

FERNANDO LOPEZ, PETITIONER, VS. GERARDO ROXAS AND PRESIDENTIAL ELECTORAL TRIBUNAL, RESPONDENTS.

G.R. No. 25716. July 28, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner Fernando Lopez and respondent Gerardo Roxas were the main contenders for the Office of Vice-President of the Philippines in the general elections held on November 9, 1965. By Resolution No. 2, approved on December 17, 1965, the two Houses of Congress, in joint session assembled as the board charged with the duty to canvass the votes then cast for President and Vice President of the Philippines, proclaimed petitioner Fernando Lopez elected to the latter office with 3,531,550 votes, or a plurality of 26,724 votes over his closest opponent, respondent Gerardo M. Roxas, in whose favor 3,504,826 votes had been tallied, according to said resolution. On January 5, 1966, respondent filed with the Presidential Electoral Tribunal, Election Protest No. 2, contesting the election of petitioner herein as Vice President of the Philippines, upon the ground that it was not he, but said respondent, who had obtained the largest number of votes for said office.

On February 22, 1966, petitioner Lopez instituted in the Supreme Court the present original action, for prohibition with preliminary injunction, against respondent Roxas, to prevent the Presidential Electoral Tribunal from hearing and deciding the aforementioned election contest, upon the ground that Republic Act No. 1793, creating said Tribunal, is "unconstitutional", and that, "all proceedings taken by it are a nullity."

Petitioner's contention is predicated upon the ground, that Congress may not, by law, authorize an election contest for President and Vice President, the Constitution being silent thereon; that such contest tends to nullify the constitutional authority of Congress to proclaim the candidates elected for President and Vice President; that the recount of votes by the Presidential Electoral Tribunal, as an incident of an election contest, is inconsistent with the exclusive power of Congress to canvass the election returns for the President and the Vice President; that no amendment to the Constitution providing for an election protest involving the office of President and Vice President has been adopted, despite the constitutional amendment governing election contests for Members of Congress; that the tenure of the President and the Vice President is fixed by the Constitution and cannot be abridged by an Act of Congress, like Republic Act No. 1793; that said Act has the effect of amending the Constitution, in that it permits the Presidential Electoral Tribunal to review the congressional proclamation of the president-elect and the vice president-elect; that the constitutional convention had rejected the original plan to include in the Constitution a provision authorizing election contests affecting the president-elect and the vice president-elect before an electoral commission; that the people understood the Constitution to authorize election contests only for Members of Congress, not for President and Vice President, and, in interpreting the Constitution, the people's intent is paramount; that it is illegal for Justices of the Supreme Court to sit as Members of the Presidential Electoral Tribunal, since the decisions thereof are appealable to the Supreme Court on questions of law; that the Presidential Electoral Tribunal is a court inferior to the Supreme Court; and that Congress cannot by legislation appoint in effect the members of the Presidential Electoral Tribunal.

Pursuant to the Constitution, "the Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law".[1]

This provision vests in the judicial branch of the government, not merely some specified or limited judicial power, but "the" judicial power under our political system, and, accordingly, the entirety or "all" of said power, except, only, so much as the Constitution confers upon some other agency, such as the power to "judge all contests relating to the election, returns and qualifications" of members of the Senate and those of the House of Representatives, which is vested by the fundamental law solely in the Senate Electoral Tribunal and the House Electoral Tribunal, respectively.[2]

Judicial power is the authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.[3] The proper exercise of said authority requires legislative action: (1) defining such enforceable and demandable rights and/or prescribing remedies for violations thereof; and (2) determining the court with jurisdiction to hear and decide said controversies or disputes, in the first instance and/or on appeal. For this reason, the Constitution ordains that "Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts", subject to the limitations set forth in the fundamental law.[4]

Prior to the approval of Republic Act No. 1793, a defeated candidate for president or vice-president, who believed that he was the candidate who obtained the largest number of votes for either office, despite the proclamation by Congress of another candidate as the President-elect or vice president-elect, had no legal right to demand by election protest a recount of the votes cast for the office concerned, to establish his right thereto. As a consequence, controversies or disputes on this matter were not justiciable.[5]

Section 1 of Republic Act No. 1793, which provides that:

"There shall be an independent Presidential Electoral Tribunal * * * which shall be the sole judge of all contests relating to the election, returns, and qualifications of the president-elect and the vice-president-elect of the Philippines."

has the effect of giving said defeated candidate the legal right to contest judicially the election of the President-elect or Vice-President-elect and to demand a recount of the votes cast for the office involved in the litigation, as well as to secure a judgment declaring that he[6] is the one elected president or vice-president, as the case may be[7] and that, as such, he is entitled to assume the duties attached to said office. And by providing, further, that the Presidential Electoral Tribunal "shall be composed of the Chief Justice and the other ten Members of the Supreme Court", said legislation has conferred upon such Court an additional original jurisdiction of an exclusive character.[8]

Republic Act No. 1793 has not created a new or separate court. It has merely conferred upon the Supreme Court the functions of a Presidential Electoral Tribunal. The result of the enactment may be likened to the fact that courts of first instance perform the functions of such ordinary courts of first instance,[9] those of courts of land registration,[10] those of probate courts,[11] and those courts of juvenile and domestic relations.[12] It is, also, comparable to the situation obtaining when the municipal court of a provincial capital exercises its authority, pursuant to law, over a limited number of cases which were previously within the exclusive jurisdiction of courts of first instance.[13]

In all of these instances, the court (court of first instance or municipal court) is only one, although the functions may be distinct and, even, separate. Thus the powers of a court of first instance, in the exercise of its jurisdiction over ordinary cases, are broader than, as well as distinct and separate from, those of the same court acting as a court of land registration or a probate court, or as a court of juvenile and domestic relations. So too, the authority

of the municipal court of a provincial capital, when acting as such municipal court, is, territorially more limited than that of the same court when hearing the aforementioned cases which are primarily within the jurisdiction of courts of first instance. In other words, there is only one court, although it may perform the functions pertaining to several types of courts, each having some characteristics different from those of the others.

Indeed, the Supreme Court,[14] the Court of Appeals[15] and courts of first instance,[16] are vested with original jurisdiction, as well as with appellate jurisdiction, in consequence of which they are both trial courts and appellate courts, without detracting from the fact that there is only one Supreme Court, one Court of Appeals, and one court of first instance, clothed with authority to discharge said dual functions. A court of first instance, when performing the functions of a probate court or a court of land registration, or a court of juvenile and domestic relations, although with powers less broad than those of a court of first instance, hearing ordinary actions, is not inferior to the latter, for one cannot be inferior to itself. So too, the Presidential Electoral Tribunal is not inferior to the Supreme Court, since it is the same Court, although the functions peculiar to said Tribunal are more limited in scope than those of the Supreme Court in the exercise of its ordinary functions. Hence, the enactment of Republic Act No. 1793 does not entail an assumption by Congress of the power of appointment vested by the Constitution in the President. It merely connotes the imposition of additional duties upon the Members of the Supreme Court. [17]

Moreover, the power to be the "judge * * * of * * * contests relating to the election, returns, and qualifications" of any public officer is essentially judicial. As such—under the very principle of separation of powers invoked by petitioner herein—it belongs exclusively to the judicial department, except only insofar as the Constitution provides otherwise. This is precisely the reason why said organic law ordains that "the Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members" (Article VI, Section 11, of the Constitution). In other words, the purpose of this provision was to exclude the power to decide such contests relating to Members of Congress—which by nature is judicial[18]—from the operation of the general grant of judicial power[19] to "the Supreme Court and such inferior courts as maybe established by law."

Instead of indicating that Congress may not enact Republic Act No. 1793, the aforementioned provision of the Constitution, establishing said Electoral Tribunals for Members of Congress only, proves the exact opposite, namely: that the Constitution intended to vest Congress with discretion[20] to determine by law whether or not the election of a president-elect or that of a vice-president-elect may be contested and, if Congress should decide in the affirmative, which court of justice shall have jurisdiction to hear the contest. It is, even, debatable whether such jurisdiction may be conferred, by statute, to a board, commission or tribunal composed partly of Members of Congress and Members of the Supreme Court, because of its possible inconsistency with the constitutional grant of the judicial power to "the Supreme Court and * * * such inferior courts as may be established by law," for said board, commission or tribunal would be neither "the Supreme Court",[21] nor, certainly, "such inferior courts as may be established by law."

It follows, therefore, not only that Republic Act No. 1793 is not inconsistent with the Constitution or with the principle of separation of powers underlying the same, but, also, that it is in harmony with the aforementioned grant of "the judicial power" to said courts. Indeed, when Claro M. Recto, Chairman of the Constitutional Convention, proposed that the original move therein to include in the fundamental law a provision creating an Electoral Commission[22] to hear election contests against the President-elect and the Vice-President-elect, be given up, he expressed the view that the elimination of said provision would have the effect of leaving in the hands of the legislative department the power to decide what entity or body would "look into the protests for the position of President and Vice-President." [23] Twenty-two (22) years later, or on May 3, 1957, then Senator

Recto reiterated this view, when, in the course of the debates on the Bill which later became Republic Act No. 1793, he stated:

"* * * Mr. President, as far as I can remember, the intention of the constitutional convention was to leave this matter to ordinary legislation."

Such was, also, the impression of Dr. Jose M. Aruego, another prominent Member of the Convention, who says[24] that

"Election protests for the Presidency and the Vice-Presidency were left to be judged in a manner and by a body decided by the National Assembly." (Italics ours.)

No less than one of the main counsel for petitioner herein, himself another delegate to the Constitutional Convention, evidently shared this view as late as September 30, 1965, for the introduction to his 1965 edition of "the Revised Election Code" states that "he will always be remembered for * * * his famous bill creating the Presidential Electoral Tribunal * * *." Indeed as a member of the Senate, on January 3, 1950, he introduced Senate Bill No. 1 Seeking to create a Presidential Electoral Tribunal "to try, hear and decide protests contesting the election of the President and the Vice-President of the Philippines", which shall be composed of three justices of the Supreme Court, including the Chief Justice, and four Senators and four Members of the House of Representatives.

Then, again, the records of the Convention show that, in voting eventually to eliminate, from the draft of the Constitution, the provision establishing a Presidential Electoral Commission, the delegates were influenced by the fact that there was no similar provision in the Federal Constitution of the United States. Having followed the pattern thereof, it must be assumed, therefore, in the absence of any indicium to the contrary,[25] that the Convention had adhered, also, to the interpretation given to this feature of said Federal Constitution, as may be deduced from the fact that, by an Act of Congress of the United States, approved on January 29, 1877, an Electoral Commission was created to hear and decide certain issues concerning the election of the President of said nation held in 1876. It is, also, worthy of notice that, pursuant to said Act, nothing therein "shall be held to impair or affect any right now existing under the Constitution and laws to question, by proceedings in the judicial courts of the United States, the right or title of the person who shall be declared elected, or who shall claim to be President or Vice-President of the United States, if any such right exists"[26]. Thus, the absence of a provision in said Federal Constitution governing protests against the election of the President and the Vice-President had been construed to be without prejudice to the right of the defeated candidate to file a protest before the courts of justice of the United States, if the laws thereof permitted it. In other words, the Federal Congress was deemed clothed with authority to determine, by ordinary legislation, whether or not protests against the election of said officers may properly be entertained by the judicial department.

Needless to say, the power of Congress to declare who, among the candidates for President and/or Vice-President has obtained the largest number of votes, is entirely different in nature from and not inconsistent with the jurisdiction vested in the Presidential Electoral Tribunal by Republic Act No. 1793. Congress merely acts as a national board of canvassers, charged with the ministerial and executive duty[27] to make said declaration, on the basis of the election returns duly certified by provincial and city boards of canvassers[28]. Upon the other hand, the Presidential Electoral Tribunal has the judicial power to determine whether or not said duly certified election returns have been irregularly made or tampered with, or reflect the true results of the elections in the areas covered by each, and, if not, to recount the ballots cast, and, incidentally thereto, pass upon the validity of each ballot or determine whether the same shall be counted, and, in the affirmative, in whose favor, which Congress has no power to do.

It is, likewise, patent that the aforementioned authority of the Presidential Electoral Tribunal to determine whether or not the protestant has a better right than the President and/or the Vice-President declared elected by Congress would not abridge the constitutional tenure. If the evidence introduced in the election protest shows that the person really elected president or vice-president is the protestant, not the person declared elected by Congress, then the latter had legally no constitutional tenure whatsoever, and, hence, he can claim no abridgement thereof.

It is similarly obvious that, in imposing upon the Supreme Court the additional duty of performing¹ the functions of a Presidential Electoral Tribunal, Congress has not, through Republic Act No. 1793, encroached upon the appointing power of the Executive. The imposition of new duties constitutes, neither the creation of an office, nor the appointment of an officer^[29].

In view of a resolution of this Court dated July 8, 1966 upholding the validity of Republic Act No. 1793, upon the ground that it merely vests additional jurisdiction in the Supreme Court, petitioner has filed a motion dated July 13, 1966, praying this Court "to clarify whether or not" this "election contest should as a consequence * * * be docketed with, and the records thereof transferred, to this Supreme Court, and all pleadings, papers and processes relative thereto should thence forth be filed with it". The motion is, evidently, based upon the premise that the Supreme Court is different and distinct from the Presidential Electoral Tribunal, which is erroneous, as well as contrary to the ruling made in said resolution.

Wherefore, the petition herein is hereby dismissed and the writs therein prayed for denied accordingly. The aforesaid motion is, moreover, denied. With costs against the petitioner. It is so ordered.

Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Writs denied.

[1] Article VIII, Section 1, of the Constitution.

[2] Article VI, Section 11, of the Constitution.

[3] Black, Constitutional Law, 2nd ed. p. 82; *Ruperto vs. Torres*, G. R. No. L-8785, February 27, 1957, citing 34 C. J. 1183-1184; *Wheeling & Elm Grove Railroad Co., Appt. vs. Town of Triadelphia, et al.* 4 LRA (NS) pp. 321, 328-329.

[4] Article VIII, Section 2.

[5] Thus in *Channie Tan vs. Republic*, 107 Phil., 632, April 18, 1960, in which this Court ruled that an action for judicial declaration of citizenship was held not to be a justiciable controversy, because there is no legislation authorizing the institution of such proceeding. *Tan Yu Chin vs. Republic*, G. R. No. L-15775, April 29, 1961; *Tan vs. Republic*, G. R. No. L-16108, October 31, 1961; *Santiago vs. Commissioner*, G. R. No. L-14653, January 31, 1963; *Reyes vs. Republic*, G. R. No. L-17642, November 27, 1964; *Dy Poco vs. Commissioner of Immigration, et al.*, G. R. No. L-22313, March 31, 1966. See, also, *Mabanag vs. Vito*, 78 Phil., 1, in which it was held that "political questions are not within the province of the judiciary, except to the extent that power to deal with such questions has been conferred upon the courts by express constitutional or statutory provision".

[6] Not the candidate proclaimed elected by Congress.

[7] If the evidence so establishes it.

[8] See, for instance, Sec. 2 Act 496 (Land Registration Act), Sec. 14, Act 1956 (Insolvency Law), and Sec. 8 CA

473 (Revised Naturalization Law), which confer upon courts of first instance additional original jurisdiction.

[9] The Courts of First Instance function not only as Courts of General Jurisdiction, i.e., competent to decide all cases, civil and criminal, within their own jurisdiction (12 C. J. S. 20-21, I Moran xxxiii; Rep. Act 296, Secs. 39, 44) but also as Courts of Special Jurisdiction, empowered to decide certain specified matters, such as probate, admiralty, naturalization, bankruptcy, cadastral and land registration cases.

[10] The powers and functions of the Court of Land Registration, established by virtue of Act 496, Sec. 2, were subsequently conferred "upon the Courts of First Instance and judges thereof," by authority of Sec. 10, Act 2347.

[11] Aside from performing the functions of a probate court (Sec. 44, par. [e], Republic Act 296, as amended), courts of first instance also act as admiralty courts (Sec. 44[d], Republic Act 296), bankruptcy courts (Act 1956), and as courts of juvenile and domestic relations (Republic Act No. 1401, Sec. 1).

[12] Except in Manila, Republic Act No. 409, Sec. 38-A, as amended by Republic Act No. 1401.

[13] See Sec. 88. Republic Act 296, as amended, pursuant to which Municipal judges may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the value of which does not exceed ten thousand pesos, * * *." Also, said municipal and city judges, "in the absence of the District Judge from the province, may exercise within the province like interlocutory jurisdiction as the Court of First Instance, which shall be held to include the hearing of all motions for the appointment of a receiver, for temporary injunctions, and for all other orders of the court which are not final in their character and do not involve a decision of the case on its merits, and the hearing of petitions for a writ of habeas corpus." Sec. 87, Republic Act 296 confers upon municipal judges in the capitals of provinces and subprovinces and judges of city courts like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdiction, in which the penalty provided by law does not exceed prisión correccional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both, and in the absence of the district judge, like jurisdiction within the province as the Court of First Instance to hear applications for bail.

[14] In addition to the original and the appellate jurisdictions conferred upon the Supreme Court by the Constitution (Art. VII, Sec. 2), Republic Act 296, Sec. 17 vests it with concurrent jurisdiction with courts of first instance.

[15] Sections 29 and 30, Republic Act 296, as amended

[16] Sections 44 and 45, Republic Act 296, as amended.

[17] The imposition by the legislature to a constitutional body of additional duties not inconsistent with those already prescribed by the Constitution is a practice recognized in many jurisdiction. See, 42 Am. Jur. Public Officers, Secs. 31, 9, pp. 902, 1949; State vs. Caldwell, 23 So. 2d 855, Terrell, J., Supreme Court of Florida; Rouse vs. Johnson, 28 S. W. (2d) 745, 70 A.L.R. 1077, CA Kentucky (1930). Even this Court has recognized the authority of the Legislature to add to, but not to diminish, the jurisdiction of the Supreme Court. In re Guariña. 24 Phil. 37; United States vs. Limsiongco, 41 Phil. 94, 2 PAL. 309.

[18] "The Constitution makes each House of Congress the judge as to the elections and returns of its members. This would appear on its face to be essentially judicial function. In fact, in England and in some of the British dominions, it is assigned to the courts. This was not the case, however, at the time of the adoption of our Constitution and we followed the plan then existing in that country whereby the House of Commons passed on election contests." American Constitutional System—Mathews-p. 98.

"There are certain matters which each house determines for itself, and in respect to which its decision is conclusive, * * * it decides upon the election and qualification of its own members. * * * In determining questions concerning contested seats, the house will exercise judicial power, but generally in accordance with a course of practice which has sprung from precedents in similar cases, and no other authority is at liberty to interfere." Cooley, Thomas M., A Treatise on the Constitutional Limitations. Vol. 1, p. 270-271, 1927 ed.

"Determining of existing facts and resultant and controverted rights and duties, is a judicial function." 23 W & P. 147 (1985 Pocket Part)

"After primary election has been held and results have been ascertained, question regarding qualifications of candidates becomes one which relates to his eligibility to hold office to which he aspires and one which requires the exercise of 'judicial functions' to decide * * * ." State ex rel. Tanner vs. Duncan, 10 So. 2d 507, 511, 23 W & P. 48 (1965 Pocket Part)

[19] Made in Section 1 of Article VIII of the Constitution.

[20] Which is denied thereto in connection with election contests affecting its own members.

[21] In which Members of Congress may not—under the principle of separation of power—sit.

[22] Consisting of members of the legislative department and members of the Supreme Court.

[23] The journal of the Convention shows that the following statements were made on the floor thereof:

"President Recto.—Under the Executive Power, the first important amendment which the Committee recommends to be accepted is the elimination of the Electoral Commission for protests for the positions of President and Vice-President; and I ask that it be voted upon without debate.

"The Acting President—Is there any objection to this proposition? (Silence.) The Chair does not hear any. Approved.

"Delegate Saguin.—For an information. It seems that this Constitution, does not contain any provision with respect to the entity or body which will look into the protests for the positions of President and Vice-President.

"President Recto.—Neither does the American constitution contain a provision over the subject.

"Delegate Saguin.—But, then, who will decide these protests?

"President Recto.—I suppose that the National Assembly will decide that." (Italics ours.)

[24] In his work on "The Framing of the Philippine Constitution," Vol. I, p. 410, printed in 1937.

[25] And none has been brought to our attention.

[26] Italics ours.

[27] Just like that of any municipal, city or provincial board of canvassers.

[28] Article VII, Section 2, Constitution of the Philippines.

[29] "Imposition of new duties upon an officer already elected or appointed does not constitute the creation of an office or the appointment of an officer. When new duties are thus attached to an office, a reappointment of the officer need not be made." (42 Am. Jur., Public Officers, Sec. 90, p. 949.)

"In the United States, except for such offices as are created by Constitution, the creation of public offices is primarily a legislative function. In so far as the legislative power in this respect is not restricted by constitutional

provisions, it is supreme, and the legislative may decide for itself what offices are suitable, necessary, or convenient. When in the exigencies of government it is necessary to create and define new duties, the legislative department has the discretion to determine whether additional offices shall be created or these duties shall be attached to and become ex officio duties of existing offices." (42 Am. Jur., Public Officers, Sec. 31, p. 902: 40 ALR 1052, 1057.)

"* * * the legislative may impose additional powers and duties on both constitutional and statutory officers so long as such duties are not inconsistent with their duties imposed by the constitution. * * * the legislature may make an existing officer the member of another and different board by enlarging his duties." (State vs. Caldwell, 23 So. 2d 855, Terrell, Supreme Court of Florida.)

"That the Legislature may annex additional duties to a constitutional office, or confer powers upon a constitutional officer other than those expressly prescribed by the Constitution, unless inhibited from so doing by that instrument, is everywhere recognized and Practiced in this and other jurisdictions, * * *." (Rouse vs. Johnson, 28 S. W. [2d] 745, 70 ALR. 1077, C. A. Kentucky [1930].

"* * * Congress may create an office, it cannot appoint the officer * * *. It cannot be doubted, * * * that Congress may increase the Power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed." (Shoemaker vs. United States, 37 Law, ed. 170, 185.)

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