 5, 1988, the HRET resolved to defer action on said prayer after finding that the grounds therefor did not appear to be indubitable. Private respondent moved for reconsideration, but this was denied by the HRET on May 30, 1988. Thus, private respondent now seeks to have the Court annul and set aside these two resolutions and to issue a temporary restraining order and/or writ of preliminary injunction on the premise that the grounds therefor are too evident to be doubted.

"The relief prayed for in private respondent's counter/cross petitioner is not forthcoming.

"The matter of whether or not to issue a restraining order or a writ of preliminary injunction during the pendency of a protest lies within the sound discretion of the HRET as sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives. Necessarily, the determination of whether or not there are indubitable grounds to support the prayer for the aforementioned ancillary remedies also lies within the HRET's sound judgment. Thus, in GR. No. 80007, where the Court declined to take cognizance of the private respondent's electoral protest, this Court said:

"The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal."

"Moreover, private respondent's attempt to have the Court set aside the HRET's resolution to defer action on his prayer for provisional relief is undeniably premature, considering that the HRET had not yet taken any final action with regard to his prayer. Hence, there is actually nothing to review or annul and set aside. But then again, so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, any final action taken by the HRET on a matter

within its jurisdiction shall, as a rule, not be reviewed by this Court. As stated earlier, the power granted to the Electoral Tribunal is full, clear and complete and 'excludes the exercise of any authority on the part of this Court that would in any wise restrict or curtail it or even affect the same.' (Lachica v. Yap, supra, at 143.) As early as 1938 in *Morrero v. Bocar* (66 Phil. 429, 431 [1938]), the Court declared that '(t)he judgment rendered by the (Electoral) Commission in the exercise of such an acknowledged power is beyond judicial interference, except, in any event, upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law.' Under the 1987 Constitution, the scope of the Court's authority is made explicit. The power granted to the Court includes the duty 'to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government' (Art. VIII, Sec. 1). Thus, only where such grave abuse of discretion is clearly shown shall the Court interfere with the HRET's judgment. In the instant case, there is no occasion for the exercise of the Court's corrective power, since no grave abuse of discretion that would amount to lack of jurisdiction and would warrant the issuance of the writs prayed for has been clearly shown." (Italics supplied)

In 1991, we decided *Co vs. Electoral Tribunal of the House of Representatives*,^[12] where the court additionally invoked its expanded jurisdiction under section 1, Article VIII of the 1987 Constitution to justify the exercise of its jurisdiction over the House Electoral Tribunal. We held:

"When may the Court inquire into acts of the Electoral Tribunals under our constitutional grants of power?

"In the later case of *Robles v. HRET* (181 SCRA 780 [1990]), the Supreme Court stated that the judgments of the Tribunal are beyond judicial interference save only 'in the exercise of this Court's so-called extraordinary jurisdiction, x x x upon a determination that the Tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or paraphrasing *Morrero*, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated ERROR, manifestly constituting such GRAVE ABUSE OF DISCRETION that there has to be a remedy for such abuse.' (at pp. 785-786)

"In the leading case of *Morrero v. Bocar* (66 Phil. 429 [1938]), the Court ruled that the power of the Electoral Commission 'is beyond judicial interference except, in any event, upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process.' The Court does not venture into the perilous area of trying to correct perceived errors of independent branches of the Government. It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.

"The Supreme Court under the 1987 Constitution, has been given an expanded jurisdiction, so to speak, to review the decisions of the other branches and agencies of the government to determine whether or not they have acted within the bounds of the Constitution. (See Article VIII, Section 1, Constitution)

"Yet, in the exercise thereof, the Court is to merely check whether or not the governmental branch or agency has gone beyond the Constitutional limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing that the HRET has committed grave abuse of discretion amounting to lack of jurisdiction, there is no occasion for the Court to exercise its corrective power; it will not decide a matter which by its nature is for the HRET alone to decide. (See *Marcos v. Manglapus*, 177 SCRA 668 [1989]) It has no power to look into what it thinks is apparent error.

"As constitutional creations invested with necessary power, the Electoral Tribunals, although not powers in the tripartite scheme of the government, are, in the exercise of their functions independent organs - independent of Congress and the Supreme Court. The power granted to HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. (*Angara v. Electoral Commission*, 63 Phil. 139 [1936]).

"In passing upon petitions, the Court with its traditional and careful regard for the balance of powers, must permit this exclusive privilege of the Tribunals to remain where the Sovereign authority has placed it. (See *Veloso v. Boards of Canvassers of Leyte and Samar*, 39 Phil. 886 [1919])

"It has been argued that under Article VI, Section 17 of the present Constitution, the situation may exist as it exists today where there is an unhealthy one-sided political composition of the two Electoral Tribunals. There is nothing in the Constitution, however, that makes the HRET because of its composition any less independent from the Court or its constitutional functions any less exclusive. The degree of judicial intervention should not be made to depend on how many legislative members of the HRET belong to this party or that party. The test remains the same - manifest grave abuse of discretion.

"In the case at bar, the Court finds no improvident use of power, no denial of due process on the part of the HRET which will necessitate the exercise of the power of judicial review by the Supreme Court." (*Italics supplied*)

In sum, our constitutional history clearly demonstrates that it has been our consistent ruling that this Court has certiorari jurisdiction to review decisions and orders of Electoral Tribunals on a showing of grave abuse of discretion. We made this ruling although the Jones Law described the Senate and the House of Representatives as the "sole judges" of the election, returns, and qualifications of their elective members. It cannot be overstressed that the 1935 Constitution also provided that the Electoral Tribunals of the Senate and the House shall be the "sole judge" of all contests relating to the election, returns, and qualifications of their respective Members.^[13] Similarly, the 1973 Constitution^[14] transferred to the COMELEC^[15] the power to be the "sole judge" of all contests relating to the election, returns, and qualifications of all members of the Batasang Pambansa. We cannot lose sight of the significance of the fact that the certiorari jurisdiction of this Court has not been altered in our 1935, 1973 and 1987 Constitutions.

Prescinding from these premises, I cannot perceive how this Court's certiorari jurisdiction to review decisions and orders of the Electoral Tribunals of Congress can be doubted under the 1987 Constitution. In the first place and as aforesaid, our 1987 Constitution reiterated the certiorari jurisdiction of this Court on the basis of which it has consistently assumed jurisdiction over decisions of our Electoral Tribunals.^[16] In the second, place it even expanded^[17] the certiorari jurisdiction of this Court by defining judicial power as "x x x the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on part of any branch or instrumentality of the Government." In the third place, it similarly reiterated the power of the Electoral Tribunals of the Senate and of the House to act as the "sole judge" of all contests relating to the election, returns, and qualifications of their respective members.^[18]

The debates in the Constitutional Commission likewise demonstrate that it was far from the minds of the commissioners to change the rulings of this Court on its certiorari jurisdiction over the Electoral Tribunals. They show their unmistakable intent to retain our rulings in *Angara*^[19] and *Vera vs. Avelino*,^[20] thus:

"MR. MAAMBONG. Thank you.

My questions will be very basic so we can go as fast as we can. In the case of the electoral tribunal, either of the House or of the Senate, is it correct to say that these tribunals are constitutional creations? I will distinguish these with the case of the Tanodbayan and the Sandiganbayan which are created by mandate of the Constitution but they are not constitutional creations. Is that a good distinction?

MR. AZCUNA. That is an excellent statement.

MR. MAAMBONG. Could we, therefore, say that either the Senate Electoral Tribunal or the House Electoral

Tribunal is a constitutional body?

MR. AZCUNA. It is, Madam President.

MR. MAAMBONG. If it is a constitutional body, is it then subject to constitutional restrictions?

MR. AZCUNA. It would be subject to constitutional restrictions intended for that body.

MR. MAAMBONG. I see, But I want to find out if the ruling in the case of Vera vs. Avelino, 77 Phil. 192, will still be applicable to the present bodies we are creating since it ruled that the electoral tribunals are not separate departments of the government. Would that ruling still be valid?

MR. AZCUNA. Yes, they are not separate departments because the separate departments are the legislative, the executive and the judiciary; but they are constitutional bodies.

MR. MAAMBONG. Although they are not separate departments of government, I would like to know again if the ruling in Angara vs. Electoral Commission, 53 Phil. 139, would still be applicable to the present bodies we are deciding on, when the Supreme Court said that these electoral tribunals are independent from Congress, devoid of partisan influence or consideration and, therefore, Congress has no power to regulate proceedings of these electoral tribunals.

MR. AZCUNA. I think that is correct. They are independent although they are not a separate branch of government."^[21]

Any iota of doubt on the matter which may be induced by loose statements made by some Commissioners during the debates ought to disappear when the Constitutional Commission itself ultimately decided to reiterate in the Constitution the certiorari jurisdiction of this Court without excepting from it decisions and orders of the Electoral Tribunals. As we have held in *Gold Creek Mining Corp. vs. Rodriguez*,^[22] the "fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves."

Quite clearly then, the power of this Court to review decisions of Electoral Tribunals is based on its certiorari jurisdiction which is now even beyond diminution by Congress.^[23] Again with due respect, I cannot see how the new expanded jurisdiction of this Court in the 1987 Constitution can be used to take away the certiorari jurisdiction of the Court over of the Electoral Tribunals. A fair reading of the proceedings of the Constitutional Commission will reveal that the primary purpose of the commissioners in expanding the concept of judicial power of this Court by including the duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government" is to eliminate the defense of political questions which in the past deprived this Court of the jurisdiction to strike down abuses of power by government. I refer to the summary of the sponsorship speech of the new provision made by former Chief Justice Roberto Concepcion, thus:^[24]

"SPONSORSHIP SPEECH OF MR. CONCEPCION:

Mr. Concepcion prefaced his sponsorship with the observation that the Judiciary is the weakest of the three branches of government because, unlike the Executive and the Legislative, except for the power of reason, it has nothing to enforce its decisions.

Thereupon, explaining the salient features of the provisions of the Article on the Judiciary, Mr. Concepcion stated that a new provision is proposed to be incorporated in Section 1 defining "judicial power" to include the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or

excess of jurisdiction on the part of any branch or instrumentality of the government.

He stated that the provision is a product of past experiences when in cases brought against the government or its officials which had no legal defense at all the then Solicitor-General would set up the defense that said cases involved political questions over which the Supreme Court had no jurisdiction. He stated that such encroachment upon the rights of people continued during martial law."

Citing the case of *Javellana vs. the Secretary of Justice*, Mr. Concepcion recalled that when the 1971 Constitutional Convention submitted the 1973 Constitution to the President, who, in turn, was to call a plebiscite for the ratification of said Constitution, a petition was filed before the Supreme Court questioning the President's authority to appropriate funds either for a plebiscite or a referendum, the power of appropriation being a legislative prerogative. But while the Supreme Court was still hearing the case, he disclosed that the Minister of Justice brought him a copy of the proclamation declaring the adoption of the Constitution through a referendum. He noted that even the Members of the Supreme court were surprised to learn that a referendum was held, and felt that a referendum could not just substitute for a plebiscite. And when other cases were filed to declare the proclamation of the President null and void, said cases were dismissed on the ground that the issue was a political question.

He also cited the case of representation in the Senate Electoral Tribunal wherein the Opposition was entitled to three seats but got only one because there was no other nomination aside from Senator Tañada so the majority party filled up the remaining two seats. The Supreme Court upheld the majority on the ground that it was a political issue.

In another case, he also recalled the issue on whether to grant parity rights to America in exchange of \$1 million. The Members of the Minority then were suspended from their seats in Congress because of alleged fraud, threats and intimidation they committed in the election and with nobody to oppose them, the Majority got the required two-thirds vote. When asked whether the number of the Minority should be included in the determination of the two-thirds vote, the Supreme Court decided that it was a political question.

Mr. Concepcion opined that the obvious reason for the suspension was to enable the majority to get the votes necessary for the approval of the bill calling for a plebiscite.

He stated that when the Committee considered the provision that judicial power shall be vested in one Supreme Court and such inferior courts as may be prescribed by law, the question as to the scope of judicial power and political question was propounded.

On the functions of the courts, Mr. Concepcion stated that the Supreme Court and the rest of the lower courts are duty-bound to settle controversies involving conflicts of rights which are demandable and enforceable. He stated that there are also rights guaranteed by law, which are, however, not enforceable, such as when a woman reneges from her duties as a wife. He stated that in such case, it would be inimical and odious to the dignity of the woman and to the nobility of human beings to use any form of compulsion. This, he stated, is the reason why the second paragraph of Section 1 speaks of the duty of the courts to settle actual controversies involving rights which are legally demandable or enforceable. He stressed that under this established rule, the courts cannot exercise their powers on hypothetical questions by applying general principles without considering the background of the situation.

Mr. Concepcion pointed out that in a presidential system, the Supreme Court has a more important function because of the separation of powers into three branches: the legislative, the executive and the judiciary. He stressed that each branch is supreme within its own sphere being independent from one another and it is this supremacy which enables the courts to determine whether a law is constitutional or unconstitutional.

By virtue thereof, Mr. Concepcion maintained that the functions of courts of justice is to determine the limit and pronounce judgment on whether or not certain officers of the government have acted within their territory. He stated that if the Judiciary feels that the department or branch concerned has acted without jurisdiction or in excess of its jurisdiction amounting to an arbitrary abuse of power, the courts are empowered and duty-bound to render judgment on these matters. He stated that these constitute the background of paragraph 2 of Section 1 which means that the court cannot later on wash its hands by saying that it is a political questions.

x x x."

It seems to me off-line to urge that the new definition of judicial power which was precisely crafted to expand the jurisdiction of this Court should now be interpreted to deflate its certiorari jurisdiction over Electoral Tribunals.

I vote to grant the petition.

[1] Francisco, How To Try Election Cases, 1973 ed., p.606.

[2] "This provision had its origin in the Constitution of the United States which, in turn had its inception in the early state constitutions." Veloso v. Boards of Canvassers of Leyte and Samar, 39 Phil. 886 [1919].

[3] Op cit.

[4] Id., at p. 888.

[5] Angara v. Electoral Commission, et al., 63 Phil. 139, 1975.

[6] Op cit.

[7] Ibid., See also Aruego, The Framing of the Philippine Constitution, Vol. I, 1949 ed., pp. 257- 273.

[8] Op cit., p. 160.

[9] No. 45352, October 31, 1938, 66 Phil. 429.

[10] See Aratuc vs. COMELEC, 88 SCRA 251 [1979]; Guiao vs. COMELEC, 137 SCRA 356 [1985]; Padilla vs. COMELEC, 137 SCRA 424 [1985].

[11] No. L-84297, December 8, 1988, 168 SCRA 391, 403.

[12] G.R. Nos. 92191-22, July 30, 1991, 199 SCRA 693, 700-701 with J. Padilla dissenting; See also Lerias vs. HRET, et al. 202 SCRA 808; Congressman Manuel Sanchez vs. HRET, et al., G.R. Nos. 112325-26, December 7, 1993.

[13] Sec. 11, Article VI, op cit.

[14] Sec. 5, Article X of the 1973 Constitution.

[15] Article XII (c) (2) (2), 1973 Constitution.

[16] Section 5, Article VIII.

[17] Section 1, Article VIII.

[18] Section 17, Article VI.

[19] Op cit.

[20] 77 Phil. 192 [1946].

[21] Proceedings of the Constitutional Commission, July 22, 1986, pp. 111-112.

[22] 66 Phil. 259, 264 [1938] cited in Agpalo, Statutory Construction, 2nd ed., p. 309.

[23] Section 2 of Article VIII, 1987 Constitution. See also section 1, Article X of the 1973 Constitution as amended.

[24] Proceedings of the Constitutional Commission, July 10, 1986, pp. 212-213.

DISSENTING OPINION

PADILLA, J.:

In this petition for certiorari, the Court is once again urged to review, annul and set aside a decision of the House of Representatives Electoral Tribunal (HRET), more particularly, its decision in HRET Case No. 92-019 entitled "Augusto L. Syjuco, Jr. versus Joker P. Arroyo."

I reiterate my dissenting opinion filed in the cases of Bondoc vs. Pineda (201 SCRA 792) and Lerias vs. House of Representatives Electoral Tribunal (202 SCRA 808), to the effect that decisions of the Electoral Tribunals, whether of the House of Representatives or Senate, may not be reviewed by this Court by reason of section 17, Article VI of the Constitution which provides:

"Sec. 17. The 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. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman." (Underscoring supplied)

I am not unaware of section 1, Article VIII of the Constitution, invoked by petitioner Arroyo, which, in part, provides:

"x x x xx x xxx

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

At this early age of our Constitution, I submit that the two (2) aforequoted provisions in the fundamental law should be harmonized with the recognition that the clear intent of the Constitution is, as its language mandates, to make the Electoral Tribunals the sole judge of all contests relating to the election, returns, and qualifications of the members of the two (2) houses of Congress.

Section 1, Article VIII of the Constitution is often invoked to elevate controversies to this Court where even no specific law or rule of procedure provides for appeal to the Court. More often than not, the party who seeks a ruling from this Court simply alleges that "grave abuse of discretion amounting to lack or excess of jurisdiction" has been committed. In other words, litigants now tend to consider section 1, Article VIII as a "catch-all" provision through which any controversy or grievance, whether real or perceived, can be elevated to this Court for

adjudication or resolution.

While the intent of the framers of the Constitution was clearly to give this Court the power to review even acts of the two (2) other branches of government in instances where there is grave abuse of discretion committed, it could not, however, have been the intent to put the Supreme Court above the two (2) other great departments of government, which are supposed to be its co-equals. The extraordinary jurisdiction of this Court (under Section 1, Article VIII) should always be construed against allowing the Court's encroachment on the legitimate powers and discretion of the executive and the legislative departments, in keeping with the time-honored and sacred principle of separation of powers.

In the specific case of the Electoral Tribunals, the same Constitution that vests, in Section 1, Article VIII, extraordinary jurisdiction in the Supreme Court effectively limits, in my view, the Court's power to review decisions of the Electoral Tribunals when it (the Constitution) provides that the Electoral Tribunals shall be the sole judge of all contests relating to the election, returns and qualifications of the members of the House and the Senate. In my dissent in *Lerias*, where the majority of the Court chose to review and reverse a ruling of the HRET, I quoted the following excerpts from the records of the 1986 Constitutional Commission thus:

"MR. MAAMBONG.

Thank you. Madam President. One more question on this point. Could we make a general statement that the jurisdiction of this electoral tribunal, either of the Senate or of the House, is exclusive and unlimited and, therefore, there will be no appeal to the Supreme Court?

MR. AZCUNA.

It is the sole judge, I think that further implies that there is no appeal elsewhere.

MR. MAAMBONG.

In other words, its judgment is final and not appealable.

MR. AZCUNA.

Insofar as the qualifications, returns and elections are concerned." (Underscoring supplied)

The foregoing discussion, to my mind, clearly shows the unmistakable intent to make the Electoral Tribunals of the House of Representatives and the Senate the final arbiters insofar as qualifications, returns and election of the members of the Senate and House are concerned, in the same way that the Constitution makes the Supreme Court, sitting en banc, as the Presidential Electoral Tribunal (PET), the sole judge of all contests relating to the election, returns and qualifications of the President and Vice-President (Section 4, Article VII).

There appears to be a clear and palpable design in the Constitution to make the decisions of the Electoral Tribunals (HRET, SET and PET) final and unappealable. For one, it would be absurd to allow an appeal from a decision of the PET to the Supreme Court whose members comprise the PET itself.

Additionally, it should be noted that the allegations and contentions of petitioner Arroyo are such that they would require a review of factual findings of the HRET which is beyond the Court's authority. It is trite to repeat that this Court is not a trier of facts. It is also for this same reason that I would not draw a line between ordinary appeals (on questions of law) and appeals by certiorari (under Rule 65 of the Rules of Court) from decisions of the Electoral Tribunals to this Court. For, whether the appeal from the Electoral Tribunals to this Court, is on a question of law or grave abuse of discretion, the appeal would in both instances be a review, nothing less, of a decision of the Electoral Tribunals which, by Constitutional proscription and mandate, are the sole judge of issues

relating to the election, returns and qualifications of members of the House and Senate.

In fine, the Electoral Tribunals (HRET, SET and PET) are the sole judges of all contests relating to the election, returns and qualifications of candidates for the House of Representatives, Senate and President or Vice-President respectively, as mandated by the Constitution. Consequently, the decisions of said Tribunals are final and unappealable, except in those very rare instances where the Court is duty-bound to rule on issues involving truly gross violations of the Constitution. In my dissenting opinion in *Co v. Electoral Tribunal* (199 SCRA 692), I posited that:

"The present controversy, it will be observed, involves more than perceived irregularities in the conduct of a congressional election or a disputed appreciation of ballots, in which cases, it may be contended with great legal force and persuasion that the decision of the electoral tribunal should be final and conclusive, for it is by constitutional directive, made the sole judge of contests relating to such matters. The present controversy, however, involves no less than a determination of whether the qualifications for membership in the House of Representatives, as prescribed by the Constitution, have been met. Indeed, this court would be unforgivably remiss in the performance of its duties, as mandated by the Constitution, were it to allow a person, not a natural-born Filipino citizen, to continue to sit as a Member of the House of Representatives, solely because the House Electoral Tribunal has declared him to be so. In such a case, the tribunal would have acted with grave abuse of discretion amounting to lack or excess of jurisdiction as to require the exercise by this Court of its power of judicial review." (Underscoring supplied)

I am not unaware of the possibility that the six (6) other members of the HRET — all members of the House of Representatives — who voted to oust petitioner Arroyo from his congressional seat, may have done so based on purely partisan considerations, even to the extent of disregarding the true mandate of the electorate. The world of politics is indeed not incapable of such sinister plots. But this Court is not the repository of all remedies and reliefs. Petitioner should find his vindication the next time he faces the sovereign electorate (as he did on 8 May 1995).

It is thus unfortunate, in my view, for petitioner Arroyo that the mechanism or system for review of controversies regarding election of members of Congress, provided for in the Constitution, precludes, to my mind, a resort to this Court from decisions of the Electoral Tribunals, save in extremely exceptional circumstances, such as those involving Philippine citizenship (as in the *Co* case) and perhaps disloyalty to the Republic, in which cases, this Court may review the final decisions of Electoral Tribunals.

Petitioner's allegations of bias and oppression due to political considerations are to me outside the authority and duty of this Court to review and decide. This Court is and should forever be detached from the Machiavellian world of politics; a contrary stance would impair and destroy the independence and impartiality of this Court. Let the sovereign people in their wisdom review and decide on petitioner's grievances founded on his adversaries' alleged unbridled partisanship. (These words have already been fulfilled as of this writing).

For these reasons, I vote to DISMISS the petition.

SEPARATE OPINION

VITUG, J.:

Section 17, Article VI, of the Constitution provides that the "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 qualification of their respective Members." (Emphasis supplied)

The majority of my colleagues would this time set aside a decision of the Electoral Tribunal of the House of Representatives. I am afraid that such a pronouncement would be derogatory to the explicit mandate of the fundamental law. Like my colleague, Mr. Justice Teodoro Padilla, I also believe that the evident Constitutional intendment is to make the tribunals the final arbiters of all contests relating to the election, returns and qualification of the respective members of Congress.

I certainly cannot question much of what my other esteemed colleague, Mr. Justice Ricardo J. Francisco, has said in his ponencia, nor can I dispute the description in Section I, Article VIII, of the Constitution of judicial power (to include the determination of "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"), but I would not go so far as to conclude that the Supreme Court can review and pass upon decisions duly promulgated by the Electoral Tribunals on a matter which, by itself no less than a constitutional fiat, is well within their exclusive domain. I must assume that it is only when the assailed action lies beyond their constitutionally vested authority (or, to use the language of the constitution, amounts to lack or excess of jurisdiction) that the Court would not be powerless to step in and grant corresponding relief.

Accordingly, I must in this case respect the decision, dated 25 January 1995, of the House of Representatives Electoral Tribunal but I concur with my colleagues who find private respondent guilty of contempt and imposing thusly on him a fine.

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