

## MA. AMELITA C. VILLAROSA, PETITIONER, VS. THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND RICARDO V. QUINTOS, RESPONDENTS.

*G.R. No. 143351. September 14, 2000*

Ponente: DAVIDE JR., C.J.

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### DAVIDE JR., C.J.:

These cases, which were ordered consolidated on 15 August 2000, have their genesis in HRET Case No. 98-030,[1] an election protest case filed by private respondent Ricardo V. Quintos (hereafter QUINTOS) against petitioner Amelita C. Villarosa (hereafter VILLAROSA) before the House of Representatives Electoral Tribunal (hereafter HRET).

VILLAROSA and QUINTOS were the only candidates for the office of Representative of the Lone Legislative District of Occidental Mindoro in the 11 May 1998 synchronized national and local elections. On 27 May 1998 the Provincial Board of Canvassers proclaimed VILLAROSA as the winning candidate with a margin of 3,032 votes.

On 4 June 1998 QUINTOS filed an election protest against VILLAROSA[2] contesting the results of the election in all the 882 precincts in the eleven municipalities of Occidental Mindoro on the following grounds: (1) the ballots were misread and counted in favor of protestee; (2) there was rampant substitute voting, i.e., persons other than the registered voters voted; (3) violence and intimidation were committed by protestee and her followers against known supporters of protestant to enhance protestee's candidacy; 4) previously prepared ballots for the protestee were deposited in the ballot boxes; and (5) illiterate Mangyan voters voting for protestant were assisted by self-appointed assistants of protestee, who wrote "JTV" on the ballots contrary to the instruction of said illiterate voters.

On 6 July 1998 VILLAROSA filed her Answer with Counter-Protest and Counterclaim.[3] She counter-protested the results of the election in 497 precincts.

During the preliminary conference conducted by the HRET on 6 August 1998, QUINTOS and VILLAROSA agreed on the following facts:

- Protestant and Protestee were registered candidates for and voted as Representatives, Lone Legislative District of Occidental Mindoro in the May 11, 1998 elections;
- On May 27, 1998, after canvass of returns, the Provincial Board of Canvassers proclaimed Protestee Villarosa as the winning candidate for having obtained fifty-five thousand four hundred (55,400) votes, or a margin of three thousand thirty-two (3,032) votes over Protestant Quintos who was credited fifty-two thousand three hundred sixty-eight (52,368) votes;
- All the precincts in the Lone Legislative District of Occidental Mindoro functioned in the elections;
- Protestant contests the results of the elections in all the precincts of the eleven (11) municipalities comprising

the Lone Legislative District of Occidental Mindoro; upon the other hand, Protestee counter-protests the results of the elections in four hundred ninety-seven (497) precincts;

- Protestee is wife of JOSE T. VILLAROSA, who was Representative of the District in question for two terms, the last of which ended on June 30, 1998; in his certificate of candidacy for the election of May 8, 1995, JOSE T. VILLAROSA wrote as his "nickname or stage name: JOE-JTV."

- In her certificate of candidacy, Protestee wrote "JTV" as her "nickname/stage name."

- In her affidavit dated April 16, 1998 sent to the Office of the Provincial Election Supervisor, Occidental Mindoro, Protestee asked that she be allowed to insert in her certificate of candidacy the name GIRLIE such that her name should read in full as MA. AMELITA "Girly" C. VILLAROSA as "in every barangays [sic] of the Province of Occidental Mindoro" she is known as "Girly Villarosa";

- In a letter dated March 27, 1998 sent by Provincial Election Supervisor (PES) Arsenio Guste of Occidental Mindoro to Director Jose B. Balbuena, Law Department, COMELEC, the former notified the latter that the nickname of protestee in her certificate of candidacy is JTV;

- In his Memorandum dated May 10, 1998 to all Election Officers, PES Guste informed them that "JTV" is the authorized nickname or stage name of protestee and that "henceforth JTV, for all intents and purposes, in the appreciation of official ballots, ... should be counted in her favor;"

- One Atty. Dan Restor of San Jose, Occidental Mindoro, had filed with the COMELEC a petition to invalidate/cancel "JTV" as the official nickname of the protestee; the petition was docketed as Election Matter No. 98-044; both Protestant and Protestee were not made formal parties thereto;

- In its Resolution of May 11, 1998, the COMELEC en banc unanimously granted the petition in Election Matter No. 98-044; it ruled that the Protestee "cannot use the nickname "JTV" considering that the same is not her nickname to which she is popularly known." Protestee's motion to reconsider the resolution was denied by the COMELEC in its Order of May 13, 1998; Protestee thereafter filed with the Supreme Court a Special Civil Action for Certiorari to challenge the resolution and order, which was docketed as G.R. No. 133927, which is still pending therein;

- Per joint affidavit of Ms. Michelle Vizcarra and Mrs. Carmen Antonio (Annex "D" of Petition) a copy of the COMELEC Resolution of May 11, 1998 in Election Matter No. 98-044 was received by PES Guste at around 4:00 p.m., but were seen by him at 4:20 p.m. of May 11, 1998;

- Before the filing of this protest, Protestant filed with the COMELEC a petition to disqualify Protestee, which was docke[te]d therein as SPA No. 98-342, on the grounds that protestee had "given money or material consideration to influence, induce or corrupt the voters or public officials performing electoral functions and committed acts of terrorism to enhance her candidacy." The case is still pending.[4]

The parties further agreed and stipulated on the following issues:

- Whether or not the votes JTV should be counted in favor of Protestee;
- Recount and appreciation of ballots;
- Damages, attorney's fees and litigation expenses as alleged and prayed for by Protestee, and according to Protestant, as indicated in prayer for "other relief, just and equitable." [5]

The HRET thereafter required the parties to designate 25% of the protested and counter-protested precincts as their respective pilot precincts pursuant to Rule 68 of the HRET Rules of Procedure.

During the revision, ballots bearing "JTV," "JTB," "GTV," "GTB," "Jitivi," "Gitivi," "Jitibi" and "Gitibi" on

the line for Representative were classified as ballots for VILLAROSA, which the revisors of QUINTOS objected to. Likewise, ballots bearing “Girle” on the line for Representative were classified as votes for VILLAROSA.

On 5 August 1999, QUINTOS filed a “Motion to Withdraw Remaining Non-Pilot Protested Precincts.”[6]

On 7 October 1999, after granting this motion, the HRET promulgated a resolution[7] stating that with QUINTOS’ withdrawal of the remaining non-pilot protested precincts, QUINTOS impliedly limited the issue to

WHETHER OR NOT THE “JTV” VOTES SHOULD BE COUNTED IN FAVOR OF PROTESTEE  
AMELITA C. VILLAROSA

On 9 December 1999 the HRET conducted an oral argument and heard QUINTOS and VILLAROSA on the aforesaid issue.[8]

On 18 May 2000, the HRET promulgated Resolution No. 00-65[9] wherein it resolved to “PROCEED with the revision of the ballots in the remaining 75%; and DIRECT the Secretariat to continue with the revision.” This resolution prompted VILLAROSA to file an Omnibus Motion[10] praying for (1) the suspension of the revision of the ballots pursuant to HRET Resolution No. 00-65; (2) a categorical ruling that all ballots cast for “JTV” are valid votes for VILLAROSA; and (3) the dismissal of the protest.

On 8 June 2000 the HRET issued Resolution No. 00-82[11] informing the parties that “the Tribunal ruled on May 18, 2000, by [a] vote of 5-4 of its members, not to count ‘JTV’ and its variations as valid votes for Protestee Amelita C. Villarosa, the same being considered stray ballots... [and that it] directed that the revision of ballots proceed with respect to the 75% counter-protest precincts.”

On 14 June 2000, VILLAROSA filed with this Court a petition for certiorari docketed as G.R. No. 143351. She alleged therein that the HRET gravely abused its discretion in (a) issuing the above-mentioned resolutions of 18 May and 8 June 2000 in that it violated her right to due process when it disposed by a 5-4 ruling a vital election incident without stating therein the findings of fact and law on which the resolutions were based; and (b) treating “JTV” votes as stray and invalid, resulting in the disenfranchisement of the voters of Occidental Mindoro. She argued that “JTV” was her designated nickname in the official list of candidates submitted by the provincial election supervisor to the COMELEC in Manila; it was the nickname she used in her posters, handbills and other election propaganda throughout the campaign period. In her speeches during the rallies, she urged the voters who might have found her full name difficult to write to simply vote “JTV,” as she had decided to use that nickname as a shortcut of her name as a married woman under Article 370 of the Civil Code. Under this Article, a married woman may use (1) her maiden first name and surname and add her husband’s surname; (2) her maiden first name and her husband’s surname; or (3) her husband’s full name, but prefixing a word indicating that she is his wife, such as Mrs.

VILLAROSA then prayed that this Court issue a temporary restraining order (TRO) or a writ of preliminary injunction in G.R. No. 143351 to enjoin the HRET from resuming the revision of the remaining ballots in HRET Case No. 98-030. The Court, however, did not issue a TRO but required the HRET and QUINTOS to file a comment on the petition.

In his Comment, QUINTOS alleged that the petition in G.R. No. 143351 is premature because the HRET had not yet rendered a decision on the election protest. The assailed resolutions of the HRET are not decisions or formal resolutions which, as mandated by the Constitution, should set out the facts and the law on which they are based; nor are they acts which may be reviewed by certiorari under Rule 65 of the Rules of Court. As to the use of “JTV” as VILLAROSA’s nickname, QUINTOS claims that the HRET’s ruling on the matter should be maintained because under Section 211 of the Omnibus Election Code any vote containing initials only shall be

considered a stray vote. Moreover, VILLAROSA's use of such nickname was attended by bad faith, fraud and misrepresentation, and could have been for no other purpose than to make voters believe that they are voting for her husband, who was the Congressman of Occidental Mindoro for two terms and the incumbent Congressman at the time of the elections on 11 May 1998.

The Office of the Solicitor General submitted a Manifestation in Lieu of Comment and took the position that "JTV" votes should be declared valid and counted in favor of VILLAROSA, and to declare otherwise would frustrate the sovereign will of the people of Occidental Mindoro.

No TRO having been issued by this Court, the revision of the ballots of the remaining 75% of the counter-protested precincts went on and was completed on 28 June 2000. Because of the ruling that "JTV" votes or votes consisting of variations of "JTV" are stray votes, VILLAROSA lost 1,842 votes in the 75% counter-protested precincts and 4,336 votes in the 25% pilot precincts.

Accordingly, in its decision promulgated on 27 July 2000,[12] the HRET, by a vote of 5-4, (1) ruled that QUINTOS obtained 51,465 votes, while VILLAROSA garnered 48,617 votes; (2) declared QUINTOS as the duly elected Representative of the Lone District of Occidental Mindoro, having obtained the highest number of votes with a margin of 2,848 votes over VILLAROSA; and (3) ordered VILLAROSA to vacate her office at the House of Representatives.

The HRET maintained that the issue of whether to count in favor of VILLAROSA votes for "JTV" or its variations necessitated a determination of whether VILLAROSA was in fact generally or popularly known as such in the locality of Occidental Mindoro.

The HRET held against VILLAROSA for various reasons. First, in her affidavit asking for the insertion of "GIRLIE" between her given name and surname she stated that she was known as GIRLIE in every barangay of the Province of Occidental Mindoro. This is an admission that, indeed, her nickname is not "JTV" but "GIRLIE." In fact, votes cast for "GIRLIE" were credited in her favor. Hence, the counting in her favor of ballots bearing "JTV" votes on the line for Representative would be tantamount to injustice because that would allow VILLAROSA to use two nicknames, "GIRLIE" and "JTV," which would be in violation of the second paragraph of Section 74 of the Omnibus Election Code allowing candidates to use only one nickname or stage name by which they are generally or popularly known in the locality. Moreover, Rule 13, Section 211 of the Omnibus Election Code on appreciation of ballots provides:

The use of nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid; Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.

The HRET thus agreed with the COMELEC in its resolution[13] that disallowed VILLAROSA to use "JTV" as a nickname because the same was not her nickname with which she was popularly known. In other cases the COMELEC en banc in its Resolution No. 95-0707 of 9 February 1995 required the following senatorial candidates in the 8 May 1995 elections to submit other names considering that the nicknames or stage names they submitted were not acceptable under the law for purposes of their candidacy:

- Juan Flavies, who submitted the nickname "Let's DOH it," which is a slogan of the Department of Health and not the nickname of a person;
- Rodolfo Biazon, who submitted the nickname "General," which cannot refer to Rodolfo Biazon only;

- Gloria Macapagal-Arroyo, who submitted the nickname “GMA,” which is more associated with Channel 7; and
- Sergio Osmeña III, who submitted the nickname “OK Eskapo,” which is a title of a recent movie and not a general or popular nickname of Osmeña.

Finally, the HRET invoked Rule 14 of Section 211 of the Omnibus Election Code, which provides that “any vote containing initials only... or which does not sufficiently identify the candidate for whom it is intended shall be considered stray vote.” The letters “JTV” and its derivatives do not adequately describe the identity of VILLAROSA considering that they are part of the “JOE-JTV” nickname of Jose Tapales Villarosa who had been the representative of the district in question for two terms, the last of which ended on 30 June 1998. The letters “JTV” could not definitely impress upon the voters that the person running for election was indeed petitioner VILLAROSA.

Her motion for the reconsideration of the decision having been denied, VILLAROSA filed in G.R. No. 143351 a Supplemental Manifestation with Urgent Motion to Act on a Pending Prayer and pleaded that this Court issue a temporary restraining order or a status quo order pending deliberation on, and resolution of, the petition.

On 8 August 2000 this Court required QUINTOS to comment on the Supplemental Manifestation, and set the case for oral argument on 15 August 2000.

On 11 August 2000 VILLAROSA filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which was docketed as G.R. No. 144129, (1) assailing the HRET decision; (2) reiterating the issue of the validity of the “JTV” votes; and (3) charging the HRET with grave abuse of discretion in dispensing with the hearings and appreciation of ballots in the remaining 75% counter-protested precincts, thereby depriving her of the right to due process.

QUINTOS filed his Comment on the Supplemental Manifestation in G.R. No. 143351. Later, in his Addendum to Comment he informed the Court that on 12 August 2000, following the denial by the HRET of VILLAROSA’s motion for reconsideration, he took his oath of office as Representative of the Lone Legislative District of Occidental Mindoro. He then prayed that the petition in G.R. No. 14335 be dismissed for having been rendered moot and academic.

At the oral argument on 15 August 2000, the parties argued on the following issues:

(1)

Whether or not due process was observed by the HRET in rendering the decision in question.

(2)

Whether or not the HRET committed grave abuse of discretion in not counting in favor of VILLAROSA the votes for “JTV” or derivatives thereof.

(3)

Whether or not this Court can still sustain the enforcement of the decision of the HRET considering its rules on finality of judgment and the fact that QUINTOS has taken his oath of office.

By a vote of 7-4, the Court resolved to issue a Status Quo Order allowing VILLAROSA to continue holding her

office until 29 August 2000.

On 29 August 2000, by a vote of 7-4, with Davide, Jr., C.J.; Bellosillo; Kapunan; Quisumbing; Purisima; Buena and Santiago, JJ., voting in favor of the dismissal of these petitions; and with Puno, Panganiban, Reyes and De Leon, JJ., dissenting, the Court resolved to dismiss the petitions in these cases, without prejudice to an extended opinion. We also ordered the immediate lifting of the status quo order issued on 15 August 2000.

This ponencia is an extended opinion.

The first two issues revolve on the ruling of the HRET limiting the issue to the validity of the votes for “JTV” or derivatives thereof and in dispensing with the hearings and appreciation of ballots in the remaining 75% of the counter-protested precincts.

We hold that VILLAROSA was not denied due process in this regard. As to the limitation of the issue, VILLAROSA has herself to blame. First, she sought no reconsideration of the pronouncement of the HRET in its 7 October 1999 Resolution that “[w]ith Protestant’s withdrawal of the remaining non-pilot protested precincts, Protestant impliedly limited the issue to whether or not ‘JTV’ votes should be counted in favor of protestee Amelita C. Villarosa.” Second, at the oral argument before the HRET on 9 December 1999, VILLAROSA’s counsel did not object to, but instead concurred with, QUINTOS’ submission that the case would rise or fall on how the Tribunal would rule on the “JTV” votes.

The assailed decision of the HRET quotes the statements of Atty. Felizmeña, counsel for QUINTOS, and Atty. Makalintal, counsel for VILLAROSA, during the oral argument, thus:

Atty. Felizmeña:

x x x Our case will rise or fall on “JTV” on whether or not it is valid or not x x x (TSN of December 9, 1999, Part I, p. 10)

x x x

Atty. Felizmeña:

x x x if this Tribunal will validate “JTV” ballots, I have no case. (Ibid, ibid, p. 14)

x x x

Atty. Felizmeña:

x x x as I said earlier, I already withdrew the balance of our protest, Your Honor, and I will only submit for resolution on the precincts so revised, referring to the pilot precincts of both parties. Now, even in the pilot precincts of the protestee, Your Honor, there were 865 ballots containing “JTV” and its derivatives so it will increase even the lead of the protestant should the Hon. Tribunal rule[ ] that “JTV” is null and void. However, if the rule is valid, I have no more case (Ibid, Part II, p. 10)

x x x

Atty. Felizmeña:

x x x And finally, Your Honors, there are sufficient ballots containing “JTV” and its derivatives including “Girly” which will offset the winning margin of the protestee by more than one thousand eight hundred (1,800). And the protestee, in the remaining non-pilot counter-protested [precincts] will not anymore recover what she had lost here in the pilot precincts because the pilot precincts are supposedly the precincts where the anomaly is more notorious. So, there is no more chance for the protestee to recover what she had lost if “JTV” ballots are considered stray. (Ibid, Part III, p. 23)

x x x

Atty. Felizmeña:

x x x we already withdrew our remaining non-pilot protested precincts. What is now left for the Tribunal is to decide whether or not it will continue the revision of the non-pilot counter-protested precincts x x x We submit, Your Honors, that if this Honorable Tribunal will consider as stray “JTV” ballots, we will sufficiently overcome the winning margin. And the protestee cannot overcome our winning margin in the non-pilot counter-protested precincts. So that, therefore, Your Honors, there is no need anymore to go though [sic] and this case could be decided without anymore revising. That is why we withdrew, as we stated earlier, our case will rise and fall on “JTV.” x x x (Ibid, ibid, pp. 24-25)

x x x

Atty. Macalintal:

x x x Well, I have nothing more to discuss, Your Honors, because I think the only issue here is whether we could validate the use[ ] of initials, Your Honors. (Ibid, Part IV, p. 25).[14] (underscoring supplied for emphasis)

Finally, after the HRET promulgated its resolution of 18 May 2000 directing the revision of the ballots in the remaining 75% precincts, VILLAROSA filed an Omnibus Motion, praying for, inter alia, a categorical ruling that all ballots cast for “JTV” are valid votes for her. In its resolution of 8 June 2000 the HRET ruled by a 5-4 vote “not to count JTV and its variations as valid votes for” VILLAROSA.

In the 1918 case of *Banco Español-Filipino v. Palanca*[15] this Court held:

As applied to a judicial proceeding, however, it may be laid down with certainty that the requirement of due process is satisfied if the following conditions are present, namely; (1) there must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon the lawful hearing.

The essence of due process is the reasonable opportunity to be heard and submit evidence in support of one’s defense. To be heard does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[16]

From the foregoing, it is too plain and obvious that not only was VILLAROSA heard on the issue, she even moved that the HRET make a categorical ruling that all ballots cast for “JTV” are valid ballots for her. VILLAROSA cannot now be heard to complain that she was denied due process.

With the ruling that the only issue left for determination was whether to count in favor of VILLAROSA votes cast for JTV or variations thereof, it logically follows that a hearing or appreciation of ballots other than those cast for “JTV” or variations thereof in the remaining 75% counter-protested precincts was unnecessary. All that was to be done was to segregate therefrom ballots bearing “JTV” or variations thereof.

Concretely then, the only issue that can justify our taking cognizance of these cases is to determine, pursuant to our duty under Section 1 of Article VIII of the Constitution, whether the HRET committed grave abuse of discretion amounting to lack or excess of jurisdiction in declaring the “JTV” votes as stray votes. It should not be forgotten that under the Constitution the HRET is “the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives.”<sup>[17]</sup> Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; or, in other words, where the power is exercised in an arbitrary manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[18]</sup>

If the HRET had committed grave abuse of discretion amounting to lack or excess of jurisdiction, then the aggrieved party may come to us for redress by way of a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure even if by the HRET Rules of Procedure the assailed judgment has become final and the prevailing party has taken his oath of office or assumed his position. The HRET rule on finality of its judgment cannot divest the Supreme Court of its power and duty under Section 1 of Article VIII of the Constitution to determine in a proper case whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of HRET.

Explaining this duty of the courts, then Commissioner Roberto R. Concepcion, former Chief Justice, stated:

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its offices. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.<sup>[19]</sup>

The facts established in this case, strengthened by the admission of the parties at the preliminary conference conducted by the HRET on 6 August 1998 and during the oral argument before the Court on 15 August 2000, lead us to no other conclusion than that the use by VILLAROSA of “JTV” as her nickname or stage name, as indicated in her Certificate of Candidacy, was a clever ruse or ploy to make a mockery of the election process. Therefore, the HRET did not commit any grave abuse of discretion in ruling that “JTV” votes should not be counted in favor of VILLAROSA. They are stray votes. Here are the facts:

- The husband of petitioner is Jose Tapales Villarosa.
- Jose Tapales Villarosa was elected Representative of the Lone Legislative District of Occidental Mindoro in the 1992 and 1995 elections, thereby serving two full terms.
- During the election and campaign periods for the 11 May 1998 elections Jose Tapales Villarosa was the incumbent Representative of the Lone Legislative District of Occidental Mindoro.
- In his certificate of candidacy for the May 1995 elections Jose Tapales Villarosa entered as his nickname

“JOE-JTV.” As stated by counsel for VILLAROSA during the 15 August 2000 oral argument, JOE and “JTV” are two nicknames of Jose Tapales Villarosa.

- Per admission of VILLAROSA’s counsel during the oral argument on 15 August 2000, “JTV” was used by Jose Tapales Villarosa as his nickname in both the 1992 and 1995 elections, and the public was publicly informed thereof.[20]

- “JTV” refers actually to the initials of Jose Tapales Villarosa.

- Before VILLAROSA filed her certificate of candidacy on 27 March 1998 for the 11 May 1998 elections, VILLAROSA never used “JTV” as her nickname or stage name. Her nickname was “GIRLIE.” In her affidavit dated 16 April 1998 which she filed with the Provincial Election Supervisor, she requested that she be allowed to insert in her Certificate of Candidacy the name “GIRLIE” between her given name Amelita and the initial of her maiden surname C so that her name would read in full as follows: “MA. AMELITA “Girlie” C. VILLAROSA.”

- In said affidavit of 16 April 1998, VILLAROSA solemnly declared under oath that she was known as “GIRLIE” Villarosa in every barangay of the Province of Occidental Mindoro.

- During the campaign period for the 11 May 1998 elections, VILLAROSA’s campaign streamers (e.g., Annex “P-1” of Petition in G.R. No. 144129) and handbills (e.g., Annex “P-2,” id.) did not at all show that “JTV” was her nickname. She earlier wanted her real nickname “GIRLIE” to be placed between AMELITA and VILLAROSA per the request in her affidavit of 16 April 1998, which request was not acted upon.

From the foregoing, the following conclusions are beyond dispute:

First, “JTV” represents either the initials or the nickname of Jose Tapales Villarosa.

Second, VILLAROSA was never generally or popularly known as “JTV.” She was generally or popularly known as “GIRLIE.” Clearly then, since “JTV” remains to be either the initials or nickname of Jose Tapales Villarosa, who was the incumbent Congressman during the election and campaign periods for the 11 May 1998 elections, votes entered or written as “JTV” cannot be considered as votes for petitioner. The votes “JTV” or any variations thereof are, therefore, stray votes.

It would be the height of naivety to believe that, indeed, “JTV” is petitioner’s nickname, or that she used it for any other purpose than to ride on the popularity of her husband to mislead the voters, especially the less informed.

The plea that the voters’ intention must prevail is misplaced. It assumes that those who wrote “JTV” actually intended to vote for petitioner. This could be true only if the person who actually owns the nickname or the initials “JTV” were not (a) VILLAROSA’s husband, (b) the incumbent Representative who had won as such in both the 1992 and 1995 elections, (c) generally and popularly known as “JTV” when he ran and campaigned for Representative in both elections in the same legislative district where VILLAROSA ran in the May 1998 elections. But since these were the immutable facts, the voters who wrote “JTV” or variations thereof had no other person in mind except the then incumbent Representative, Jose Tapales Villarosa, or the very person whom they have known for a long time as “JTV.”

The foregoing facts distinguish these cases from those relied upon by VILLAROSA and in the concurring and dissenting opinion of Mme. Justice Gonzaga-Reyes.

Since “JTV” undoubtedly refers to the initials or nickname of VILLAROSA’s husband, Jose Tapales Villarosa, who was, let it be stressed again, the incumbent Representative of the district in question at the time of the election for his successor, neither reason nor rhyme can support or justify a claim that “JTV” votes were intended for petitioner VILLAROSA.

Article 370 of the Civil Code, which VILLAROSA invokes, provides no relief for her. The article enumerates the names which a married woman may use. One of them is “her husband’s full name, but prefixing a word indicating that she is his wife, such as Mrs.” If VILLAROSA had availed herself of this, as she suggested in her petition and during the oral argument, then her name would be “MRS. JOSE TAPALES VILLAROSA.” If for expediency and convenience she would use the initials of her husband, then her name, in initials would be “MRS. JTV.” Yet, on this point, VILLAROSA even attempted to confuse us. During the oral argument on 15 August 2000 she tried to convince us that “MRS. JTV” is also her nickname, thus:

CHIEF JUSTICE:

And before 1995 can you inform the Court if Mrs. Villarosa the petitioner here had ever used the nickname JTV?

ATTY. DE LIMA BOHOL:

As Mrs. JTV, yes, but not purely as JTV. I am not aware of any instance where she used purely as JTV but as Mrs. JTV.

CHIEF JUSTICE:

Do you have evidence to show that before 1995 elections JTV was the nickname of Mrs. Villarosa or the petitioner now?

ATTY. DE LIMA BOHOL:

We don’t have evidence, Your Honor.

CHIEF JUSTICE:

Can you tell the Court if at any time before the filing of the certificate of candidacy of the petitioner before the May 11, 1998 election she ever used the nickname JTV?

ATTY. DE LIMA BOHOL:

As Mrs. JTV, yes.

CHIEF JUSTICE:

So, before the filing of the certificate of candidacy for the May 11, 1998 election the petitioner here used the nickname Mrs. JTV?

ATTY. DE LIMA BOHOL:

Yes, Your Honor.

CHIEF JUSTICE:

Meaning, I stress Mrs. JTV?

ATTY. DE LIMA BOHOL:

Yes, your Honor.[21] (Emphasis supplied)

This attempt further proves beyond doubt that, indeed, “JTV” had never been VILLAROSA’s nickname.

Even if VILLAROSA decided to use “JTV” as her nickname for purposes of the 11 May 1998 elections, one must never forget that she never used it as a nickname before she filed her certificate of candidacy. The nickname which the second paragraph of Section 74 of the Omnibus Election Code allows to be included in the certificate of

candidacy is that “by which [the candidate] is generally or popularly known.” This clearly means the nickname by which one has been generally or popularly known BEFORE the filing of the certificate of candidacy, but NOT what the candidate wants to THEREAFTER use. By her own statement under oath in her affidavit of 16 April 1998, VILLAROSA solemnly declared that she was generally and popularly known in every barangay in Occidental Mindoro as “GIRLIE” BEFORE and AFTER she filed her certificate of candidacy. And, as asserted by her counsel during the oral argument on 15 August 2000, her other nickname before she filed her certificate of candidacy was “MRS. JTV,” not “JTV.”

Rule 13 of Section 211 of the Omnibus Election Code cannot be applied in favor of VILLAROSA. That rule allows the use of (a) a nickname and appellation of affection and friendship, provided that it is accompanied by the first name or surname of the candidate, unless the nickname or appellation is used to identify the voter; and (b) a nickname, which is not accompanied by the name or surname of a candidate, provided that it is the one by which the candidate is generally or popularly known in the locality. In both instances, the vote cast for the nickname is a valid vote for the candidate concerned. The “JTV” votes are unaccompanied by her first name or surname; and “JTV” is not, to repeat, a nickname by which VILLAROSA was generally and popularly known in the Legislative District of Occidental Mindoro. The HRET then committed no error in not applying in favor of VILLAROSA Rule 13, Section 211 of the Omnibus Election Code.

Significantly, VILLAROSA’s original counsel admitted during the oral argument on 9 December 1999 that “JTV” are mere initials, thus:

Atty. Macalintal:

xxx Well, I have nothing more to discuss, Your Honors, because I think the very issue here is whether, we could validate the used [sic] of initials, Your Honors.

The HRET was thus correct in applying Rule 14 of Section 211 of the Omnibus Election Code, which provides:

14. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.

Under this rule three kinds of votes are considered stray: (1) a vote containing initials only, (2) a vote which is illegible, and (3) a vote which does not sufficiently identify the candidate for whom it is intended. The only error of the HRET is its ruling that if the votes are in initials only, they are to be considered stray votes if they do not sufficiently identify the candidate for whom the votes are intended. The first category of stray votes under this rule is not to be qualified by the third category in the sense that votes in initials only may be counted for a candidate provided that the initials would sufficiently identify the candidate voted for. Such construction of the rule fails to give meaning to the disjunctive conjunction OR separating the first category from the second, and the second from the third.

Furthermore, since votes for “GIRLIE” written in the space for Representative were in fact claimed by VILLAROSA and credited in her favor, then the HRET correctly ruled that “JTV” votes or variations thereof, under the idem sonans rule, cannot be counted for VILLAROSA because only one nickname or stage name is allowed.

From all the foregoing, bad faith or malice on the part of VILLAROSA was evident when, in her certificate of candidacy and campaign materials, she appropriated the initials or nickname of her husband, the incumbent Representative of the district in question whom she wanted to succeed in office. She tried to make a mockery of a process whose credibility is essential in preserving democracy. Nullus commodum potest de injuria sua propria. No one should be allowed to take advantage of his own wrong.

Howsoever viewed, public respondent HRET did not commit any abuse of discretion in holding that the only issue for its determination was whether “JTV” votes or variations thereof should be counted in favor of VILLAROSA and in ruling that such votes are stray votes.

WHEREFORE, the petitions in these cases are DISMISSED for lack of merit.

**SO ORDERED.**

Bellosillo, Kapunan, Quisumbing, Purisima, and Buena, JJ., concur.

Melo, J., no part. Chairman of the HRET.

Vitug, J., no part; a member of the House Electoral Tribunal.

Mendoza, J., no part. Member of HRET, which decided the case.

Pardo, J., no part, was Comelec Chair at the time.

Gonzaga-Reyes, J., see concurring & dissenting opinion.

Puno, Panganiban, and De Leon, Jr., JJ., join the concurring and dissenting opinion J. Gonzaga-Reyes.

Ynares-Santiago, J., on leave.

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[1] Entitled Ricardo V. Quintos, protestant, versus Amelita C. Villarosa, protestee.

[2] Rollo, G.R. No. 144129, 110-115.

[3] Id., 116-129.

[4] Rollo, G.R. No. 143351, 50-52.

[5] Id., 52.

[6] Id., 66.

[7] Rollo, G.R. No. 143351, 48 et seq.

[8] Id., G.R. No. 144129, 52.

[9] Id., G.R. No. 143351, 33.

[10] Id., 36.

[11] Id., 30.

[12] With Honorable Members Asani S. Tammang, Didagen P. Dilangalen, Simeon E. Garcia, Jr., Danton Q. Bueser, and Napoleon R. Beratio voting for the majority, and with Honorable Justice Chairman Jose A.R. Melo, Justices Jose C. Vitug and Vicente Mendoza and Hon. Raul M. Gonzalez, dissenting.

[13] This resolution was annulled by the decision of this Court in G.R. No. 133927, promulgated on 29 November 1999, not on the issue of whether “JTV” votes should be counted in favor of VILLAROSA but on a procedural issue.

[14] Rollo, G.R. No. 144129, 57.

[15] 37 Phil. 921, 934 [1918] .

[16] Richards v. Asoy, 152 SCRA 45 [1987] ; Mutuc v. Court of Appeals, 190 SCRA 43 [1990] ; Philippine National Construction Corp. v. Court of Appeals, 272 SCRA 183 [1997] .

[17] Section 17, Article VI, Constitution.

[18] *Cuison v. Court of Appeals*, 289 SCRA 159, 171 [1998].

[19] JOAQUIN G. BERNAS, *The Intent of the 1986 Constitution Writers* 498 (1995).

[20] TSN, 15 August 2000, 5-54.

[21] TSN, 15 August 2000, 55-56.

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## CONCURRING AND DISSENTING OPINION

### GONZAGA-REYES, J.:

I fully concur with the ponencia that petitioner's right to due process was not violated, and public respondent House of Representatives Electoral Tribunal ("HRET" or "the Tribunal") committed no grave abuse of discretion, when the hearings and appreciation of ballots on the counter-protest were dispensed with and the issue was limited to the validity of the "JTV" votes.

Petitioner informed the Court that had she been allowed to formally present evidence on the 75% counter-protested precincts, she would have submitted revision reports, and photocopies of ballots credited for private respondent which were objected to by petitioner.[1] Petitioner insists that she had the right to present the said revision reports and ballots as evidence for the 75% counter-protest. However, the Tribunal had explained in its decision that the originals of these revision reports are already in its possession,[2] and the original ballots are admittedly also in the custody of the HRET.[3] The Tribunal may be reasonably presumed to have taken these into cognizance when it rendered its decision.

More important, during the oral arguments of December 9, 1999, private respondent's counsel submitted that "the case will rise and fall on how the Tribunal will rule on the 'JTV' Ballots." Petitioner's counsel concurred, and as noted by the Tribunal, "did not raise any other issues" or make any comment. Thus, the Tribunal did not act arbitrarily in ruling that the resolution of the case hinges on how it will rule on the "JTV" ballots.

What is repugnant to due process is the denial of the opportunity to be heard.[4] Petitioner was adequately heard on her counter-protest when the revision reports on the non-pilot precincts (with the parties' claims and objections registered therein) were admitted in evidence by the Tribunal. Moreover, her objections to the Tribunal's decision to dispense with the hearings were duly heard when she filed her motion for reconsideration on August 4, 2000.[5]

I also concur with the majority's finding that the Tribunal acted within its jurisdiction when it limited the issue to the validity of the "JTV" votes alone. It is part of the judicial function and discretion of a court to define or recast the issues in such manner as it deems necessary to resolve a case. The Tribunal is not bound by the issues exactly as pleaded by the parties, or as stipulated upon in the preliminary conference. While a court is expected to be guided by a stipulation of issues, it would seriously compromise the independence of a court if it were required to respond to all the agreed issues regardless of its opinion as to each issue's relevance. In the case at hand, the Tribunal found that by reason of the sheer number of the "JTV" votes (at least 6,000)[6], they are determinative of the winner in HRET Case No. 98-030.

For as long as the Tribunal acted within its jurisdiction, any alleged errors committed in the exercise of discretion, such as errors in procedure or misappreciation of facts and evidence, will amount to nothing more than errors of judgment which are not correctible by a writ of certiorari.[7] A writ of certiorari will issue only to correct errors

of jurisdiction.

With all due respect, however, I cannot agree with the majority in its resolution of the issue of whether the Tribunal gravely abused its discretion in declaring the "JTV" votes and its variations invalid. To the contrary, I submit that an application of the plain provisions of the Omnibus Election Code, consistent with their spirit and intent to respect and uphold the will of the voters, will lead to no other conclusion than that the "JTV" votes and their variations are valid, and that the Tribunal gravely abused its discretion in grossly misapplying the provisions of the law in favor of a strained and technical interpretation that resulted in the disenfranchisement of more than 6,000 voters of Occidental Mindoro.

Petitioner filed her certificate of candidacy on March 27, 1998, day one of the campaign period. On the space provided for "One nickname or stage name" she wrote "JTV" and thus registered "JTV" as her nickname.[8] No proper challenge was made to her choice of nickname, which nickname was officially listed in the COMELEC certified lists of candidates posted in each and every polling precinct on May 11, 1998. About 6,000 voters voted "JTV" on election day.

One of the arguments of private respondent in assailing a "JTV" votes is that they are invalid for being initials, which are stray votes under Section 211, paragraph 14.[9] However, the facts before us indicate that the initials "JTV" were used by petitioner as a nickname, for purposes of being voted upon. Contrary to private respondent's protestations in this regard, there is no law or rule that prohibits the adoption of initials as a nickname; nor is there any law or rule that requires that the initials adopted by a person as a nickname strictly correspond to his or her own initials. Petitioner is the lawful wife of Jose T. Villarosa and could legally present or identify herself as "Mrs. JTV". No law was transgressed when she registered "JTV" as her nickname in her certificate of candidacy.

Therefore, the applicable provision of the Omnibus Election Code is Section 211, paragraph 13, which sets out the rule for the appreciation of votes using nicknames:

Rules for the appreciation of ballots. --- 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. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will: xxx

13. The use of nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid; Provided, that if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.

The foregoing rule establishes that a nickname alone is a valid vote, provided: (1) it is that by which a candidate is generally or popularly known in the locality, and (2) there is no other candidate with the same nickname running for the same office. The underlying purpose for the rule, as explained in the opening provision of Section 211 of the Omnibus Election Code, is to ascertain and carry into effect the intention of the voter, where such intention could be determined with reasonable certainty.[10] To this end, every ballot is presumed to be valid and all doubts are to be liberally construed in favor of its validity if only to give effect to the will of the voter as reflected therein.[11]

A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally

construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded.[12]

Taking into consideration all of the foregoing, it is my submission that petitioner's use of the nickname "JTV" sufficiently complies with the requirements of Section 211, paragraph 13 of the Omnibus Election Code. The first requirement that the nickname be one by which a candidate is "generally or popularly known in the locality" was met when, after registering "JTV" as her nickname in her certificate of candidacy, she actively campaigned under that nickname and made it widely known to the voters of Occidental Mindoro that she could be voted for by the said nickname. The streamers, posters, leaflets, handbills and other election propaganda that she used throughout the election season prominently display the words "Ma. Amelita 'JTV' Villarosa for Congresswoman".[13] In the handbills, a sizeable photograph of petitioner accompanies the caption "For Congresswoman - Ma. Amelita 'JTV' Villarosa".[14]

Petitioner's efforts at popularizing her nickname "JTV" were upon the approval and clearance of the COMELEC. The nickname "JTV" was declared in petitioner's certificate of candidacy which was in turn forwarded by the provincial COMELEC of Occidental Mindoro to the COMELEC Law Department in Manila.[15] The COMELEC appeared to have perceived nothing objectionable with the nickname as it did not require her to change or amend it. A day before the elections, or on May 10, 1998, the Provincial Election Supervisor Atty. Arsenio T. Guste issued a directive to all election officers of Occidental Mindoro that "JTV is the authorized nickname or stage name of Mrs. Ma. Amelita C. Villarosa as per records appearing in (her) Certificate of Candidacy" and that "(h)enceforth, for all intents and purposes, in the appreciation of official ballots, (the) same should be counted in her favor."[16] On election day, the COMELEC posted lists containing candidates' names, registered nicknames and party affiliations inside every precinct in Occidental Mindoro; the nickname of petitioner therein was "JTV".[17]

It is also not disputed that petitioner was the only congressional candidate in Occidental Mindoro in the May 11, 1998 elections who use the nickname "JTV". Petitioner and private respondent were the only contenders in the congressional race at the time, and the latter's nickname was "Ding". Although petitioner's husband was also known as "JTV", he was not a candidate for congressman, or for any other elective position, during the same elections.

In holding the "JTV" votes to be invalid, the majority affirmed the holding of the Tribunal that the first requirement of Section 211, paragraph 13 aforecited was not met because petitioner was generally or popularly known in the locality, not as "JTV", but as "Girly". In its decision, the Tribunal stated that petitioner herself admitted this when she filed an affidavit with the Provincial Election Supervisor of Occidental Mindoro before the elections, requesting that the appellation "Girly" be inserted in her certificate of candidacy such that her name should read in full "MA. AMELITA "Girly" C. VILLAROSA" since "in every barangay of the Province of Occidental Mindoro" she is known as "Girly Villarosa". Considering that ballots cast for "Girly" were credited to petitioner, the Tribunal ruled that it would be unjust to also count "JTV" in favor of petitioner because this would contradict the COMELEC rule requiring that each candidate should use only one nickname.[18]

The ruling of the Tribunal is based on Section 74 of the Omnibus Election Code, which sets out the contents of the certificate of candidacy, and which provides, inter alia, that a person filing a certificate of candidacy "may also include one nickname or stage name by which he is generally or popularly known in the locality." COMELEC Resolution No. 2977, the implementing rules to Section 74, emphasizes that "(i)n case of several nicknames or stage names, only the nickname or stage name first written shall be considered."

I find the Tribunal's application of the above provisions to the instant case misplaced, restrictive and contrary to the intendment of the law. In the first place, petitioner herein had only one registered nickname --- "JTV" --- in her certificate of candidacy. Even assuming that in attempting to include "Girlie" to her full name in her certificate of candidacy she was intending to register a second nickname, such attempt did not materialize because it was not acted upon by the Provincial Election Supervisor, Atty. Arsenio T. Guste. Thus, petitioner did not transgress the rule requiring only one registered nickname.

Moreover, going by the reasoning of the Tribunal that the registered nickname of petitioner is defective or invalid because she is "generally or popularly known" by another nickname in the locality, it is submitted that such "defect" in the registered nickname, perceived only after the elections, could not justifiably invalidate the substantial number of votes (at least 6,000) already cast for "JTV". This Court has repeatedly held that provisions of election law regarding certificates of candidacy, although mandatory on the part of the complying candidate before the elections, are to be regarded as merely directory after the elections if only to give effect to the will of the people.[19] Thus, even if the certificate of candidacy was not duly signed or if it does not contain the required data, the proclamation of the candidate as winner may not be nullified on such ground.[20] Where the defect or irregularity complained of did not prevent a full, fair and free expression of the public will, it will be disregarded. The same rule should apply with equal force to a registered nickname, which is belatedly assailed as defective for allegedly failing to adhere with the requirements of Section 74 of the Omnibus Election Code. I use "belatedly" because the proper remedy for imputing defects upon a registered nickname, as with all other contents of a certificate of candidacy, is by way of a petition to deny due course to a certificate of candidacy[21] , which must be filed before the election and was not resorted to by private respondent in this case.

Private respondent waived his right to question petitioner's registered nickname when he failed to file a petition to deny due course to her certificate of candidacy before the elections. In like manner, the Tribunal ought to be deemed as having acted in excess of its jurisdiction to entertain issues on the contents of a certificate of candidacy in an election protest. The plain reason, once more, is that after the votes are cast, the electorate acquires a distinct and substantive interest in the outcome of the electoral process and it cannot be bound or affected by the technical rules that are imposed upon the candidates before the elections.

As far as the voters of Occidental Mindoro are concerned, petitioner's certificate of candidacy is an authorized badge which they can scrutinize and rely upon before casting their votes.[22] They had every right to take the nickname registered thereon at face value. When petitioner told them that she may be voted for by that nickname, they had every reason to take her word for it. When the COMELEC, through its official lists posted in the polling places and voting booths, represented that petitioner's authorized nickname is "JTV", the voting public could not be faulted or punished for voting for her in that manner.

Another ground of the Tribunal for invalidating the "JTV" votes was that the appellation "JTV" does not sufficiently identify petitioner.[23] The Tribunal found that "JTV", which corresponded to the initials of petitioner's husband, Jose Tapales Villarosa, was registered by Mr. Villarosa in his certificate of candidacy when he ran for the congressional elections in Occidental Mindoro in 1992 and 1995, respectively. Mr. Villarosa, in fact, won in both elections and was, thus, the incumbent congressman during the May 11, 1998 elections. The Tribunal gave credence to private respondent's contention that the voters could have voted "JTV" under the misapprehension that they were voting for Mr. Villarosa, running for a third-term reelection.

The Tribunal also cites *Reyes vs. Biteng*[24] , where the appellant candidate's intention to appropriate votes not intended for him can be clearly inferred from the fact that he assumed other persons' Christian names. Thus, he insisted that the ballots bearing the names "B. Reyes", "V. Reyes", "R. Reyes", "Alberto", "Berto", "Loberto" and "Cayong" should be considered valid and credited to him because he stated in his certificate of candidacy that in

Ilocos Sur he is also known as Ruperto, Lamberto, Loberto, Edilberto, Norberto, Eriberto, Filisberto and Roberto and nicknamed Cayong and Berto. In declaring such votes invalid, the Court declared that Reyes's act of registering multiple nicknames effectively "convert(ed) (his) certificate of candidacy into a sort of net or artifice with which to obtain invalid or scattered votes or those cast for other persons." [25]

It must be noted that the situation in Reyes vs. Biteng may no longer materialize under the present Omnibus Election Code which requires a candidate to declare only one nickname or stage name in his certificate of candidacy. As was earlier pointed out in this opinion, there is no issue of multiple registration of nicknames in the instant case. Rather, what is before us is an issue as to whether the "JTV" votes are reflective of an intention to vote for petitioner.

Given the fact that the incumbent congressman of Occidental Mindoro during the May 11, 1998 elections was also known as "JTV", the possibility cannot entirely be discounted that some voters may have actually been misled into thinking that the "JTV" in the May 11, 1998 elections was Mr. Villarosa running for reelection. This possibility, however, may only prosper when buttressed by proof, because the presumption in law is to favor the validity of the ballots. Put another way, a rebuttable presumption arises from the "JTV" votes that these were cast with the intention of voting for petitioner.

I am convinced by the evidence before us that private respondent has not discharged the burden of proving that the "JTV" votes, or at least some of them, were cast with the mistaken intention to vote for petitioner's husband. Contrarily, what I observe from his arguments is a misconception as to whom the burden of proof lies. Thus, he alleged:

xxx It is not correct to say that when "JTV" is written on the ballot the voters were aware that it was Amelita they were voting for. The conclusion has no basis because no such voter was presented to determine that when he wrote "JTV" he was voting for Amelita. There was even no attempt for the petitioner to secure affidavits of his (sic) followers or sympathizers who wrote "JTV" on the ballots. A random sampling could have been done and their affidavits submitted in evidence before the HRET. xxx [26]

The law expressly and plainly accords presumptive validity to the "JTV" votes. The intention to vote for petitioner by casting a "JTV" vote is presumed. It is private respondent who has the burden to show that the intention to vote for petitioner is unascertainable on the face of the "JTV" ballots, and absent any evidence of such ambiguity or imperceptibility the presumption of validity of the ballots should not be disturbed.

Not one affidavit by a voter professing to have voted "JTV" with the intention of voting for Mr. Villarosa, or some person other than petitioner, was submitted by private respondent before the Tribunal or this Court. The evidence that private respondent did submit, such as the certificates of candidacy of Mr. Villarosa in the 1992 and 1995 elections wherein he declared his "nickname or stage name" as "JOE-JTV", [27] as well as newspaper reports referring to Mr. Villarosa as "JTV" [28] and to petitioner as "Girlie" [29] do not prove the allegation of misapprehension or mistake on the part of the voters as to the identity of the "JTV" they were voting for.

A closer look at the arguments of private respondent reveals that he is not alleging mere misapprehension or mistake on the part of the voters, but "bad faith, misrepresentation and even fraud" [30] on the part of petitioner. In other words, private respondent imputed that by using "JTV" petitioner actively and deliberately misled the people as to the identity of the "JTV" candidate. Additionally, among the grounds stated in his election protest with the Tribunal was: "5. Illiterate Mangyan voters voting for Protestant were assisted by self-appointed assistants of Protestee who wrote 'JTV' on the ballots contrary to the instructions of said illiterate voters." [31]

It will be remembered that the Solicitor General declined to act as counsel for the Tribunal in this case because he found the latter's ruling to invalidate the "JTV" votes insupportable. Instead, he adopted the position that there

was no misrepresentation in the use of "JTV" and to invalidate the "JTV" votes would be to frustrate the sovereign will of the voters of Occidental Mindoro. In his "Manifestation in Lieu of Comment", the Solicitor General made the following astute observation:

Obviously, what private respondent questions is the alleged massive fraud committed during the elections such as, but not limited to, writing of the name "JTV" on ballots by petitioner's assistants on behalf of illiterate Mangyan voters. However, this was not established as no evidence was presented to prove the same. It is therefore a surprise why the validity of the JTV votes became one of the issues before the respondent HRET. (Underscoring supplied) [32]

Bad faith and fraud are allegations of fact which demand clear and convincing proof. These are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them. They cannot be discerned from the mere fact that petitioner assumed the nickname "JTV" only during the elections.

Private respondent presented absolutely no evidence of petitioner's bad faith, fraud or misrepresentation. Rather, what the antecedent and undisputed facts bear out is that: petitioner registered "JTV" as her nickname, it was approved by the COMELEC, it was listed as her authorized nickname in the COMELEC notices posted in the polling places, petitioner actively campaigned to the people using that nickname --- as evidenced by streamers, posters, handbills and other election propaganda, and in her campaign speeches she informed the people that she can be voted for by writing "JTV" in the ballots. In the handbills, a sizeable photograph of petitioner accompanies the words "For Congresswoman - Ma. Amelita 'JTV' Villarosa". The streamers and handbills read: "Ma. Amelita'JTV' Villarosa".

Thus, on top of the presumptive validity accorded by law, petitioner submitted substantial evidence to show that she plainly and consistently held herself out as the "JTV" running for Representative of Occidental Mindoro in the 1998 elections. All the antecedent facts support petitioner's contention that there is no confusion in the minds of the voters that petitioner and "JTV" are one and the same person, and that in voting "JTV" they intended to vote for petitioner.

The majority makes much of the Tribunal's finding that the nickname "JTV" was adopted by petitioner specifically for election purposes. It held that her use thereof was "a clever ruse or ploy to make a mockery of the election process" and that "(i)t would be the height of naivety to believe that, indeed, 'JTV' is petitioner's nickname, or that she used it for any purpose than to ride on the popularity of her husband to mislead the voters, especially the less informed."

Yet even granting that "JTV" was not petitioner's nickname before the elections and was adopted by her purposely for the elections, is it not that for purposes of election law all that the Court is called to ascertain is the intention of the voters in casting their votes? In the instant case, there is substantial evidence that at the time of the elections, the voters identified petitioner and "JTV" to be the same person. Petitioner said that she chose "JTV" for the convenience of the voters, because the voters might find her full name, or even only her last name, too long to write. She also said that she found "Girlie" undignified considering the elective post she was vying for. Whether her adoption of "JTV" was to instigate name recall, or simply a means of riding on the popularity of her husband in order to improve her chances of winning in the elections, such by itself is not illegal, and the Court should have not interfered with her use thereof where the line to deceit or anomaly was not crossed.

Another consideration which militates against the possibility of fraud or misrepresentation is the sheer number of "JTV" votes and their ubiquitous occurrence in practically all the protested and counter-protested precincts. Contrary to private respondent's allegation that the "JTV" votes were concentrated in certain municipalities mostly

populated by Mangyans, the revision of the HRET showed that the "JTV" votes were spread all over the eleven (11) municipalities of Occidental Mindoro, occurring in numbers as few as one (1) to as many as forty four (44) per precinct.[33] The considerable number of "JTV" votes, as well as the pervasiveness by which "JTV" appeared in the ballots from precinct to precinct, suggests a free, spontaneous and unmanipulated manner of voting which is inconsistent with private respondent's theory of fraud.

One of the earliest pronouncements of the Court on the issue of whether a nickname alone is a valid vote is found in *Abrea vs. Lloren*, 89 Phil. 809 (1948),[34] where the Court ruled that Isabelo Lloren was sufficiently identified by his nickname "Beloy" or "Biloy" ---

(f)irst, because such nickname is a derivative, or a contraction, of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and third, because there was no other candidate for mayor with the same nickname. xxx

It is important to situate that the Lloren case arose at a time when the election law did not include a rule on the appreciation of nicknames, cast alone and unaccompanied by the name or surname of the candidate. In fact, the standing jurisprudential rule at the time was that votes using nicknames alone were not valid[35] Thus, the Lloren case which declared the "Beloy" or "Biloy" votes valid was exceptional for its time.[36] As explained in later cases:

Examining the ratio decidendi in the case of *Abrea vs. Lloren*, supra, the reason why this Court admitted ballots containing only a nickname was because 602 of the total number of 1,010 votes counted for Isabelo Lloren were cast by writing his nickname "Beloy"; and it had no alternative than to brush aside legal technicalities for the sake of "giving effect to the will of the people as freely expressed on the ballots." In justifying the admission of 602 ballots containing the nickname "Beloy", this Court took into consideration certain proven facts, to wit: (a) that in his certificate of candidacy candidate Lloren stated that he was known by the nickname "Beloy"; (b) that Lloren distributed sample ballots containing only his nickname "Beloy" on the line for Municipal Mayor; (c) that the ballots containing only his nickname represent 60% of the total number of votes received by Lloren; and (d) that no objection was interposed by the other party against the evidence presented by Lloren that he was properly and commonly known by the nickname "Beloy" and no other candidate for mayor bears the same nickname. (Underscoring supplied)[37]

In the instant case, at least 6,000 voters were disenfranchised by the invalidation and setting aside of the "JTV" votes. These voters are innocent of the imputations and counter-imputations of fraud and anomaly that petitioner and private respondent assail each other with. If there is anything that the Lloren case tells us, it is that the spirit of the law is, and has always been, to ensure the implementation of the voters' will. In light of the fact that a substantial number of voters voted for Lloren as "Beloy" or "Biloy", the Court did not hesitate in declaring those votes valid even if it meant going beyond the provisions of the existing election law and carving an exception to standing case rule. The present provisions of the Omnibus Election Code are very clear and require no construction - - - there is no excuse for not applying them squarely to the herein case.

The Court has given due emphasis to the fact that its power of judicial review over final decisions of constitutional bodies like the Electoral Tribunals are wielded in the exercise of extraordinary jurisdiction, that is, 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.[38] Grave abuse of discretion, as we had occasion to describe, refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[39]

Private respondent posits that the herein situation does not call for the exercise of extraordinary jurisdiction by the Court, because the 5-4 ruling that brokered his victory in the election protest was a mere difference in opinion in the interpretation of the law that does not amount to grave abuse of discretion. I cannot agree that the Tribunal was confronted with so novel a question of law as to give way to a "difference in opinion". The resolution of the issue of the validity of the "JTV" votes did not require the interpretation and construction of complicated provisions of law. It simply entailed applying the plain provisions of the Omnibus Election Code to an undisputed set of facts. Thus, I am constrained to opine that the Tribunal's decision to invalidate a duly registered nickname that complies with the requirements for a valid vote under Section 211, paragraph 3 of the Omnibus Election Code is a patent, capricious and indiscreet abdication of its constitutionally sworn duty to enforce the election laws consistent with their spirit and intendment, in favor of a judgment that is legally flawed and pays homage to technicality. Worse, it is a judgment that is unjust and crucially disenfranchises more than 6,000 voters of Occidental Mindoro.

"Upholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed through the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all." [40] The Constitution, it is true, constitutes the HRET as the sole judge of all contests relating to the election, returns, and qualifications of Members of the House of Representatives. However, it is also the Court's constitutionally mandated duty "to refine, and when necessary, correct constitutional and/or statutory interpretation, in the context of the interactions of the three branches of the government, almost always in situations where some agency of the State has engaged in action that stems ultimately from some legitimate area of governmental power." [41] I am hard put to accept that the Tribunal committed no grave abuse of discretion in declaring the "JTV" votes invalid, for I think that a gross misapplication of the election law has been committed, on a matter not merely concerning the appreciation of ballots but the very right of a citizen to be voted for public office. Such matter is squarely within the certiorari jurisdiction of the Court and should not remain unchecked.

For all the foregoing reasons, I register my vote to set aside the decision of the House of Representatives Electoral Tribunal in HRET Case No. 98-030 for having been issued in grave abuse of discretion, and for the Court to declare the votes of "JTV" and its derivatives valid.

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[1] TSN, Oral Argument, 7.

[2] HRET Decision; Rollo, 56. Except when otherwise indicated, all references to Rollo are to G.R. No. 144129.

[3] TSN, Oral Argument, 9.

[4] *Salafranca vs. Philamlife Village Homeowners Association*, 300 SCRA 469; *Pascual vs. Court of Appeals*, 300 SCRA 214; *Oil and Natural Gas Commission vs. Court of Appeals*, 293 SCRA 26.

[5] See *Vda. De Chua vs. Court of Appeals*, 287 SCRA 33, which held that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.

[6] The Tribunal in its Decision did not make a categorical ruling on the total number of "JTV" votes as revised. The records show a discrepancy in the identification of the actual number of "JTV" votes. For the record, petitioner's count is 6,178 (4,336 in the 25% pilot precincts and 1,842 in the non-pilot precincts). Private respondent contends that there are a total of 6,315 "JTV" votes, and Justice Melo's dissenting opinion to the HRET decision declares that there are 8,151 "JTV" vote .

[7] See *Sahali vs. Commission on Elections*, G.R. No. 134169, February 2, 2000.

[8] Annex "E", Petition in G.R. No. 144129.

[9] Section 211, paragraph 14 of the Omnibus Election Code provides: Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.

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[10] Ferin vs. Gonzales, 53 SCRA 237.

[11] Bautista vs. Commission on Elections, 298 SCRA 480; Silverio vs. Castro, 19 SCRA 521.

[12] Mandac vs. Samonte, 49 Phil. 284.

[13] Annexes "P-1" and "P-2" of Petition; Rollo, 298-299.

[14] Annex "P-2", supra.

[15] 15 Annex "Q-1" of Petition; Rollo, 337.

[16] Annex "Q-2" of Petition; Rollo, 339.

[17] Annex "Q-3" of Petition; Rollo, 340.

[18] HRET Decision; Rollo, 59-60.

[19] Sinaca vs. Mula, G.R. No. 135691, September 27, 1999; Collado vs. Alonzo, 15 SCRA 562; Lambanao vs. Teno, 15 SCRA 716; Guzman vs. Board of Canvassers, 48 Phil. 211.

[20] Sinaca vs. Mula, supra.

[21] Under Section 78 of B.P. 881, a petition to deny due course to a certificate of candidacy may be filed against a candidate on the ground that a material representation contained in said certificate of candidacy is false. The petition must be filed not later than 25 days from the time of the filing of the questioned certificate of candidacy.

[22] Sinaca vs. Mula, supra.

[23] HRET Decision; Rollo, 62.

[24] 57 Phil. 100.

[25] Ibid.

[26] Comment to Petition in G.R. No. 144129, 48-49.

[27] HRET Decision; Rollo, 47.

[28] Ibid., 48.

[29] Ibid.

[30] Comment to Petition in G.R. No. 144129, 27.

[31] HRET Resolution dated October 7, 1999; Rollo, 139-140.

[32] Rollo in G.R. No. 143351, 125.

[33] Annexes "A" and "B" to HRET Decision (Lists of Stray Ballots with "JTV" on Line for Representative); Rollo, 88-105.

[34] Reiterated in *Illescas vs. Court of Appeals*, 94 Phil. 215.

[35] *Cecilio vs. Tomacruz*, 62 Phil. 689.

[36] It was not until the election Code of 1971 that provisions on the appreciation of nicknames alone were incorporated into the law. These provisions were essentially carried over to the 1978 Election Code and to the present provisions of Section 211, par. 13 of the Omnibus Election Code.

[37] *Tajanlangit vs. Cazenaz*, 5 SCRA 567. See also *Conui-Omega vs. Samson*, 9 SCRA 493; *Bisnar vs. Lapasa*, 19 SCRA 534. These cases reiterate the general rule at the time that isolated ballots where a nickname alone is written should not be given effect.

[38] *Libanan vs. HRET*, 283 SCRA 520; *Robles vs. HRET*, 181 SCRA 780.

[39] *Sahali vs. Commission on Elections*, G.R. No. 134169, February 2, 2000; *Garcia vs. HRET*, G.R. No. 134793, August 12, 1999.

[40] *Loong vs. Commission on elections*, 305 SCRA 832.

[41] Concurring opinion of Justice Abraham F. Sarmiento in *Co vs. HRET*, 199 SCRA 692, citing *Chartered Bank Employees Association vs. Ople*, 138 SCRA 273.

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