

MARCELINO C. LIBANAN, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND JOSE T. RAMIREZ, RESPONDENTS.

G.R. No. 129783. December 22, 1997

Ponente: VITUG, J.

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VITUG, J.:

The 28th May 1997 decision of the House of Representatives Electoral Tribunal (“HRET”), which affirmed the proclamation of herein private respondent Jose Tan Ramirez declaring him to be the duly elected Representative of Eastern Samar for having obtained the plurality of votes over petitioner Marcelino Libanan, and the 20th June 1997 resolution of the HRET, which denied with finality petitioner's motion for reconsideration, are sought to be annulled in this special civil action for certiorari.

Petitioner Marcelino Libanan and private respondent Jose Ramirez were among the candidates for the lone congressional seat of Eastern Samar in the May 1995 elections. After the canvass of the returns was made on 13 May 1995, the Provincial Board of Canvassers of Eastern Samar proclaimed respondent Ramirez to have been duly elected Representative of the District with a total of forty-one thousand five hundred twenty-three (41,523) votes, compared to petitioner's forty thousand eight hundred sixty-nine (40,869) votes, or a margin of six hundred fifty-four (654) votes over those of petitioner.

Petitioner Libanan seasonably filed an election protest before the HRET claiming, among other things, that the 08th May 1995 elections in Eastern Samar were marred by massive electoral irregularities perpetrated or instigated by respondent Ramirez, as well as his leaders and followers, in the twenty-three (23) municipalities of the lone district of Eastern Samar with the aid, in various instances, of peace officers supposedly charged with maintaining an orderly and honest election. Petitioner contested seventy-nine (79) precincts in five (5) municipalities. He also maintained that the election returns and/or ballots in certain precincts were tampered with, substituted, or systematically marked in favor of respondent Ramirez. Libanan prayed that, after due proceedings, the HRET should issue an order to annul the election and proclamation of Ramirez and to thereafter so proclaim petitioner as the duly elected Representative of the Lone District of Eastern Samar.

In his answer and counter-protest, with a petition for preliminary hearing on the special and affirmative defenses, respondent Ramirez denied the charges. He counter-protested the results of the elections in certain precincts where, he claimed, Libanan engaged in massive vote buying, lansadera, terrorism and tearing of the list of voters to disenfranchise voters therein listed. Accordingly, he prayed, inter alia, for the dismissal of the protest and the confirmation of his election as the duly elected representative of the Lone District of Eastern Samar.

After some peripheral issues were settled by the HRET, the revision of ballots in the protested precincts commenced on 20 February 1996. The HRET noted that Libanan contested a total of seventy-nine (79) precincts. It was noted during the revision, however, that six (6) of the contested precincts, namely, Precincts Nos. 14, 15, 16, 18, 19 and 20 of Arteche, were found to have been merged during the 08 May 1995 elections into three (3)

precincts, i.e., Precincts Nos. 14 and 19, Precincts Nos. 15 and 16 and Precincts Nos. 18 and 20. Thus, only seventy-six (76) ballot boxes were actually opened for revision, one of which, Precinct No. 4-1 of Guiuan, did not contain any ballot.

On 22 February 1996, while the revision of the counter-protested precincts was being held, Ramirez filed an "Urgent Motion to Withdraw/Abandon Counter-Protest in Specific Municipalities/Precincts" praying that he be granted leave to withdraw and abandon partially his counter-protest in certain precincts. [1] Libanan filed an opposition thereto but the motion was eventually granted by the Chairman of the HRET and subsequently confirmed in a resolution by the tribunal.

On 21 March 1996, the HRET designated a Hearing Commissioner and a Deputy Hearing Commissioner for the reception of evidence. Following that reception, the respective memoranda of Libanan and Ramirez were filed.

The evidence and the issues submitted by the parties for consideration by the HRET related mainly to the proper appreciation of the ballots objected to, or claimed by, the parties during the revision. No evidence was presented in support of the other allegations of the protest (like the alleged tampering of election returns) and of the counter-protest (such as the alleged tearing of some of the pages of the computerized list of voters to disenfranchise legitimate voters and the use of goons to terrorize and compel voters to vote for Libanan), nor were these issues discussed in the memoranda of the parties. The HRET thus concentrated, such as can be rightly expected, its attention to the basic appreciation of ballots. [2]

The particular matter focused in this petition deals with what petitioner claims to be spurious ballots; on this score, the HRET has explained:

"No spurious ballot was found in this case. For a ballot to be rejected for being spurious, the ballot must not have any of the following authenticating marks: a) the COMELEC watermark; b) the signatures or initial of the BEI Chairman at the back of the ballot; and c) red and blue fibers. In the present case, all the ballots examined by the Tribunal had COMELEC watermarks.

"The Tribunal did not adopt protestant's submission in his Memorandum that the absence of thumbmark or BEI Chairman's signature at the back of the ballot rendered the ballot spurious. The applicable law on this issue is Sec. 24, R.A. 7166. It reads:

"In every case before delivering an official ballot to the voter, the Chairman of the Board of Election Inspectors shall, in the presence of the voter, affix his signature at the back thereof. Failure to so authenticate shall be noted in the minutes of the board of election inspectors and shall constitute an election offense punishable under Section 263 and 264 of the Omnibus Election Code."

"As may be gleaned above, unlike the provision of Section 210 of the Omnibus Election Code where the BEI Chairman was required to affix his right thumbmark at the back of the ballot immediately after it was counted, the present law no longer requires the same.

"Anent the BEI Chairman's signature, while Section 24 of R.A. 7166 provides that failure to authenticate the ballot shall constitute an election offense, there is nothing in the said law which provides that ballots not so authenticated shall be considered invalid. In fact, the members of the Committee on Suffrage and Electoral Reforms agreed during their deliberation on the subject that the absence of the BEI Chairman's signature at the back of the ballot will not per se make a ballot spurious.

"Moreover, while Rep. Palacol, then Chairman of the Committee on Suffrage and Electoral Reforms, mentioned during his sponsorship speech that one of the salient features of the bill filed was 'to require the chairman of the Board of Election Inspectors to authenticate a ballot given to a voter by affixing his signature on (sic) the back thereof and to consider any ballot as spurious,' R.A. 7166, as approved, does not contain any

provision to that effect. Clearly, therefore, the Congress as a whole (House of Representatives and Senate) failed to adopt the proposal of Rep. Palacol that ballots without the BEI Chairman's signature at the back will be declared spurious. What is clearly provided under the said law is the sanction imposable upon an erring Chairman of the BEI, and not the disenfranchisement of the voter." [3]

In its assailed decision, the HRET ruled in favor of respondent Ramirez; it concluded:

"WHEREFORE, in light of the foregoing, the Tribunal Resolved to DISMISS the instant election protest, including the parties' mutual claims for damages and attorney's fee; AFFIRM the proclamation of Protestee Jose Tan Ramirez; and DECLARE him to be the duly elected Representative of the Lone District of Eastern Samar, for having obtained a plurality of 143 votes over second placer Protestant Marcelino Libanan." [4]

Petitioner Libanan moved for a reconsideration of the decision of the HRET arguing, among other grounds, [5] that the absence of the BEI Chairman's signature at the back of the ballots could not but indicate that the ballots were not those issued to the voters during the elections. He averred that the law would require the Chairman of the BEI to authenticate or sign the ballot before issuing it to the voter. Acting on petitioner's motion for reconsideration, the HRET credited petitioner Libanan with thirty (30) votes because of the error in the computation of the base figure and rejected twelve (12) ballots for respondent Ramirez. Respondent Ramirez, nevertheless, remained to be the winner with a lead of ninety-nine (99) votes in his favor. As regards the absence of BEI Chairman's signature at the back of the ballots, the HRET stressed:

"Fraud is not presumed. It must be sufficiently established. Moreover, Section 211 of the Omnibus Election Code provides in part that 'in the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection.' In the instant case, there is no evidence to support protestant's allegation that the ballots he enumerated in his Motion for Reconsideration are substitute ballots. The absence of the BEI Chairman's signature at the back of the ballot cannot be an indication of ballot switching or substitution. At best, such absence of BEI Chairman's signature is a prima facie evidence that the BEI Chairmen concerned were derelict in their duty of authenticating the ballots. Such omission, as stated in the Decision, is not fatal to the validity of the ballots." [6]

Thus, the present recourse.

A perusal of the grounds raised by petitioner to annul the HRET decision and resolution boils down to the issue of whether or not the HRET committed grave abuse of discretion in ruling that the absence of the signature of the Chairman of the BEI in the ballots did not render the ballots spurious.

Petitioner Libanan contends that the three hundred eleven (311) ballots (265 of which have been for private respondent Ramirez) without the signature of the Chairman of the BEI, but which had the COMELEC water-marks and/or colored fibers, should be invalidated. It is the position of petitioner that the purpose of the law in requiring the BEI Chairman to affix his signature at the back of the ballot when he issues it to the voter is "to authenticate" the ballot and, absent that signature, the ballot must be considered spurious.

Prefatorily, the Court touches base on its jurisdiction to review and pass upon decisions or resolutions of the electoral tribunals.

The Constitution mandates that the House of Representatives Electoral Tribunal and the Senate Electoral Tribunal shall each, respectively, be the sole judge of all contests relating to the election, returns and qualifications of their respective members. [7] In *Laza tin vs. HRET*, [8] the Court has observed that -

"The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as 'intended to be as complete and unimpaired as if it had remained originally in the legislature.' Earlier this grant of power to the

legislature was characterized by Justice Malcolm as "full, clear and complete.' Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the Legislature and the Electoral Commission. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution." [9]

The Court has stressed that ". . . 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 the power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same."

The Court did recognize, of course, its power of judicial review in exceptional cases. In *Robles vs. HRET*, [10] the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only "in the exercise of this Court's so-called extraordinary jurisdiction, . . . 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."

In the old, but still relevant, case of *Morrero vs. Bocar*, [11] the Court has 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, to paraphrase it in *Co vs. HRET*, [12] venture into the perilous area of correcting 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 itself calls for remedial action.

In the instant controversy, it would appear that the HRET "reviewed and passed upon the validity of all the ballots in the protested and counter-protested precincts, including those not contested and claimed by the parties." [13] The Tribunal, added, that "(t)his course of action was adopted not only to give effect to the intent of each and every voter, but also to rectify any mistake in appreciation, deliberate or otherwise, committed at the precinct level and overlooked during the revision stage of this case." [14] In holding that the absence of the signature of the Chairman of the BEI at the back of the ballot does not invalidate it, the HRET has ratiocinated in this wise:

"No spurious ballot was found in this case. For a ballot to be rejected for being spurious, the ballot must not have any of the following authenticating marks: a) the COMELEC watermark; b) the signatures or initial of the BEI Chairman at the back of the ballot; and c) red and blue fibers. In the present case, all the ballots examined by the Tribunal had COMELEC watermarks.

"xxx xxx xxx

"Anent the BEI Chairman's signature, while Section 24 of R.A. 7166 provides that failure to authenticate the ballot shall constitute an election offense, there is nothing in the said law which provides that ballots not so authenticated shall be considered invalid. In fact, the members of the Committee on Suffrage and Electoral Reforms agreed during their deliberation on the subject that the absence of the BEI Chairman's signature at the back of the ballot will not per se make a ballot spurious.

"Moreover, while Rep. Palacol, then Chairman of the Committee on Suffrage and Electoral Reforms, mentioned during his sponsorship speech that one of the salient features of the bill filed was 'to require the chairman of the Board of Election Inspectors to authenticate a ballot given to a voter by affixing his signature

on (sic) the back thereof and to consider any ballot as spurious,' R.A. 7166, as approved, does not contain any provision to that effect. Clearly, therefore, the Congress as a whole (House of Representatives and Senate) failed to adopt the proposal of Rep. Palacol that ballots without the BEI Chairman's signature at the back will be declared spurious. What is clearly provided under the said law is the sanction imposable upon an erring Chairman of the BEI, and not the disenfranchisement of the voter." [15]

The pertinent provision of the law, Section 24 of R.A. No. 7166, provides:

"SEC. 24. Signature of Chairman at the back of Every Ballot. - In every case before delivering an official ballot to the voter, the Chairman of the Board of Election Inspectors shall, in the presence of the voter, affix his signature at the back thereof. Failure to authenticate shall be noted in the minutes of the Board of Election Inspectors and shall constitute an election offense punishable under Section 263 and 264 of the Omnibus Election Code."

There is really nothing in the above law to the effect that a ballot which is not so authenticated shall thereby be deemed spurious. The law merely renders the BEI Chairman accountable for such failure. The courts may not, in the guise of interpretation, enlarge the scope of a statute and embrace situations neither provided nor intended by the lawmakers. Where the words and phrases of a statute are not obscure and ambiguous, the meaning and intention of the legislature should be determined from the language employed, and where there is no ambiguity in the words, there should be no room for construction. [16]

As so aptly observed by the Solicitor-General, House Bill ("HB") No. 34811 (which later become R.A. No. 7166), approved by the House of Representatives on third reading, was a consolidation of different bills. Two of the bills consolidated and considered in drafting H.B. No. 34811 were H.B. 34639 and H.B. No. 34660. Section 22 of the two latter bills provided that:

"In every case before delivering an official ballot to the voter, the chairman of the Board of Election Inspectors shall, in the presence of the voter, affix his signature at the back thereof. Any ballot which is not so authenticated shall be deemed spurious. Failure to so authenticate shall constitute an election offense." [17]

During the deliberation of the Committee on Suffrage and Electoral Reforms, held on 08 August 1991, the members agreed to delete the phrase "Any ballot which is not so authenticated shall be deemed spurious." Pertinent portions of the transcript of stenographic notes ("TSN") taken during the Meeting of the Committee on Suffrage and Electoral Reforms read:

"THE CHAIRMAN. Yes, Congressman Mercado.

"HON. MERCADO. I think, Section 22, we go to the intent of the provision. I think the intent here is to sanction the inspector so I would propose a compromise. The ballot should not be deemed as spurious. However, it would rather be failure of the inspector to, or the chairman to affix his signature would rather be a circumstance which would aggravate the crime, which would aggravate the election offense, on the part of the inspector, but not to disenfranchise the voter. Because the intention here is to punish the election inspector for not affixing the signature. Why should we punish the voter? So I think the compromise here . . .

"THE CHAIRMAN. A serious election offense.

"HON. MERCADO. Yes, it should be a serious election offense on the part of the chairman for not affixing the signature, but not to make the ballot spurious.

"HON. RONO. Mr. Chairman.

"THE CHAIRMAN. Yes, Congressman Rono.

"HON. RONO. One thing that we have to guard against is when we deal with the ballot and the right to

suffrage, we should not really make law that would prevent the flexibility of the Commission on Elections, and the Supreme Court from getting other extraneous efforts to confirm authenticity or the spuriousness of the ballot, by making a provision that by that single mistake or inadvertence of the chairman we make the ballot automatically spurious is dangerous. It should be ... what I'm saying is that the Commission or the proper bodies by which this matter will be taken up may consider it as one of the evidences of spuriousness but not per se or ipso facto it becomes; it should look for other extraneous evidence. So what I am suggesting is let us give them this kind of flexibility before we determine or before we say that this ballot is spurious, we give the COMELEC some flexibility in the determination of other extraneous evidence.

"HON. GARCIA. May I offer a suggestion?

"THE CHAIRMAN. Yes, Congressman Garcia.

"HON. GARCIA. That the fact that a ballot does not contain the signature, I think, initial will not be sufficient, the signature of the Chairman should be noted in the minutes. Noted in the minutes. So that in case of protest, there is basis.

"HON. RONO. Oo, may basis na. Iyon lang. I think that would solve our problem.

"THE CHAIRMAN. Yes, Mr. Chairman.

"MR. MONSOD. Your honor, we're willing to accept that amendment. Take out that sentence spurious, with the introduction of the proposed measure x x x." [18]

The TSN of the proceedings of the Bicameral conference Committee on Election Law, held on 29 October 1991, in turn, would show these exchanges:

"CHAIRMAN GONZALEZ: Are there anything more ?

"HON. ROCO. There is a section in the Senate version about the ballot being signed at the back.

"CHAIRMAN GONZALEZ. Counter side.

"HON. ROCO. If it is not signed then it is being spurious which is a very dangerous, I (think) (it) is a very dangerous provision and so...

"MR. MONSOD. We agree with the House version that anyway when chairman of BEI doesn't sign subject to an election offense. But it should not be a basis for disenfranchisement of the voter. So, we believe we set this in the hearings in the House that we should strike out that sentence that says that this ballot is automatically spurious." [19]

Thus, the final draft, which was later to become R.A. No. 7166, no longer included the provision "Any ballot not so authenticated shall be deemed spurious." The intention of the legislature even then was quite evident.

The reliance on *Bautista vs. Castro* [20] by petitioner, is misdirected. It must be stressed that B.P. Blg. 222, [21] otherwise known as the "Barangay Election Act of 1982," approved on 25 March 1982, itself categorically expresses that it shall only be "applicable to the election of barangay officials." Section 14 of B.P. Blg. 222 and its implementing rule in Section 36 of COMELEC Resolution No. 1539 have both provided:

Section 14 of B.P. 222:

"Sec. 14. Official barangay ballots.- The official barangay ballots shall be provided by the city or municipality concerned of a size and color to be prescribed by the Commission on Elections.

"Such official ballot shall, before it is handed to the voter at the voting center, be authenticated in the presence of the voter, the other Tellers, and the watchers present by the Chairman of the Board of Election Tellers who shall

affix his signature at the back thereof."

Section 36 of COMELEC Resolution No. 1539:

"Sec. 36. Procedure in the casting of votes. - x x x

"b. Delivery of ballot. - Before delivering the ballot to the voter, the chairman shall, in the presence of the voter, the other members of the board and the watchers present, affix his signature at the back thereof and write the serial number of the ballot in the space provided in the ballot, beginning with No. '1' for the first ballot issued, and so on consecutively for the succeeding ballots, which serial number shall be entered in the corresponding space of the voting record. He shall then fold the ballot once, and without removing the detachable coupon, deliver it to the voter, together with a ball pen.

"x x x x x x x x.

"e. Returning the ballot. (1) In the presence of all the members of the Board, the voter shall affix his right hand thumbmark on the corresponding space in the detachable coupon, and shall give the folded ballot to the chairman. (2) The chairman shall without unfolding the ballot or looking at its contents, and in the presence of the voter and all the members of the Board, verify if it bears his signature and the same serial number recorded in the voting record. (3) If the ballot is found to be authentic, the voter shall then be required to imprint his right hand thumbmark on the proper space in the voting record. (4) The chairman shall then detach the coupon and shall deposit the folded ballot in the compartment for valid ballot and the coupon in the compartment for spoiled ballots. (5) The voter shall then leave the voting center.

"f. When ballot may be considered spoiled. Any ballot returned to the chairman with its coupon already detached, or which does not bear the signature of the chairman, or any ballot with a serial number that does not tally with the serial number of the ballot delivered to the voter as recorded in the voting record, shall be considered as spoiled and shall be marked and signed by the members of the board and shall not be counted." [22]

The difference in the rules may not be too difficult to discern. The stringent requirements in B.P. Blg. 222 should be justifiable considering that the official barangay ballots would be provided by the city or municipality concerned with the COMELEC merely prescribing their size and color. Thus, the official ballots in B.P. Blg. 222, being supplied and furnished by the local government themselves, the possibility of the ballots being easily counterfeited might not have been discounted. The absence of authenticating marks prescribed by law, i.e., the signature of the chairman of the Board of Election Tellers at the back of the ballot, could have well been really thought of to be fatal to the validity of the ballot.

Section 24 of R.A. No. 7166, upon the other hand, contains no similar stringent provisions such as that seen in Section 36(f) of COMELEC Resolution No. 1539. The pertinent part in Resolution No. 2676 on the requirement of the signature of the chairman is found in Section 73 thereof which merely provides:

"Sec. 73. Signature of chairman at the back of every ballot. -- In every case, the chairman of the board shall, in the presence of the voter, authenticate every ballot by affixing his signature at the back thereof before delivering it to the voter. FAILURE TO SO AUTHENTICATE SHALL BE NOTED IN THE MINUTES OF THE BOARD AND SHALL CONSTITUTE AN ELECTION OFFENSE."

Again, in Resolution No. 2738, [23] promulgated by the COMELEC on 03 January 1995, [24] which implemented, among other election laws, R.A. No. 7166 (that governed the election for Members of the House of Representatives held on 08 May 1995), the relevant provision is in Section 13 which itself has only stated:

"Sec. 13. Authentication of the ballot.-- Before delivering a ballot to the voter, the chairman of the board shall,

in the presence of the voter, affix his signature at the back thereof."

It would appear evident that the ruling in *Bautista vs. Castro* was prompted because of the express declaration in Section 36(f) of COMELEC Resolution No. 1539, implementing Section 14 of B.P. Blg. 222, that: "Any ballot returned to the chairman . . . which does not bear the signature of the chairman . . . shall be considered as spoiled . . . and shall not be counted." This Court thus stated in *Bautista*:

"The law (Sec 14 of B.P. Blg. 222) and the rules implementing it (Sec. 36 of Comelec Res. No. 1539) leave no room for interpretation. The absence of the signature of the Chairman of the Board of Election Tellers in the ballot given to a voter as required by law and the rules as proof of the authenticity of said ballot is fatal. This requirement is mandatory for the validity of the said ballot."

It should be noteworthy that in an unsigned 3rd April 1990 resolution, in "*Jolly Fernandez vs. COMELEC*," [25] the Court en banc had the opportunity to debunk the argument that all ballots not signed at the back thereof by the Chairman and the Poll Clerk were to be considered spurious for non-compliance with Section 15 of R.A. No. 6646, [26] i.e., "The Electoral Reforms Law of 1987," reading as follows:

"Sec. 15. - Signature of Chairman and Poll Clerk at the Back of Every Ballot. - In addition to the preliminary acts before the voting as enumerated in Section 191 of Batas Pambansa Blg. 881, the chairman and the poll clerk of the board of election inspectors shall affix their signatures at the back of each and every official ballot to be used during the voting. A certification to that effect must be entered in the minutes of the voting."

The Court declared:

"The cardinal objective in the appreciation of the ballots is to discover and give effect to the intention of the voter. That intention would be nullified by the strict interpretation of the said section as suggested by the petitioner for it would result in the invalidation of the ballot even if duly accomplished by the voter, and simply because of an omission not imputable to him but to the election officials. The citizen cannot be deprived of his constitutional right of suffrage on the specious ground that other persons were negligent in performing their own duty, which in the case at bar was purely ministerial and technical, by no means mandatory but a mere antecedent measure intended to authenticate the ballot. A contrary ruling would place a premium on official ineptness and make it possible for a small group of functionaries, by their negligence - or, worse, their deliberate inaction - to frustrate the will of the electorate." [27]

Petitioner Libanan suggests that the Court might apply the "ruling" of respondent HRET in the case of *Yap vs. Calalay* (HRET Case No. 95-026). He states that "it is the HRET itself, ironically, that deals the coup de grace to its ruling in HRET Case No. 95-020." The "ruling" cited by petitioner is actually a "Confidential Memorandum," [28] dated 28 April 1997, from a certain Atty. Emmanuel Mapili addressed to "PA Committees in HRET Case No. 95-026 (*Yap vs. Calalay*)" which has for its subject "(n)ew rulings to be followed in the appreciation of ballots in HRET Case No. 95-026 (*Yap vs. Calalay*) and other concerns." Petitioner Libanan quotes the pertinent portion of the said Memorandum, viz:

"WHEREFORE, the Tribunal Resolved that the following rules and guidelines on the appreciation of ballots shall be given effect in the resolution of this case and shall be applied prospectively to other pending cases:

"1. The absence of the signature of the BEI Chairman at the back of the ballot shall nullify the same and all the votes therein shall not be counted in favor of any candidate." [29]

Reliance by petitioner on this alleged "ruling," obviously deserves scant consideration. What should, instead, be given weight is the consistent rule laid down by the HRET that a ballot is considered valid and genuine for as long as it bears any one of these authenticating marks, to wit: (a) the COMELEC watermark, or (b) the signature or initials, or thumbprint of the Chairman of the BEI; and, (c) in those cases where the COMELEC watermarks are

blurred or not readily apparent to the naked eye, the presence of red and blue fibers in the ballots. [30] It is only when none of these marks appears extant that the ballot can be considered spurious and subject to rejection.

It is quite clear, in the opinion of the Court, that no grave abuse of discretion has been committed by respondent House of Representatives Electoral Tribunal in its issuance of the assailed decision and resolution.

One other important point. Regarding the membership of certain Justices of this Court in the HRET and their participation in the resolution of the instant petition, the Court sees no conflict at all, and it, therefore, rejects the offer of inhibition by each of the concerned justices. As early as *Vera vs. Avelino*, [31] this Court, confronted with a like situation, has said unequivocally:

"x x x Mulling over this, we experience no qualmish feelings about the coincidence. Their designation to the electoral tribunals deducted not a whit from their functions as members of this Supreme Court, and did not disqualify them in this litigation. Nor will their deliverances hereat on a given question operate to prevent them from voting in the electoral forum on identical questions; because the Constitution, establishing no incompatibility between the two roles, naturally did not contemplate, nor want, justices opining one way here, and thereafter holding otherwise, *pari materia*, in the electoral tribunal, or vice-versa." [32]

Such has thus been, and so it is to be in this petition, as well as in the cases that may yet come before the Court.

WHEREFORE, the instant petition is DISMISSED.

IT IS SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Davide, Jr., Romero, Melo, Puno, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, JJ., concur.

Bellosillo, J., Without prejudice and filing separate to qualify.

[1] "1) All the forty-five (45) precincts of Dolores; 2) All the thirty (30) precincts of Taft; 3) All the protested precincts from the municipalities of Maydolong, Llorente, Salcedo and Giporlos (Rollo, p. 38).

[2] "Re: Multiple Ballots Written By One Person (Ibid., p. 51)

Re: Ballots Accomplished by Two (2) Persons (Ibid., p. 52)

Re: Marked Ballots (Ibid., 57)

Re: Spurious Ballots (Ibid., 60)

Re: Ballots Objected to on Miscellaneous Grounds (Ibid., p. 63)

Re: Ballots Objected to on Combination of Grounds x x x" (Ibid.)

[3] Ibid., pp. 60-62.

[4] Ibid., p. 74.

[5] "a) Error in computing "base figure" for protestant (Ibid., p. 235); b) Recourse to the election returns is not warranted when tampering of the ballots was designed to preclude challenge of votes reflected in the election returns (Ibid., 236); c) absence of BEI Chairman's signature on ballots indicates that they were substituted of stuffed into the ballot boxes after the election (Ibid., 238); and, d) ballots for the protestee which are clearly multiple ballots written by one hand but which were not rejected as such." (Ibid., p. 241).

[6] Ibid., p. 267.

[7] Section 17, Article VI, 1987 Constitution

[8] 168 SCRA 391.

[9] At p. 401.

[10] 181 SCRA 780.

[11] 66 Phil. 429.

[12] 199 SCRA 692.

[13] Rollo, p. 42.

[14] Ibid.

[15] Ibid., pp. 60-62.

[16] Allarde vs. Commission on Audit, 218 SCRA 227.

[17] Comment of the Solicitor General, p. 4.

[18] Rollo, p. 61.

[19] Comment of the Solicitor-General, pp. 5-6.

[20] 206 SCRA 305.

[21] Entitled, "An Act Providing For The Election of Barangay Officials, And For Other Purposes."

[22] Bautista vs. Castro, 206 SCRA 305, 313-314.

[23] Entitled, "General Instructions For The Board Of Election Inspectors On The Casting And Counting Of Votes In The May 8, 1995 Elections."

[24] Published on 07 January 1995 in Manila Standard.

[25] G.R. No. 91351, 03 April 1990.

[26] Entitled, "An Act Introducing Additional Reforms In The Electoral System And For Other Purposes."

[27] Jolly Fernandez vs. COMELEC, supra.

[28] Annex "F," Petition, Rollo, pp. 303-304.

[29] Rollo, p. 303.

[30] Neri vs. Romualdo, HRET Case No. 92-001, 14 April 1994, 4 HRET Reports 42; Simando vs. Fuentebella, HRET Case No. 92-011, 14 April 1994, 4 HRET Reports 429; San Buenaventura vs. Baguio, HRT Case No. 92-016 14 April 1994, 4 HRET Reports 603. Tanchanco vs. Oreta, HRET Case No. 92-017, 28 April 1994, 5 HRET Reports 25-26; Alterado vs. Garcia, HRET Case No. 92-008, 12 May 1994, 5 HRET Reports 359; Hisuler vs. Lanto, HRET Case No. 92-014, 22 July 1994, 6 HRET Reports 36; .

[31] 77 Phil. 192, 213.

[32] At pp. 213-214.

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