

ZACARIAS A. TICZON, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 52451. March 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

These related cases, concerning the position of mayor of San Pablo City, have a common factual back-ground and involve turncoatism as a ground for disquali-fication.

1. In 1963, Zacarias A. Ticzon, as official candidate of the Liberal Party, was elected mayor of San Pablo City while Cesar P. Dizon, the Nacionalista candi-date, was elected vice-mayor.
2. In 1967, Dizon as the Nacionalista candidate, was elected mayor of San Pablo City. He beat Ticzon, the official candidate of the Liberal Party.
3. In 1971, Dizon, again as a Nacionalista, was reelected mayor, beating Ticzon, who ran as a rebel Liberal Party candidate, and Pedro Magcase, the official Liberal Party candidate. By reason of the transitory provisions of the Constitution, Dizon continued to serve as mayor after the expiration of his four-year term in 1975.
4. According to Dizon, he remained a member of the Nacionalista Party up to the early part of 1978 when he campaigned for the candidates for the Batasang Pambansa of the Kilusang Bagong Lipunan (KBL) in the elections held on April 7, 1978.
5. Dizon was the official KBL candidate for mayor of San Pablo City in the elections on January 30, 1980 while, ironically, his old antagonist, Ticzon, was the official candidate of the Nacionalista Party.
6. In Ticzon's certificate of candidacy filed on December 28, 1979 he indicated that he was partyless or an independent candidate. He withdrew that certificate of candidacy. On January 4, 1980, he filed a new certificate of candidacy wherein he alleged that he was the official Nacionalista standard-bearer.
7. The change in party affiliation made by Dizon and Ticzon provoked the filing against them of the charge of turncoatism. Thus, on January 21, 1980, Ramon C. Armedilla, a registered voter of San Pablo City, filed with the Commission on Elections a petition to disqualify Dizon on the ground that in his certificate of candidacy dated January 3, 1980 he indicated that he was the KBL official candidate although he was formerly affiliated with the Nacionalista Party (Case No. 166).
8. Dizon in his verified answer to that petition alleged that during his four-year term in office, he did not change his party affiliation because he continued to be a member of the Nacionalista Party; that he remained in office after December 31, 1975 not as an elected official but as a "casual"; that his change of party affiliation was beyond the six-month prohibitory period because he became a KBL member in 1978 and that the constitutional prohibition should not be applied retroactively to his case. He said that he was the KBL cam-paign manager in San Pablo City in the elections for Batasan members on April 7, 1978 (p. 7, Memorandum). His cer-tificate of

affiliation with the KBL is dated March 7, 1978 and is attested by the President of the Philippines and Secretary General Jose A. Roño (Annex B of Dizon's Memo).

9. On the other hand, on January 23, 1980, Antonio B. Cosico, a registered voter, filed with the Comelec a petition to disqualify Ticzon because in his second certificate of candidacy he stated that he was nominated by the Nacionalista Party although he admittedly ran as a Liberal Party candidate in the 1971 elections (Case No. 235). Fifty--eight barangay captains and chairmen of San Pablo City, in a resolution dated January 27, 1980, asked Mayor Dizon to push through the disqualification case against Ticzon (pp. 89-91, Rollo of G. R. No. 52678).

10. Ticzon in his answer to that petition alleged that in 1971 he was expelled from the Liberal Party because he had run as a rebel candidate and, consequently, in January, 1980 when he ran for mayor, he was partyless. Attached to his answer was an affidavit of Manuel A. Concordia, the acting chairman of the district committee of the Liberal Party. Concordia attested to the expulsion of Ticzon from the Liberal Party in 1971. (According to Dizon, no answer was filed by Ticzon, pp. 72 and 85, Rollo of G. R. No. 52678).

11. The disqualification case against Ticzon was submitted for decision on February 6, 1980 when Ticzon offered as rebuttal evidence the affidavit of Senator Gerardo Roxas, the president of the Liberal Party, affirming that in 1971 Ticzon was expelled from the party for acts inimical to its objectives (pp. 30-31, Rollo of G. R. No. 52678). But Governor Felicísimo San Luis, the provincial chairman of the Liberal Party, stated in his affidavit that Ticzon was not expelled from the party (p. 86, Rollo). The two disqualification cases were not decided before the elections.

12. A third case, Case No. 462, was filed by Ceferino Ambray, the KBL campaign manager in San Pablo City, against the San Pablo City chapter of the Nacionalista Party for having included among its candidates for councilor a guest candidate named Dominador Laset, Jr., a member of the National Union for Liberation. Because of that guest candidacy, the Comelec in its resolutions of February 13 and 16, 1980 treated the candidates of the Nacionalista Party in San Pablo City as independent candidates not entitled to the benefit of block-voting (pp. 223 and 285 to 287, Rollo of G. R. No. 52678).

13. In the meantime or in the evening of January 30, 1980, the city board of canvassers started the canvass of the election returns. Dizon later asked the Comelec to change the board of canvassers on the ground of bias and partiality (p. 38, Rollo of G. R. No. 52678).

14. The Comelec in a telegram dated January 30, 1980 to the city board of canvassers directed that should it appear that Ticzon had won, then his proclamation should be suspended in view of the pending disqualification case against him (p. 292, Rollo of G. R. No. 52678).

15. On January 31, 1980, Dizon filed with the Comelec a verified petition praying, alternatively, for the suspension of the canvass and the proclamation or for the nullification of the election. He alleged the following grounds:

"3. That prior to the elections of January 30, 1980, in the City of San Pablo, many registered voters in the permanent list of voters were not included in the certified list of voters prepared for each voting center, so that thousands of registered voters were disenfranchised and not able to vote on Election Day, which registered disenfranchised voters had they been able to vote, would materially alter the results of the election, more particularly with respect to the position of City Mayor;

"4. That private respondent (Ticzon) on or before Election Day has resorted to widespread vote-buying and has employed strong-arm tactics, resulting in the nullification of the free will of the electorate;

"5. That the election returns submitted appear to be tampered with, altered or falsified and that there exists discrepancies in the authentic copies from a voting center or discrepancies in the votes of the candidates, which tampering, alteration, or falsification and discrepancies in the returns would materially affect the results of the elections, more particularly that of the position of City Mayor." (Annex A of Dizon's Memorandum.)

16. Ticzon was furnished with a copy of that petition. The Comelec acted on it by sending a directive dated February 1, 1980 to the provincial election officer of Laguna to stop the canvass of the votes for city mayor, vice-mayor and members of the Sangguniang Panglungsod in San Pablo City and advising that -"no canvass or proclamation shall be undertaken until further orders" from the Comelec (p. 32, Rollo of G. R. No. 52678).

17. That directive triggered the filing by Ticzon' of a petition for certiorari in this Court on February 4, 1980 for the purpose of suspending its enforcement (G. R. No. 52451, Ticzon vs. Comelec). Only the Comelec was made a respondent in that case. Ticzon did not implead Dizon as a respondent in that case. This Court issued a resolution with a restraining order on February 5, 1980, enjoining the Comelec from enforcing its directive insofar as it suspended the canvass and instructing the city board of canvassers to proceed with the canvass of the election returns (p. 33, Rollo). Not being a respondent, Dizon was not aware of that resolution. The provincial election officer of Laguna was advised by telegram on February 6 of that restraining order.

18. However, that restraining order was not implemented because before it was served upon the Comelec, it had issued a resolution dated February 6, 1980, replacing the city board of canvassers with a new board of canvassers composed of three Comelec lawyers. It was stated in the resolution that Dizon had sought the replacement of the city board of canvassers due to acts prejudicial to his candidacy (p. 35, Rollo). Dizon contends that this Court's restraining order did not prohibit the change of the city board of canvassers.

19. Dizon had complained to the Comelec that the city superintendent of schools and the city fiscal, two of the three members of the city board of canvassers, were partial to Ticzon. The fiscal allegedly owed his appointment to Congressman Manuel A. Concordia (Ticzon's lawyer) while the city superintendent of schools had allegedly campaigned on the sly for Tic zon. The Comelec's investigating team found it advisable that a new board of canvassers be appointed and that the venue of the canvass be changed to Manila (pp. 78-79, Rollo).

20. On February 7, the Comelec instructed the new board of canvassers to bring the election returns to Manila and to canvass them in the Comelec' s session hall (p. 36, Rollo). Dizon in a sworn letter to the city board of canvassers dated February 7, 1980 alleged that the previous members of the board were partial and biased; that there was lack of notice or improper notice to the parties in the previous partial canvass of the returns and that there was undue haste in the previous canvass. Dizon asked for a recanvass in the interest of fairness and justice (pp. 38-39, Rollo).

21. The Comelec in its resolution of February 11, 1980 held that the recanvass was not prohibited by this Court's restraining order. It ordered the new board to canvass all the election returns including those already canvassed by the old board (p. 39, Rollo). So, the new board canvassed all the returns.

22. At the instance of Ticzon and without the knowledge of Dizon, this Court issued on February 14, 1980 an order restraining the canvass of the election returns in Manila by the new city board of canvassers. That order was served in the Comelec at ten o'clock in the morning of February 15, 1980 when the recanvass was about to be terminated and after Ticzon had learned of the resolution of February 12, disqualifying him. A copy of the restraining order was sent to the Comelec' s Law Department at four-quarter in the afternoon. Horacio Apostol of the Law Department sent the restraining order to the Comelec Chairman at five-forty in the afternoon of the following day. But the day before, Dizon had already been proclaimed as mayor (p. 4, Memo of Solicitor General of August 1, 1980).

23. In the meanwhile, or on February 12, 1980 before the recanvass was completed, the Comelec in its Resolution No. 9085, Case No. 235, Cosico vs. Ticzon, ruled that Ticzon was disqualified because without having resigned from the Liberal Party or being expelled therefrom he ran as a Nacionalista (pp. 40-41, Rollo).

24. The Comelec found that, according to the affidavit of Pedro Magcase, a former vice-mayor and Liberal Party standard bearer, and other documentary evidence, Ticzon continued as a member in good standing of the Liberal Party. Hence, Ticzon's candidacy was not given due course, the votes in his favor were regarded as stray votes and the new city board of canvassers was directed to proclaim Dizon as the winning candidate for mayor of San Pablo City (p. 40, Rollo). Thus, this Court's second restraining order of February 14, enjoining the canvass by the newly constituted board of canvassers, was useless. It was useless because of the Comelec's prior resolution of February 12, disqualifying Ticzon and ordering the proclamation of Dizon. By reason of Ticzon's disqualification, there was no need to canvass or determine the votes for him as tallied in the election returns.

25. In a separate resolution No. 9098 in Case No. 166, dated February 13, 1980, the Comelec dismissed Armedilla's petition to disqualify Dizon. That petition was submitted on the basis of the pleadings. The dismissal was anchored on the ground of insufficiency of evidence (p. 23, Rollo of G. R. No. 53393).

26. On February 15, 1980, Ticzon filed in this Court against the Comelec and Cosico a second petition for certiorari wherein he prayed that the resolution disqualifying him be set aside. Again, Ticzon did not implead Dizon as a respondent (G. R. No. 52678).

27. On that same day, after five o'clock in the after-noon, this Court issued a third restraining order, enjoining the Comelec from implementing the disqualification resolution and the city board of canvassers from proclaiming Dizon. That restraining order was received in the Comelec at seven-forty in the evening. However, as already stated, at a little past six o'clock in the evening of that same day, or before that third restraining order could be served, the city board of canvassers, implementing the Comelec's February 12 resolution, proclaimed Dizon as mayor. He garnered 28,119 votes. As directed by the Comelec, the votes in favor of Ticzon were not counted and were considered stray votes (pp. 45, 49, 102, 109 and 112, Rollo of G. R. No. 52678).

28. It should be noted that Ticzon filed with the Comelec a petition for quo warranto dated February 22, 1980, seeking to oust Dizon as mayor on the ground of turncoatism, and that he filed against Dizon an election protest ad cautelam (Cases Nos. 80-14 and 80-15, pp. 34-36, Rollo of G. R. No. 53393).

29. On February 20, 1980 Dizon filed a motion to intervene in the second, case. Attached to his motion was his answer in intervention. His motion was granted. Annexed to that motion was a resolution dated February 3, 1980, signed by fifty-eight (58) barangay chairmen and captains of San Pablo City, headed by Ricardo B. Dioso, Sr., enumerating the following irregularities and frauds allegedly committed by the Nacionalistas or Ticzon's backers: (1) use of flying and fake voters; (2) open ballot boxes; (3) disenfranchisement of old and new voters; (4) substitution of ballots; (5) some KBL voters were not able to vote due to the threats on their persons and families made by Nacionalista leaders; (6) substitution of voters and voting by dead persons; (7) to invalidate the ballots of KBL voters who resorted to block-voting, some teachers wrote therein the names of certain candidates; (8) frauds committed by teachers; (9) vote-buying by adherents of Ticzon at prices ranging from P20 to P50 per vote; (10) use as watchers by Nacionalistas of ex-convicts and goons and (11) fraudulent reading of ballots to favor Nacionalista candidates (Annex G, p. 92, Rollo).

30. With respect to the disqualification case against Dizon, Armedilla interposed in this Court on March 18, 1980 an "appeal by certiorari" wherein he contended that the Comelec did not observe due process in dismissing the case (G. R. No. 53393).

31. Dizon in his comment on that appeal traversed the allegation as to nonobservance of due process. He said that at the hearing of the petition for disqualification on Jan-u-ary 26, 1980 in the Comelec the case was submitted on the basis of the pleadings (p. 30, Rollo of G. R. No. 53393).

The issues are whether the Comelec committed a grave abuse of discretion in changing the city board of canvassers and the venue of the recanvass of the returns, in disqualifying Ticzon on the ground of turncoatism, in dismissing the petition for disqualification against Dizon and in ordering his proclamation.

In resolving those issues, we have to take into account the Comelec's unique position in our scheme of government and its dominant and pervasive role in insuring the holding of free, orderly and honest elections.

The Comelec is empowered to "enforce and administer all laws relative to the conduct of elections" and is "the sole judge of all contests relating to the elections, returns, and disqualifications" of elective officials (Sec. 2[1 & 2], Art. XII[C], Constitution; Secs. 185 and 188, 1978 Election Code).

It is "the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall be final and executory" (Art. 175, 1978 Election Code). However, its decision, order or ruling may be reviewed by this Court on certiorari (Sec. 11, Art. XII[C] of the Constitution).

It has "direct control and supervision over the board of canvassers" and any member of the board "may at any time be relieved for cause and substituted motu proprio by the Commission" (Sec. 168, Election Code of 1978).

We find that the Comelec did not abuse its discretion in changing the city board of canvassers, in directing that the canvass be held in its session hall in Manila and in allowing a recanvass of the returns already canvassed by the old board. The Comelec acted within its powers and jurisdiction in taking those steps based on its findings. It investigated the situation in the light of the representations made by Dizon. The question as to the recanvass was argued by the parties before the city board of canvassers.

There is no justification for this Court to interfere with the actions taken by the Comelec. In factual matters, the Comelec is "en mejores condiciones que ningun otro organismo del Estado para conocer aquellos que tiendana asegurar la pureza del sufragio, en que radica la salud de las democracias. Sus conclusiones, por tanto, relativas a los hechos y las cuestiones de equidad no deben ser modificadas, a menos que en autos aparezca que abuso gravamente de sus facultades." (Vinzons vs. Commission on Elections, 73 Phil. 247, 251-2.)

Hence, the petition in the first case, G. R. No. 52451, should be dismissed for lack of merit.

The other cases, G. R. Nos. 52678 and 53393, are pre-proclamation controversies which arose because of the constitutional prohibition that "no elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six months immediately preceding or following an election" (Sec. 10, Art. XII(C)). That prohibition is incorporated in section 4 of Batas Blg. 52 which took effect on December 22, 1979.

Section 7 of that law provides that the Comelec "shall motu proprio, or upon sworn petition of any voter, political party or candidate, after due notice and hearing, refuse to give due course to a certificate of candidacy if it is shown that the person filing the same does not possess all the necessary qualifications for the office concerned or is disqualified from running for said office as provided by law".

The Comelec found that Ticzon, a Liberal in the 1971 elections, indicated that he was a Nacionalista in the certificate of candidacy which he filed for the elections on January 30, 1980. "The records do not disclose that he resigned his membership from the said Liberal Party. Neither was he expelled from his party. On the contrary, the affidavit of Ex-Vice-Mayor Pedro Magcase shows" that Ticzon remained with the Liberal Party. "All other

documentary evidences on record indicate his conti-nuance as member in good standing of the Liberal Party" (Reso-lution No. 9085, p. 40, Rollo of G. R. No. 52678).

The Comelec had jurisdiction to make the factual find-ing that Ticzon changed his party affiliation within six months preceding the elections. It is not a whimsical and capricious finding. It is supported by documentary evidence. Ticzon was not denied due process when the finding was made. He was duly heard and he presented evidence at the hearing. Consequently, that finding cannot be set aside in this certiorari proceeding. It is binding and conclusive on this Court.

"Indeed, in special civil actions for certiorari, the main issue is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction whereas petitions for review on certiorari are limited to the consideration of questions of law" (Lucman vs. Dimaporo, L-31558, May 29, 1970, 33 SCRA 387, 399-400. See Bashier vs. Commission on Elections, L-33692, February 24, 1972 and two other cases, 43 SCRA 238).

A review of the decision, order or ruling of the Comelec by means of certiorari means that this Court cannot review its factual findings (Sotto vs. Commission on Elections, 76 Phil. 516, 521).

If the courts do not disturb the factual findings of administrative agencies created by law, except when there is no substantial evidence to support such findings, then there is no reason to believe that the Constitution intended to place the Comelec (which was created by the Constitution as an independent body) on a lower level than those adminis-trative agencies (Lucman vs. Dimaporo, 33 SCRA 387, 401).

Another contention of Ticzon is that the Comelec erred in regarding the votes obtained by him as stray votes. The Comelec's ruling is based on section 155(24) of the 1978 Elec-tion Code which provides that "any vote cast in favor of a candidate who has been disqualified under this Code shall be considered as stray and shall not be counted but it shall not invalidate the ballot". This is a new provision.

It is argued that because that rule is found among the "rules for the appreciation of ballots", it should be applied by the citizens election committee in the counting of votes and it cannot be applied by the board of canvassers in canvassing the election returns. That contention has no merit.

Rule 24 means that the votes cast for a disqualified candidate fall into the category of invalid or inexistent votes because a disqualified candidate is no candidate at all or is not a candidate in the eyes of the law.

In Monsale vs. Nico, 83 Phil. 758, a candidate who withdrew his candidacy but who, nevertheless, obtained the highest number of votes, was not proclaimed because he had ceased to be a candidate. His opponent, who obtained the next highest number of votes, was proclaimed as the duly elected municipal mayor.

The Comelec did not give due course to Ticzon's candidacy. He became a non-candidate. The votes for a non-candidate cannot be counted and cannot influence the result of the elections. The votes for Ticzon were properly adjudged as stray votes.

With respect to the disqualification case against Mayor Dizon (G. R. No. 53393), the contention that due pro-cess was not observed in dismissing that case is not well-taken because petitioner Armedilla was given a chance to controvert Dizon's defense that he was already a KBL par-tisan in April, 1978, or more than six months prior to Jan-uary 30, 1980 but Armedilla was not able to overthrow that defense lie submitted the case for decision by the Comelec on the pleadings.

The Comelec concluded that Dizon did not violate the prohibition against turncoatism. (See Resolution of January 25, 1980 in Amante vs. Comelec, G. R. No. 52375 where a gubernatorial candidate who was a KBL member for a

short time and then ran as a Nacionalista in the election of January 30, 1980 was not considered disqualified.)

Armedilla's counsel, who is also Ticzon's counsel, did not discuss in his memorandum the disqualification case against Dizon. The latter's counsel discussed it in his memorandum.

Dizon contends that the constitutional provision disqualifying an elective officer from changing his political party affiliation during his term of office cannot be given retroactive effect to his case. He argues that in 1971, when he was elected mayor for a four-year term ending on December 31, 1975, there was no legal provision prohibiting an elective public official from changing his party affiliation.

After his four-year term expired, he continued to hold office by virtue of the provision that "all officials and employees in the existing Government shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines" (Sec. 9, Art. XVII, Transitory Provisions of the Constitution).

The Comelec assumed that the other portion of section 10, Article XII[C], regarding change of political party within six months prior to the elections, has no application to Dizon because, as alleged in his answer, he changed his party in April, 1978 or more than six months before January 30, 1980.

However, since, as stated earlier, Ticzon had filed with the Comelec a quo warranto proceeding against Dizon, wherein Dizon's alleged disqualification is in issue, that same matter may again be threshed out in the Comelec (Case No. 80-15).

Justices Barredo, Makasiar, Concepcion Jr., Fernandez, Guerrero and De Castro (seven including the herein ponente) concurred in this opinion. Chief Justice Fernando in a separate opinion concurs in Justice Melencio-Herrera's dissent. Justices Teehankee and Abad Santos filed separate dissents.

WHEREFORE, the petition in the three cases are dismissed without prejudice to further proceedings in the afore-mentioned quo warranto case.

The proclamation of Cesar P. Dizon as mayor of San Pablo City is upheld. No costs.

SO ORDERED.

Barredo, Makasiar, Concepcion, Jr., Fernandez, and Guerrero, Jr., JJ., concur.

De Castro, J., see concurring opinion.

Fernando, C.J., concurs in the dissent of J. Melencio-Herrera and files a separate opinion.

Teehankee, Abad Santos, and Melencio-Herrera JJ., dissent in a separate opinions.

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DISSENTING OPINION

ABAD SANTOS, J.:

I vote to grant the petitions. I join Justice Melencio-Herrera's dissent except for the last paragraph thereof. This is another instance where the Commission on Elections did not live up to the high expectations of the people and of this Court. The vast powers entrusted to the COMELEC by the Constitution and statutes should have given it a sober sense of responsibility. Instead it has even dealt unfairly with this Court. Add to this its flip-flopping resolutions and we have a constitutional body whose credibility has been seriously eroded.

Zacarias A. Ticzon appears to have obtained the plurality of votes over Cesar P. Dizon for the office of the mayor

of San Pablo City. He should be proclaimed the winner and accordingly allowed to hold office. Thereafter, Dizon can file the appropriate proceedings to test Ticzon's title to the office on the alleged ground of turn-coatism if he is so minded.

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CONCURRING OPINION

DE CASTRO, J.:

I concur. I wish, however, to write this separate opinion not so much to place its weight behind one of the contending parties and thereby advance his cause against the other, but more to raise a voice of defense of COMELEC, which came under a scathing attack in the, dissenting opinion of Justice Teehankee (hereafter referred to for brevity as "dissent") which, to me, is unkind and undeserved.

I assuredly am one with my brethren who would feel serious concern and strong displeasure for any act of dis-respect, disregard or disobedience to any court order, writ or process. But looking at the instant case with an absolutely objective eye and serenity, not with a mind agitated with anger and a heart heavy with frustration, I see no cause for an out-burst of severe denunciation against the COMELEC for what is seen in the "dissent" as willful, oppressive and brazen disregard of three restraining orders of this Court, and other alleged acts of arbitrariness committed by the COMELEC. A constitutional body like the Supreme Court, the COMELEC should, I believe, even with some faults or errors it is susceptible of committing, be spared that kind of stinging castigation that might quite properly be visited upon on lesser bodies in appropriate instances or occasions, except perhaps when a measure of severity of condemnation is, with undisputable propriety, unavoidably and compellingly called for.

In the present instance, I see no "gross disregard or violation" of the restraining order issued by this Court on February 5, 1980 against the enforcement of a directive dated February 1, 1980 of the COMELEC to stop "until further orders," the canvass of the votes of city mayor, vice-mayor and members of the Sangguniang Pangluso in San Pablo City, and directed the San Pablo City Board of Canvassers to proceed with the canvass of the election returns. When the COMELEC, before the restraining order could be served on it, issued Resolution of February 6, 1980 to replace the original members of the city board of canvassers with three COMELEC lawyers; on a sworn letter and a verified petition of Dizon filed on January 31, 1980 for the suspension of the canvass and proclamation, or in the alternative, the annulment of the election in San Pablo City, it could not have disregarded the Court's restraining order. The grounds of the petition were all of grievous nature, and COMELEC could not have left it unacted upon without a feeling of guilt for dereliction of duty. All that COMELEC did was to discharge its duty on the premises in the best light that dawned on it, and the actions it took did not violate, even in the slightest, our restraining order of February 5, 1980.

In changing the members of the city board of canvassers, COMELEC acted clearly within its power of having direct control and supervision over the board of canvassers, to relieve them for cause, and substitute them even *motu proprio*.^[1] Two members of the city board of canvassers, the City Fiscal and School Superintendent, were denounced as partial by Dizon, and the charge was properly investigated by COMELEC which thereupon acted as

it saw fit and proper.

When COMELEC also directed the canvass to be held in its Session Hall in Manila, and ordered the canvass to include the returns already canvassed by the old board, the order was issued only after an investigation into the charges contained in the aforementioned verified petition filed by Dizon. Again, the Commission acted well within its powers in dutiful fulfilment of its grave responsibility to insure clean, honest and orderly elections, likewise violating no directive of the restraining order. Transfer of venue of canvass had been ordered as in the case of Mandaluyong municipality involving mayoralty candidates, and Batangas province, involving the gubernatorial aspirants therein.

The very plain terms, therefore, of the restraining order of February 5, 1980, the main thrust of which is only for the canvass to proceed and proclamation to follow thereafter, do not justify branding the issuance, of February 6 Resolution of the COMELEC as "arbitrary," much less "in gross disregard and violation" of Our first restraining order of February 5, 1980, for neither the reconstitution of the board nor the recanvassing was expressly, or even impliedly, prohibited by said restraining order.

It was when Ticzon came again to this Court that We issued on February 14, 1980 a second restraining order against the canvass of the election returns in Manila by the new City Board of Canvassers. This is a clear inference that before this restraining order of February 14, 1980, the canvassing of the election returns by a newly formed board of canvassers in the premises of the COMELEC was not prohibited since indeed all that this Court had ordered in its first restraining order was for the canvass to proceed.

Parenthetically, the order of COMELEC on February 1, 1980, which suspended canvassing and proclamation, was not arbitrary. It apparently considered the move necessary and well-advised because in all good faith, as it must be so assumed, it felt that it was its inescapable duty to decide the pre-election disqualification cases against both Ticzon and Dizon before the canvassing and proclamation, considering the distinct possibility that one of the two opposing candidates, or even both of them, may be found disqualified to run for the elective office they sought. The Commission must have seen the propriety and wisdom of first resolving the pre-election disqualification controversies quickly to avoid what may amount to a virtual grabbing of proclamation by one not qualified to hold the elective office, excluding the legally entitled aspirant from assuming the position. So, as early as February 12, 1980, after due hearing which ended on February 6, 1980, when the case was submitted for decision, COMELEC issued a resolution finding Ticzon disqualified on ground of "turncoatism". It also found the evidence against Dizon for a similar charge insufficient, and it, accordingly, dismissed the petition for his disqualification on February 13, 1980, after the case had been submitted on the pleadings. This led to the votes of Ticzon being considered stray, as expressly so ordained by the Election Code of 1980,[2] and paved the way for the proclamation of Dizon as the remaining unopposed candidate, late in the afternoon on February 15, 1980, before our second restraining order of the same date could be served on the Board of Canvassers that proclaimed Dizon.

It is all too evident, therefore, that when Ticzon came to this Court with his second petition for certiorari praying for the setting aside of the COMELEC resolution disqualifying him, it was a bit too late, even if on the same day after 5:00 o'clock p. m., this Court issued a third restraining order enjoining COMELEC from implementing the disqualification resolution of Ticzon and the city board of canvassers from proclaiming Dizon, for the latter was already proclaimed before the restraining order could actually be served on the Board of Canvassers.

The foregoing are the salient facts to consider in deciding these related cases, in all of which the crucial issue, consistent with the limited certiorari jurisdiction of this Court over the COMELEC,[3] is whether said body acted with grave abuse of discretion or with lack or in excess of its jurisdiction, or otherwise against the law; questions of facts being deemed settled by the COMELEC itself beyond Our interference, except in case of denial of due

process or evident arbitrariness[4] which, as I said at the outset, and with due respect, I fail to see with a calm and objective mind.

We need not look as far back as the order of February 1, 1980 of the Commission suspending the canvassing of the election returns, which it issued manifestly because of the pendency of the pre-election disqualification cases against the two opposing candidates, Dizon and Ticzon, as well as the sworn letter and verified petition of Dizon filed on January 31, 1980. For as soon as the first restraining order of February 5, 1980 was served on it, the Commission took steps towards the canvassing of the election returns, in compliance therewith. It only had to change the original membership of the board of canvassers, on being made to appear to it that, as charged by Dizon, and after its own investigation, the City Fiscal and School Superintendent were not impartial members, the first, for having owed his position to Ticzon's counsel, ex-Congressman Manuel Concordia, and the second, for having campaigned for Ticzon, on the sly, as Justice Aquino said in his main opinion. It also changed the venue of the canvassing to Manila within its office premises, obviously to free the proceedings from possible extraneous illegal influences or pressures, certainly not to manipulate the canvass to favor one of the candidates, which, if COMELEC had done so, would deserve the severest censure and indictment. The Commission's power of control and supervision over the Board of Canvassers leaves absolutely no room for doubt as to the legality of its action, without any vestige of grave abuse of discretion or arbitrariness. A motive other than one related to the goal and in the interest, of a free, honest and orderly elections to the end that the legitimate will of the people is given effect not being demonstrable to have influenced the Commission, and also considering the presumption of regularity in the performance of official functions, a strongly critical thrust against the COMELEC is, to my mind, clearly unkind and unwarranted.

In any case, when the Commission ordered the suspension of the canvass on February 1, 1980, there was yet no ruling of this Court on whether such a suspension based on the pendency of pre-election or pre-proclamation disqualification cases against both opposing candidates for Mayor, or either of them, is proper or not. A direct ruling on the impropriety of COMELEC suspension of proclamation (not canvassing) due to pendency of a disqualification suit was handed down in *Singco vs. COMELEC, et al*[5] and possibly other earlier cases before it, but positively not before the questioned order of the COMELEC. Even the case of *Pimentel vs. COMELEC, et al*,[6] G. R. No. 53581-83, which annulled the suspension of the proclamation of Pimentel because of the invalidity of the COMELEC resolution of his disqualification for having been issued in violation of procedural due process, was decided on February 21, 1980. The COMELEC suspending the canvass of the election returns of San Pablo City, therefore; does not deserve so castigating a stricture as the "dissent" appears to be bristling with.

But should We annul Dizon's proclamation in the same way that We did Ong's proclamation in the *Singco* case? Or stated differently, should We order the proclamation of Ticzon as We did order the proclamation of Pimentel in the *Pimentel* case?

Dizon's proclamation on February 15, 1980 came after COMELEC had pronounced Ticzon's disqualification in a resolution issued on February 12, 1980, before proclamation of the winner. Unlike in the *Pimentel* case, the resolution disqualifying Ticzon is not vitiated by any violation of due process, as this Court has found, at least with no member, except Justice Teehankee, expressly holding that the disqualification of Ticzon is not valid for lack of due process, or being contrary to the evidence. In the case of *Singco*, his proclamation was suspended by COMELEC because it found him disqualified. On certiorari, We found the resolution disqualifying *Singco* void as We did in *Pimentel*, for lack of procedural due process. Hence, there was no legal obstacle to their proclamation since the canvassing showed them to be the winners.

From the foregoing observations, the answers to the questions earlier propounded should be clear and unmistakable. However, I need not elaborate on them, for this separate opinion is primarily intended, as I have

stated at the outset, in defense of the COMELEC from the virulent attack against its credibility, competence, and impartiality, as I sense it from the vigorous language used in the "dissent". Its effect on either of the opposing candidates by way of advancing his cause, is thus only incidental, insofar as the real objective of this separate opinion as just pointed out once more, is concerned.

At this juncture, may I be permitted to state a few words on the following portion of the "dissent":

"Before, the loser's tactic, was to 'grab the proclamation at all costs and prolong the protest.' Now, the Comelec has refused to even count the votes of the winner (in gross violation of the Court's standing February 5, 1980 restraining order) and enabled the loser to grab not only the proclamation but the election as well with not even a right of protest by the winner. The Comelec did this by an arbitrary post-election disqualification of the winner as a 'turncoat' from the Liberal Party (which had boycotted the elections as well as the previous 1978 elections and was considered by the Comelec itself as 'inexistent') to Nacionalista Party and ordering the proclamation of the loser as 'the remaining winning candidate' with 'no opponent.' There might as well have been no elections. In the words of the late Chief Justice Fred Ruiz Castro, the loser continues to fraudulently represent people who had in law and in fact duly elected some-one else to represent them.' Furthermore, the prevailing doctrine since the 1912 case of Topacio vs. Paredes that the repudiated loser who succeeds in disqualifying the winner is not entitled to be proclaimed, much less to assume office, since he has not received the majority of the votes cast in the elections as well as the sovereign will of the San Pablo electorate have simply been disregarded and swept aside without even a passing nod."

The disqualification suits against both Ticzon and Dizon were pre-election controversies. As earlier intimated, the Commission must have felt, in all good faith, backed by the legal presumption of regularity in the performance of official functions, that it was its duty to resolve them as quickly as possible to prevent the proclamation of a disqualified candidate which would be not only a futile ceremony, but also unfair to the qualified candidate who actually would be a victim of "grabbing of proclamation", so well exemplified by the case of Santos vs. Comelec, et al., G. R. No. 52390, March 31, 1981. There, Santos was declared disqualified by COMELEC before the elections, but was nevertheless allowed to run because of a restraining order issued by this Court, when he came to this Court for a review of the COMELEC resolution disqualifying him. We affirmed the resolution of the COMELEC disqualifying Santos, but not after he was proclaimed winner and has held office for more than a year, to the prejudice of the qualified candidate who should have been unopposed since Santos was declared disqualified by COMELEC as early as before the election.

It is apparently to prevent occurrence of cases where there would be "grabbing of proclamation" that COMELEC would not want proclamations to be rushed. What would have happened if Ticzon had been proclaimed and allowed to assume office because COMELEC had not suspended the proclamation "until further orders?" Dizon who actually was the only candidate qualified to be elected would have had to oust Ticzon through quo warranto proceedings which may take years before it could finally be decided. Would not Ticzon have grabbed the proclamation? Certainly, Dizon cannot be pointed to as the culprit. He did not exclude Ticzon from lawfully assuming the position of Mayor of San Pablo City, for Ticzon is legally barred from the position.

How then can the act of the Commission in deciding a disqualification case before the completion of the canvass and of the proclamation, be considered "arbitrary" specially when, as it now turns out, the Supreme Court, in its decision herein, has found no reason to annul the COMELEC resolution of disqualification against Ticzon? The Commission's action on the premises would precisely achieve the aim of the policy that condemns "grabbing the proclamation" by one who, by the people's will, as expressed in the Constitution in its "innovative and mandatory" provision against 'turncoatism,' is disqualified from running for an elective office. The fully qualified candidate voted for, even with less votes than those obtained by the disqualified candidate, which are legally "stray" votes, justly deserves to be proclaimed. He would not be the loser who "continues to fraudulently

represent the people", as Chief Justice Fred Ruiz Castro said in the case of *Aratuc vs. COMELEC*,^[7] cited in the "dissent", for had the disqualified candidate not run as the people would not have wanted him to, the so-called "loser" would unquestionably have been elected. At least, he could not be said to have grabbed the proclamation unlawfully, or to continue representing the people fraudulently.

In the above-quoted portion of the dissenting opinion of Justice Teehankee, the case of *Topacio vs. Paredes*, 23 Phil. 238, is cited for the proposition that even if Ticzon is disqualified, Dizon is not entitled to be proclaimed. A different ruling appears to have been enunciated much later in the case of *Monsale vs. Nico*, 83 Phil. 758, cited in the main opinion (p. 14). In any case, Dizon as the only remaining candidate and therefore the legally proclaimed winner may be ousted only at the instance of possibly the Vice-Mayor-elect who may have a valid claim to the position of Mayor if Dizon is himself disqualified, in a quo warranto proceedings seasonably filed.

The crux of the present controversy, therefore, actually hinges on no other question than whether the Resolution of COMELEC disqualifying Ticzon is valid or not, Dizon having already been proclaimed and had since acted as City Mayor. If its validity is upheld, all other issues would be moot. The proclamation of Dizon would be legal, and his continuance in office can be tested only in a quo warranto proceedings, not by an election protest by Ticzon whose disqualification, as herein pronounced, would bar him from such remedy, nor that of quo warranto, not being qualified to make a lawful claim on the position. This is of course on the premise that Dizon is not disqualified as so demonstrated with convincing lucidity, in the main opinion, to which I do not propose to add anything more. To do so might deviate from the primary object of this separate opinion. But because in assailing the validity of the COMELEC resolution disqualifying Ticzon, the "dissent" is equally vigorous in lashing at the poll body for what it alleges to be whimsical and capricious acts committed with apparent bias and evident arbitrariness, in the evaluation of the evidence as well as the application of the law relative to the cause of the disqualification, I would like to put in a few words too on the matter.

Ticzon's violation of the constitutional prohibition against so-called "turncoatism" is premised on his having been with no other party than the Liberal Party, but he became a Nacionalista just days before the last election. He tried to overcome the adverse effect of this switch of party by claiming to have been expelled from the Liberal Party when he ran as a rebel Liberal candidate for Mayor of San Pablo City in 1971 and therefore he had no party to switch from. His claim of expulsion is sought to be proven by an affidavit of his own counsel, Atty. Manuel Concordia, who had been the Liberal Party Chairman in one of the congressional districts of Laguna, and a certification of former Senator Gerardo Roxas as President of the Liberal Party, presented on rebuttal during the hearing. By way of counter evidence, an affidavit of a former Liberal Party Vice-Mayor, Pedro Magcase, firmly attests to Ticzon having always remained with the Liberal Party. At once manifest is that ex-Congressman Concordia, as counsel of Ticzon, cannot be as unbiased or disinterested a witness as Pedro Magcase whose affidavit, accordingly, deserves more faith and credence.

As President of the Liberal Party, former Senator Roxas, likewise, could not be as reliable as Magcase in his knowledge of Ticzon's standing as a Liberal Party man. His duties and concern as the Liberal Party head are nationwide in scope and extent. He, therefore, could not have been so intimately aware of the status of Ticzon, as a fellow Liberal as Magcase was. Both Ticzon and Magcase belong to the same City chapter of the party. As Liberals of some prominence in their locality, they certainly have been in frequent personal contacts with each other, which Senator Roxas may never have had at all with Ticzon.

Even assuming that Ticzon was expelled from the Liberal Party, his expulsion was only a punishment for being perhaps an undisciplined party man, but that does not necessary mean that he had to give up his adherence to, and belief in, the ideals and objectives of that party if he wanted to stick to them even outside of the party. What is condemned by the Constitution is to adopt and adhere to the ideals and objectives of a political party different

from those of the party to which one had always affiliated himself. This is what Ticzon did when he turned Nacionalista from a different party that he had been before within the prohibited period before an election as specified in the Constitution.

Moreover, Ticzon's readmission to the Liberal Party soon after the 1971 elections, in preparation of the 1973 presidential elections, could be a very strong probability, not a mere possibility, if we consider the well-known and simple political dictum of one of Our most loved and revered politicians, Don Eulogio (Amang) Rodriguez, Sr., that "politics is addition not subtraction." This observation would give even more credence to Magcase's affirmation that Ticzon had always been a Liberal of good standing. Ticzon's alleged expulsion is indeed hard to believe for the party would gain nothing by it. A declaration of a "free zone" when two candidates of the same party are bent on running is usually what is done, instead of expulsion to preserve the strength of the party. In any case, Ticzon's expulsion could have been so momentary, for the party was always willing, for practical reasons, to forgive him, and to take him back, that Magcase did not even know Ticzon was ever ex-pelled.

I can neither subscribe to the idea or proposition that the Liberal Party has become inexistent for its not participating in both 1978 and 1980 elections. Its non-participation in said elections was more an evidence of its well-disciplined existence, and solid organizational compactness as shown by its boycott of the past two elections which can be only under a strong unity of decision of the Party, than as showing its disintegration or dissolution. No strongly viable party of pre-martial law vintage like the Liberal Party appears to have dissolved, itself. This would be an act so contrary to the simple political aphorism that "politics is addition not subtraction" as earlier adverted to. This is a fact easily borne out by recent events in the political scene, with the organization of the UNIDO in which the Liberal Party President, former Senator Gerardo Roxas, is Co-Chairman, an undeniable evidence of the party's continued and healthy existence.

Pursuing, further, the main purpose of this opinion, I would like to say that I cannot agree with the accusation against COMELEC implicit in the statement in the "dissent" that "Ticzon case was arbitrarily, whimsically and discriminate-ly plucked by the COMELEC from hundred of pending disqualification cases in order to select the losers as the winners with no opponent by disqualifying the elected winners and not count-ing their votes as stray votes." The action of COMELEC is one done purely in administering the laws relative to the conduct of elections. For this Court to rebuke the COMELEC for this simple and pure act of administration would be to overstep the bounds of its reviewing authority over the Com-mission, no law having been violated by COMELEC in this regard, administrative discretion only being involved - fixing priori-ties among cases pending before it.

It must be emphasized that the resolution disqualifying Ticzon was before the proclamation of any winner. The case was submitted for decision on February 6, 1980, after Ticzon has presented rebuttal evidence, thus negating any claim of absence of procedural due process. If the Commission picked the Ticzon case for an early disposition together with the Dizon disqualification case, it evidently was because of the petition of Dizon for the suspension of the canvass and proclamation, or the annulment of the election in San Pablo City, filed on January 31, 1980 with the COMELEC, just after the election day. A decision on either or both of the cases finding "turncoatism" to have disqualified either or both respondents therein would obviously render the Dizon petition moot. By and large, the Commission cannot be blamed for finding an expeditious way of quickly solving so grave a problem as that posed before it by the Dizon petition. COMELEC has shown thereby its thorough grasp of its priorities and responsibilities, and its capacity for sound and efficient administration of its massive and multifarious activities and affairs. An act purely one of administration, it may be repeated, does not come within the certiorari authority of this Court, to permit it to castigate the COMELEC for any error committed by it, which is one, not of jurisdiction but only of judgment or discretion.

It must, likewise, be stressed that in deciding the two disqualification cases against both Ticzon and Dizon, the

first having been submitted on February 6, 1980, but decided on February 12, 1980 again negating any suggestion of "railroading" the COMELEC did so before proclamation of a winner. It thus, fully adhered to the ruling in *Arcenas vs. COMELEC*,^[8] where it was stated that "it is now the prevailing doctrine that after an election duly held and a proclamation thereafter made, a pre-proclamation controversy should no longer be viable." Did not COMELEC, therefore, act correctly and wisely in deciding the disqualification cases of both Ticzon and Dizon before proclamation, for thereby it relieved itself of what otherwise would have taken much of its precious time, and also this Court to which the petition will, in all likelihood, be eventually elevated for review? City elective position being involved, COMELEC had, with commendable foresight, wisely gave priority to these disqualification cases in San Pablo mayoralty, for once decided by it and its decision finally passed by the Supreme Court on review, it has disposed of two cases with most salutary effect in its concern for an expeditious disposition of the numerous cases before it.

On the supposed assurance of COMELEC, given to its counsel, then Asst. Solicitor General Vicente Mendoza, (not to this Court) that the officials of the COMELEC would not implement the questioned order to proclaim Dizon as the only remaining candidate, then Asst. Solicitor General Mendoza could have been a little precipitate, if not indiscreet, in making the mani-festation of said assurance to this Court, since it does not appear that COMELEC wanted or asked him to pass on the same assurance to this Court as to make it feel solemnly bound not to implement the order on Dizon's proclamation. It could also be that the Board of Canvassers had not been timely advised not to proclaim Dizon because of oversight or inadvertence, on the part of the COMELEC, the officials thereof at the time being under tremendous pressure of work all to be attended to with utmost urgency. A realization of this fact evidently was the reason why the motion for contempt later filed with this Court against COMELEC was not entertained which, if it was, would have given the COMELEC officials concerned the opportunity to explain their side. Condemning now COMELEC without hearing would not be in keeping with our ever zealous concern for the solemn observance of the right of procedural due process.

At all events, any sign of disregard of any of the court's restraining orders as the "dissent" would see in the actuations of the COMELEC, which hopefully, has been erased by this humble opinion, need no longer excite so much fury and frustration, for with the ultimate disposition of this case as the "plurality decision" would have it, finding Ticzon disqualified for "turn-coatism", absolutely no prejudice was inflicted on him by said actuation except perhaps that from his personal standpoint, not from that of the electorate which undoubtedly holds to stronger allegiance to the Constitution, had he been proclaimed, should have held the position and exercised the prerogatives and enjoyed the privileges thereof. But surely, the COMELEC cannot be condemned that by its actuations, in the sound exercise of its discretion and wise application of its powers, such an eventuality did not come to pass, for this would have been a Constitutional transgression.

Of no practical value then would it be to propose, as the "dissent" does at this stage, even in the name of justice, to undo everything that has already been done, for what is allegedly in gross violation and disregard of the restraining orders issued in this case by the COMELEC, (which is not clearly or undisputably so, as hereinabove demonstrated) only for the sake of asserting the court's authority to uphold its restraining orders. For this may not be done now without transgressing or violating the Constitution by allowing a disqualified person to hold an elective office. Injustice would also be inflicted on Dizon, for the allegedly arbitrary acts committed not by him but by COMELEC, whose enjoined acts would have been perfectly lawful without the restraining orders. Incidentally, this Court has not set aside any proclamation except only when the person proclaimed had before the election or the proclamation been found by COMELEC to be disqualified, and the disqualification had been affirmed, as it had to be, so affirmed, by this Court after the proclamation.^[9]

Another point raised in the "dissent" is the question of whether P.D. 1661 is ex post facto if made to apply to

Ticzon, or even to Dizon. The "dissent" still insists on said decree being ex post facto, and should not be given retroactive effect despite that in the case of Santos vs. COMELEC, et al, supra, this Court already held that P.D. No. 1661 is not "banned under the ex post facto clause of the Constitution", for if it were, all disqualification cases would have all been brushed aside on this account by one stroke of the pen.

The high regard I hold for democratic tenets and processes would make my personal sympathy go for Ticzon if he had indeed obtained more votes than Dizon, without fraud or any other election irregularity as those charged by Dizon, and yet unable to assume office by reason of disqualification. The will of the people, however, as expressed in the Constitution against "turncoatism" may not be disregarded, even if only momentarily in order to give effect to the supposedly winning votes cast by the electorate of a given locality in favor of a certain candidate. The constitutional prohibition, like all constitutional provisions, is mandatory and unyielding. It constitutes a basic, permanent and continuing expression of the will of the people, unlike a passing fancy or preference for, certain candidates expressed at intervals of time when elections are held. Hence, my commitment as a member of the Supreme Court, the judicial guardian of the Constitution, leaves me with no choice but to subordinate my personal sympathy to the supremacy of the fundamental law.

I have always felt that it might be doing a disservice to the cause of effective government if the different agencies created by the Constitution were to treat each other with distrust and suspicion, and not with benign confidence and gentle faith that all of them are equally striving to fulfill their responsibility in their respective domain with the highest degree of integrity, competence, impartiality and good faith, entirely without malice, bias or prejudice for or against any person or party. The same spirit that animated me to write a separate opinion in the case of Aratuc vs. COMELEC, et al,[10] has moved me to write this opinion, in a desire to maintain the faith and trust of the people in the COMELEC, not to contribute, even if only unwittingly, to their erosion as might happen when its good faith and impartiality is placed under a cloud of doubt for whatever error it may have committed, to which like this Court itself and all other human institutions, it is susceptible, not being endowed with the attribute of infallibility. Thus, I said in the Aratuc case where certain official actions of COMELEC were also placed under severe scrutiny before this Court after the 1978 elections:

"We must refrain from imputing to the COMELEC which has been enlarged with fresh mandate and a bigger trust by the Constitution failure in the performance of its functions by willful neglect, official incompetence, much less by deliberate partiality, in the first real test of its capability."

It must be to the credit of COMELEC that it has just recently proclaimed NP Candidate Elias B. Lopez as Mayor of Davao City, whose proclamation it has suspended on petition of KBL Candidate Luis T. Santos, on the ground that numerous voters were unable to vote because of rampant terrorism which it found to be well-founded. It ordered a new election to be held in a widely affected area, and the Supreme Court affirmed its decision for a new election to be held, but only in some portions of said area. This the COMELEC did after realizing the impracticability of holding the new elections, because the state of peace and order of the affected area has not improved but worsened. By this act, COMELEC had clearly demonstrated its capacity for fairness, justice and impartiality, which, from the very start, as may be gleaned from the above quoted portion of the very first separate opinion I wrote upon my joining this Court, I have nurtured hopes, would continually mark and unceasingly characterize its work and service to the nation. It is my well-considered opinion that the Commission has not failed in that hope and in the expectation of the people at large.

[1] Section 168, Election Code of 1980.

[2] Section 155, par. 24, Election Code of 1980.

[3] Article XII-C, Section 16, Philippine-Constitution.

[4] *Marrero vs. Bocar*, et al, 66 Phil. 429; *Pungutan vs. Abubakar*, et al, 43 SCRA 1; *Bashier vs. COMELEC*, 43 SCRA 238; *Lucman vs. Dimaporo*, 33 SCRA 387.

[5] G.R. No. 53830, November 28, 1980.

[6] G.R. No. 53581-83, February 21, 1980.

[7] 88 SCRA 251

[8] G.R. No. 54039, November 28, 1980.

[9] See *Santos vs. Comelec*, supra.

[10] 88 SCRA 251.

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DISSENTING OPINION

FERNANDO, C.J.:

It must be admitted that there is support for the conclusion reached based on the appraisal of the facts as set forth in the majority opinion penned with his usual clarity by Justice Aquino. It cannot be denied either that once there be acceptance of the proclamation of respondent Dizon, reliance on the now prevailing doctrine given full expression in *Aguinaldo v. Commission on Elections* leads to such a result. Nonetheless, I find myself unable to yield my assent in view of what I consider to be the failure of respondent Commission on Elections to heed and comply with a restraining order issued by this Court as early as February 6, 1980. Without, therefore, joining dissenting Justices Teehankee and Abad Santos in their condemnation in strongly-worded terms of the actuation of respondent Commission on Elections, it is my belief that it could have acted with more prudence and circumspection on the matter and thus avoid what on its face was a failure to abide by what was ordered by this Court. In therefore, dissenting from the exhaustive and able opinion of the Court, I am inclined to follow the approach taken by Justice Melencio-Herrera. I reach the same conclusion as she did that for the present, it would be premature for either petitioner Ticzon and respondent Dizon to discharge the functions of city mayor. I shall explain why.

1. There is still need it seems, to recall fundamentals at times. This is one of them. The categorical affirmation of Chief Justice Marshall in the landmark decision, *Marbury v. Madison*, comes to mind: "It is emphatically the province and duty of the judicial department to say what the law is."^[1] That is the basis for the exercise of the function of judicial review, which is a corollary to the cardinal postulate that the Constitution is the fundamental law. In the leading case of *Angara v. Electoral Commission*, Justice Laurel spoke of this peculiarly American doctrine imposing upon the judiciary the duty of enforcing the Constitution in the determination of actual cases and controversies.^[2] Such a principle is the necessary consequence of the supremacy of the Constitution, with the Supreme Court, in the last analysis, as its guardian. There is this caveat. It can act as such only when it exercises its judicial function. This Tribunal then cannot avoid its sworn duty to give effect to its mandates.^[3] It must not

sanction a constitutional breach.[4] It should strike down legislative or executive acts in conflict with the fundamental law.[5] It can, of course, on the other hand affirm their validity. The function of judicial review has thus both a checking and a legitimating aspect.

2. Nor is the fundamental concept of the Supreme Court as the ultimate arbiter on questions of law limited only to issues of constitutional dimensions. In all other cases where it has to rule on a legal question, it can speak authoritatively. It may change its view as it has the right to. As long, however, as a resolution issued by this Tribunal stands in force and unreversed, it must be obeyed. If it were otherwise, the rule of law becomes a myth. It would, at the very least, erode respect for jural norms as traditionally, conceived in all legal systems. An excerpt from an opinion of Justice J.B.L. Reyes in *Albert v. Court of First Instance*[6] has relevance. Thus: "Judge Gaudencio Cloribel need not be reminded that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings".[7] That such a principle obtains in the United States is quite evident upon a cursory perusal of such recent American Supreme Court decisions as *Cooper v. Aaron*,[8] *Baker v. Carr*,[9] *Powell v. McCormack*,[10] and *United States v. Nixon*. [11] It is worth noting that in *Aaron*, the opinion of the Court was quite unique. It is not only that it is a unanimous decision but also that the nine Justices of the Court from Chief Justice Burger down to the most Junior Justice, Justice Whitaker, were ponentes.

3. Let there be no misunderstanding. There is no thought of interfering in any wise or form with the prerogative vested by the Constitution in the Commission on Elections. Its independence must be preserved --but not to the extent of allowing it to follow a course of conduct contrary to order of this Court. For the wide discretion it enjoys is subject to this specific provision of the Constitution: "Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof." [12] When, therefore, a case is properly before us, it must ever be alert to avoid the slightest suspicion that it pays no heed to what this Court has required it to do. There must be awareness that this Tribunal is entitled to and must insist on obedience to its judgments or resolutions. Any other view would entail pernicious consequences to the rule of law. Confronted as it was by the February 5, 1980 Resolution with its restraining order, it should have filed a petition with this Court to have it lifted. Then it would have avoided the serious predicament in which it finds itself at present. There is plausibility, it must be conceded, to its submission that such restraining order came too late. At the most, that would only be indicative of its good faith. Thereafter, knowing that this Court had assumed jurisdiction, the proper and lawful thing to do was to avoid any hasty action which could be characterized as a failure to accord this Court the respect due it. So constitutiona-lism mandates.

Hence my concurrence in the dissent of Justice Melencio-Herrera, coupled with the hope that respondent Commission, perhaps not laboring under the time pressure that plagued it in the 1980 election would not, in the future, be found lacking in that degree of care and circumspection to avoid a recurrence of this deplorable situation.

[1] *Marbury v. Madison*, 1 Cranch 137, 177 (1803).

[2] Cf. *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[3] *People v. Vera*, 65 Phil. 56 (1937).

[4] *Laurel, dissenting, Government v. Hongkong and Shanghai Bank*, 66 Phil. 483 (1938).

[5] *Laurel, concurring, Zanduetta v. De la Costa*, 66 Phil. 615 (1938).

[6] L-26364, May 29, 1968, 23 SCRA 948.

[7] Ibid, 961.

[8] 358 US 1 (1958).

[9] 369 US 186 (1962).

[10] 395 US 486 (1969).

[11] 418 US 683 (1974).

[12] Article XII, C, Sec. 11 of the Constitution.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

In the local elections held on January 30, 1980 in San Pablo, Laguna, petitioner Zacarias A. Ticzon and intervenor Cesar P. Dizon (then incumbent Mayor) were the respective NP and KBL official candidates for the position of City Mayor of San Pablo.

Prior to said elections, petitioner Ticzon and intervenor Dizon were respondents in cases for disqualification on the ground of political turncoatism before respondent COMELEC. In PDC 235 entitled *Cosico vs. Ticzon*, it was alleged that petitioner Ticzon did not resign from his former political party, the Liberal Party, and became a member of the Nacionalista Party only on December 31, 1979. In PDC 166, entitled *Armedilla vs. Dizon*, it was alleged that intervenor Dizon was a member of the Nacionalista Party until he filed his candidacy for City Mayor as the KBL candidate on January 3, 1980.

On January 31, 1980, intervenor Dizon filed a Petition with respondent COMELEC alleging that prior to the elections many registered voters in the permanent list of voters were not included in the certified list of voters prepared for each voting center, so that thousands of registered voters were disenfranchised and not able to vote on Election Day, and who, if able to vote, would materially alter the results of the election particularly with respect to the position of City Mayor; that petitioner Ticzon had resorted to wide-spread vote-buying and had employed strong-arm tactics; and that the election returns appear to be tampered, altered or falsified. Intervenor Dizon thus prayed to suspend ex-parte the canvassing of the election returns, more particularly that of City Mayor, and to suspend ex-parte the proclamation of the candidate elect and/or to annul any proclamation already made, more particularly that of City Mayor of San Pablo.

Acting on the aforesaid Petition of intervenor Dizon, respondent COMELEC issued a directive on February 1, 1980 addressed to the Provincial Election Officer of Laguna, the pertinent portion of which reads as follows:

"You are hereby directed as follows:

"1. To stop the canvassing of the votes for city positions from Mayor, vice?mayor and Member of Sangguniang Panglungsod in the City of San Pablo and that no canvass or proclamation shall be undertaken until further orders from the Commission.

"x x x xxx xxx"

On February 4, 1980, petitioner filed a Petition for Certiorari, Injunction with Preliminary Injunction (G.R. No. L-52451) with this Court questioning the aforequoted directive of respondent COMELEC as violative of section 175 of the 1978 Election Code.

On February 5, 1980, we issued a Restraining Order reading as follows:

"Acting on the petition, the court RESOLVED in the light of the provisions of the Election Code and the applicable jurisprudence x x x to restrain the Comelec from enforcing the said directive insofar as it suspended the canvassing, and to direct the city board of canvassers to proceed with the canvas-sing of the election returns."

After the issuance of said Restraining Order, which was served on COMELEC on February 6, 1980, that poll body became fully aware of the controversy before this Court and of the Restraining Order issued herein. Nonetheless, COMELEC continued to take steps the results of which tended to make the pending case before this Court moot and academic. Thus, on February 6, 1980, it replaced the City board of canvassers with a new board of canvassers composed of 3 COMELEC lawyers. On February 7, 1980, it transferred the place of canvass from San Pablo to Manila. On February 11, 1980, it ordered a re-canvass of election returns previously canvassed by the former Board of Canvassers and to continue canvassing election returns not as yet canvassed. On February 12, 1980, it disqualified petitioner Zacarias A. Ticzon for turncoatism on the basis of pleadings and exhibits and without a full-dress hearing, considered the votes cast for him as stray votes, and directed the City Board of Canvassers of San Pablo City to proclaim the remaining winning candidate. On February 15, 1980, Dizon was proclaimed winner by the City Board of Canvassers with "no opponent." And this, notwithstanding the manifestation by Asst. Solicitor General Vicente Mendoza at the hearing before this Court in the afternoon of February 15, 1980, of the COMELEC officials assurance that implementation of the Resolution disqualifying petitioner Ticzon and directing the proclamation of the remaining candidate would be suspended pending this Court's action on his petition. The end result was that the canvassing of the election returns ordered by this Court, undoubtedly to include the votes of both contestants, was completely thwarted.

I vote, therefore, to grant the Petitions, the actuations of the COMELEC having been contrary to the spirit and intendment of our Restraining Order of February 5, 1980. The proclamation of Cesar P. Dizon as Mayor of San Pablo City should be set aside with the elected Vice-Mayor assuming office in the meantime; a canvass of the votes of both candidates should be held pursuant to the Restraining Order of this Court dated February 5, 1980; and the disqualification case against Ticzon should be remanded to the COMELEC for a full-dress hearing, or that issue ventilated anew in the quo warranto proceeding filed by Ticzon against Dizon with the COMELEC.

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DISSENTING OPINION

TEEHANKEE, J.:

1. This is a sorry tale that will go into the record books as the case where three (3) successive restraining orders issued unanimously by the Supreme Court enjoining enforcement of an equal number of successive Comelec resolutions arbitrarily issued ex parte after the elections (1) suspending the canvass of the election returns of San Pablo City (to prevent the proclamation of the winner); (2) replacing the original board of canvassers with a new and more pliant board and transferring the venue of the canvassing to Manila; and (3) disqualifying the winning mayoralty candidate Zacarias A. Ticzon for alleged turncoatism and directing the board to proclaim the loser Cesar P. Dizon "as the remaining winning candidate"[1] have been grossly disregarded and violated by the Comelec, and yet the Supreme Court has dismally failed (by a vote of seven [7] members against to four [4] members for) to enforce its own restraining orders and compel compliance therewith.

2. This case marks the nadir of the Comelec's credibility. Mr. Justice Abad Santos' separate dissent says it all: "This is another instance where the Commission on Elections did not live up to the high expectations of the people and of this Court. The vast power entrusted to the COMELEC by the Constitution and statutes should have given it a sober sense of responsibility. Instead it has even dealt unfairly with this Court. Add to this its flip-flopping resolutions and we have a constitutional body whose credibility has been seriously eroded."

3. Before, the loser's tactic was to "grab proclamation at all costs and prolong the protest." Now, the Comelec has refused to even count the votes of the winner (in gross violation of the Court's standing February 5, 1980 restraining order) and enabled the loser to grab not only the proclamation but the election as well with not even a right of protest by the winner. The Comelec did this by an arbitrary post-election disqualification of the winner as a "turncoat" from the Liberal Party (which had boycotted the elections as well as the previous 1973 elections and was considered by the Comelec itself as "in-existent") to Nacionalista Party and ordering the proclamation of the loser as "the remaining winning candidate" with "no opponent." There might as well have been no elections. In the words of the late Chief Justice Fred Ruiz Castro, the loser "continues to fraudulently represent the people who had in law and in fact duly elected someone else to represent them." [2] Furthermore, the prevailing doctrine since the 1912 case of *Topacio vs. Paredes* [3] that the repudiated loser who succeeds in disqualifying the winner is not entitled to be proclaimed, much less to assume office, since he has not received the majority of the votes cast in the elections as well as the sovereign will of the San Pablo electorate have simply been disregarded and swept aside without even a passing nod.

4. As early as one day after the elections on January 31, 1980, Dizon already exhibited the loser's perennial tantrums and filed his petition with the Comelec "for suspension of the canvass and proclamation or for nullification of the election with the usual cries of "disenfranchisement and widespread vote-buying" notwithstanding the vast powers at his disposal as incumbent KBL mayor and the utter lack of any authentic election day reports of such alleged irregularities which the Comelec certainly would have attended to, considering the alacrity with which the Comelec accommodated his every petition after the elections to thwart the winner as this case shows. (See decision at pages 5-6). The Comelec without the notice and hearing required by Section 175 of the 1978 Election Code forthwith accommodated him in its peremptory order of February 1, 1980 directing that "no canvass or proclamation shall be undertaken until further orders" which the Court set aside in February 5, 1980 restraining order ordering the board to proceed with and terminate the canvassing - futilely, as it turned out now. For where other agencies and subordinate courts generally refrain, as matter of deference, from taking any action on questions pending with this Court even where no restraining order is issued by this Court, here in gross disregard of the two restraining orders of February 5 and 14, 1980 and still the third restraining order that was issued right after the Court's hearing of February 15, 1980, as well as of the Solicitor General's assurance

given solemnly on its behalf, the Comelec raced to beat the force and effects of the said orders, and has gotten away with it, as well as beaten the contempt charges filed against it and the canvassing board which the plurality decision has just ignored.

5. At the same time, the Comelec whimsically refused to disqualify the loser Dizon on the Armedilla petition for "petitioner's failure to present sufficient evidence, " when Dizon (who was elected mayor as the official Nacionalista Party candidate in the 1967 and 1971 elections but in the last 1980 elections turned coat and ran as official KBL candidate) was patently guilty of turncoatism for changing his political party affiliation during his term of office against the express prohibition of Article XII C, Section 10 of the 1973 Constitution.[4] The plurality's decision has disregarded their pledge during our deliberations of applying the same measure of "turncoatism" to Dizon and necessarily also disqualifying him.

6. What is worse, Comelec's abrupt disqualification of the winner Ticzon was against the President's own post-election order to "the lawyers of the KBL to withdraw all disqualification charges to allow already proclaimed opposition candidates involved in such cases to assume office without prejudice to filing an election protest." [5] Questioned about such order, Dizon's counsel replied that the order was just a newspaper order and they did not receive it.

7. The core issue at bar is the validity and fairness of the Comelec's post-election disqualification of Ticzon as a turncoat for having run as an oppositionist Liberal in 1971 and nine years later as an oppositionist Nacionalista in 1980 against the dominant KBL candi-date, Dizon, who had been elected in both the 1967 and 1971 elections as the then dominant Nacionalista official candidate.

(a) The said disqualification of Ticzon should be dismissed out-right by this Court for lack of substantial evidence (see my Memorandum to the Court of March 25, 1980, reproduced hereunder, at pages 4-5). In *Potencion vs. Comelec* [6] involving the governorship of the Province of Aurora, the Comelec, as sustained in the comment filed by the Solicitor General on its behalf, "dismissed the disqualification case against respondent for switching from Liberal Party (under which he was elected) to the KBL on the ground that 'the Liberal Party may be deemed to have become inexistent as it did not nominate candidates both in the elections of 1978 and 1980.'" But the Comelec inconsistently flip-flopped here and did not equally apply this reasoning and in the case of the winner Ticzon who became partyless and switched from the "inexistent" Liberal Party not to the dominant KBL (as the loser Dizon did, switching from the former majority Nacionalista Party under which he was elected) but to the opposition Nacionalista Party. This action of the Comelec violates the very spirit of the cited constitutional prohibition against turn coatism, which is to curtail opportunism and desertion of the opposition ranks;

(b) The Comelec's disqualification of Ticzon likewise denied him "the rudimentary requirements of fair play [which] demand that [he] be afforded ample opportunity to prove" his defenses against the charge of turncoatism - to borrow the very phrase of Mr. Justice Ramon C. Aquino for a unanimous Court in *Gonzales vs. Comelec*. [7] In setting aside therein the Comelec disqualification of the winner of the election for the mayoralty of Polangui, Albay, and the proclama-tion of the loser (because the winner's votes were considered as stray votes and not counted, as in Ticzon's case here), Mr. Justice Aquino pointed out that he was denied procedural due process: "(T)he Comelec disqualified Gonzales without hearing his evidence. It denied his mo-tion for reconsideration in a somewhat high-handed or cavalier man-ner. It did not bother to resolve the factual issues raised in the affidavits supporting his motion for reconsideration. There is no find-ing as to when the KBL became a duly accredited political party. Moreover, the release of the disqualification resolution on the eve of the election was quite unfair and disconcerting to Gonzales, " - which con-siderations are fully applicable to the present case; and worse, Ticzon was disqualified 16 days after the election and on the eve of his proclama-tion;

(c) The Comelec's post-election disqualification of the winner Ticzon offends all notions of fair play and equal protection as well as of substantive due process and transgresses the constitutional injunction that all "bona fide candidates shall be free from any form of harassment and discrimination." [8] Here, Ticzon's case, like that of Antonio O. Singco the opposition winner of the last mayoralty election for Ginatilan, Cebu (whose arbitrary post-election disqualification on February 26, 1980 by the Comelec was set aside by a unanimous Court in *Singco vs. Comelec*, [9]) was arbitrarily, whimsically and discriminatorily plucked by the Comelec from hundreds of pending disqualification cases in order to select the losers as the winners with "no opponent" by disqualifying the elected winners and not counting their votes as "stray votes"; and

(d) In *Arcenas vs. Comelec*, [10] the Chief Justice, speaking for a unanimous Court, essayed to write finis to all such pending disqualification cases still being utilized to harass the winners and clear the Court's dockets by restating that "It is now the prevailing doctrine that after an election duly held and a proclamation [of the winner] thereafter made, a pre-proclamation controversy should no longer be viable" and "resort [must] be had to the remedy of an election protest or a quo warranto, whichever is proper." This doctrine has been affirmed and reaffirmed in all subsequent cases, the latest being *Agcaoili vs. Santos and Comelec*. [11] In this latest case, the Court thru the Chief Justice once again reiterated election day, January 30, 1980, as the cut-off date and that disqualification cases which had not been acted upon prior to that date by the Comelec "should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding." Inexplicably, this settled doctrine has not been applied to the present case of Ticzon who should have long been proclaimed the winner (since January 31st and at the latest in February of last year pursuant to the Court's three restraining orders) and assumed his rightful office pursuant to the electorate's verdict.

8. In *Esquivel vs. Comelec*, [12] a plurality of six members of the Court sanctioned the Comelec's belated unseating of petitioner as mayor of Palayan City despite the lapse of almost two months since his assumption of office, on the ground that the canvassing board which proclaimed him was "illegally constituted" and "as such its acts are patent nullities without force and effect in law" because its chairman, the election registrar, was not a lawyer as directed by section 11 of B. P. Blg. 52, although said board was constituted according to the Comelec's own guidelines, which imposed no such requirement. Then all the more so, should the unjustifiable act of the new canvassing board of proclaiming Dizon as the "remaining winning candidate" with "no opponent" be deemed a "patent nullity without force and effect in law" by virtue of the Court's restraining orders of February 14 and 15, 1980 enjoining enforcement of the Comelec orders replacing the original board and ordering Dizon's "proclamation."

9. The plurality decision's assertion (at page-8) that "this Court's second restraining order of February 14, enjoining the canvass by the newly constituted board of canvassers, was useless. It was useless because of the Comelec's prior resolution of February 12, disqualifying Ticzon and ordering the proclamation of Dizon. By reason of Ticzon's disqualification, there was no need to canvass or determine the votes for him as tallied in the election returns," [13] is untenable, because: -

- The Court's first restraining order of February 5th directed the canvassing board to disregard the Comelec's suspension of the canvass and "to proceed with the canvassing" and count, of course, the votes of both Ticzon and Dizon, and the board acknowledged the same and pledged compliance therewith in its February 7th telegram;
- This triggered the Comelec's arbitrary order replacing the original board and transferring the venue to Manila, which was also enjoined by the Court's second restraining order of February 14th; and hence, the new board was "illegally constituted" and its acts were "patent nullities" - in the language of *Esquivel*, supra;
- This Court's second restraining order of February 14th can hardly be downgraded as "useless". Ticzon's 11th

hour disqualification by the Comelec resolution dated February 12, 1980 but released only on February 14, 1980 when the canvassing showed Ticzon with an insurmountable margin of 2,994 votes with only 62 more precincts to be tallied was another "patent nullity" in gross violation of the Court's first restraining order, which ordered that the board and Comelec canvass Ticzon's votes, as well as of the Court's third restraining order of February 15th which expressly enjoined enforcement of the Comelec's 11th hour disqualification of Ticzon;

- As admitted in the plurality decision, (at pages 7 and 8), the Court's second restraining order restraining the canvass in Manila by the new board "was [timely] served in (sic) the Comelec at ten o'clock in the morning of February 15, 1980 when the recan-vass was about to be terminated. " The excuse that it took up to 4:30 p. m. that day for the Comelec records section to send a copy of the restraining order to its Law Department, which in turn took more than 24 hours until 5:30 p.m. of the next day, February 16, to forward a copy to the Comelec chairman, whereas Dizon had been proclaimed at past 6:00 p.m. of the preceding day, February 15, is of no consequence, prescinding from the outrageous incredibility of the excuse;

- For on that very afternoon of February 15th, the Court was hearing Ticzon's urgent petition for a restraining order against his 11th hour disqualification (which he learned of only on the preceding day) and then Assistant Solicitor General, now Court of Appeals Justice, Vicente V. Mendoza in representation of the Comelec solemnly manifested in open court that he was assured by the Comelec chairman and officials that pending the Court's action on the petition before it, they would not implement the questioned Comelec order to proclaim Dizon as the only remaining candidate. Assistant Solicitor General Mendoza was so visibly shocked when it turned out that as he gave his assurance at the hearing, the new board was at that very hour rushing its proclamation of Dizon, that at the subsequent hearing of February 26, 1980 to set aside Dizon's proclamation and to hold the Comelec in contempt, he candidly stated to the Court that on his own, he was recommending to the Comelec and to this Court the setting aside of Di-zon's proclamation. Callous proof of the Comelec's forfeiture of "a sober sense of responsibility" is its obdurate failure to heed its own counsel's recommendation and set aside Dizon's railroaded" proclama-tion" against its chairman's plighted word.

- No matter. Prescinding from the nullity of said proclama-tion and the brazenly oppressive and arbitrary action of the Comelec, it lies within the inherent power of the Court to enforce its restraining order against the parties who were racing to beat the order and to set aside the "proclamation" and restore the status quo, as this Court has done in many such other cases.

10. The plurality decision's pronouncements to the effect that the Comelec's findings are sacrosanct and that "there is no justifica-tion for this Court to interfere with the actions taken by the Comelec" (at page 11, et seq) are an untenable abdication of the Court's consti-tutional power and duty of review over the Comelec[14] and have no justification in law and in fact.

In law: Ironically, the cited case of Vinzons^{14-a} manifests the Court's reluctance to disturb the Comelec's rulings "on facts and matters of equity . . . to assure the sanctity of the ballot," exercised freely by the voters as "particles of sovereignty" - but has no applica-tion when the Comelec serves as the very instrument of oppression to thwart the people's will and impose on them the repudiated loser as the "remaining winning candidate" with "no opponent". When the Comelec makes the baseless finding in its disqualification resolution that "the records do not disclose that [Ticzon] resigned his membership from the said Liberal Party. Neither was he expelled from his party. On the contrary the affidavit of Ex-Vice Mayor Pedro Magcase shows 'that Ticzon remained with the Liberal Party.' All other documentary evidences on record indicate his continuance as member in good standing of the Li-beral Party, " (at page 12, decision), such baseless finding cannot be "binding and conclusive on this Court, " as asserted by the plurality decision (at page 13). Contrary to the Comelec's incorrect statement, the documentary evidence of record amply shows that both former Con-gressman Manuel Concordia as LP chairman

for the Laguna first con-gressional district and LP president Gerardo Roxas had submitted sworn statements that Ticzon had been expelled from the Liberal Party for having run as a rebel Liberal candidate in the 1971 elections (resulting in the victory of the Nacionalista Party candidate Dizon, now KBL, and the defeat of the disgruntled official Liberal Party candidate, ex-vice mayor Pedro Magcase upon whose barren affidavit the Comelec solely relied for its "finding" that "Ticzon remained with the Liberal Party" which the Comelec itself had held to be now "inexistent" since it had not participated in the 1978 and 1980 elections. So how could Ticzon be a turncoat from an "inexistent" Liberal Party?) The plurality deci-sion itself does not even mention these vital documents that reveal the baselessness of the Comelec's "finding" which it pronounces as "binding and conclusive."

In fact: As Mr. Justice Abad Santos justly observed in his dissent in *Omar vs. Comelec*,^[15] "(T)he proposition that this Court should sparingly use its power of review over the COMELEC because it is an independent constitutional body is correct but this is one case where we should firmly exercise our power because of the flip-flopping resolutions of the Comelec." These "flip-flopping" resolutions have had to be "interfered with" and stricken down by this Court in a far greater number of decisions of this Court than at any other time, as listed in the footnote.^[16] None of these cases approximates the brazenly oppressive and arbitrary actions of the Comelec in this case.

11. I have always maintained that all pre-election cases seeking to disqualify the winner simply on the ground of alleged turncoatism should be ordered dismissed after the last January 30th elections, subject to the filing of an appropriate quo warranto action or election protest against the winner in the appropriate forum.

The people's will and undeniable right to have officials of their unfettered choice will thus be respected pending the final out-come of such protest, which depends upon so many factual and other relevant considerations as set forth hereinbelow. (See memoranda reproduced hereunder)

In *Venezuela vs. Comelec*^[17] (where the Court upheld the Comelec's action in refusing to disqualify the mayor-elect of Pozorrubio for turncoatism, for having switched, like Dizon from the then majority NP under which he was elected in 1971 to the now dominant KBL), I pointed out in my separate concurrence that "Respondent Comelec in its Comment of May 8, 1980 filed by Solicitor General Estelito P. Mendoza takes the position that '(I)t is worth noting that the people of Pozorrubio, Pangasinan have spoken and their choice to be their mayor is the private respondent. The will of the electorate of Pozorrubio, Pangasinan should be respected. In *Canceran v. Comelec*, 107 Phil. 607, this Honorable Court held that the courts must give the voice of the electorate efficacy and not stifle or frustrate it. Also of particular relevance is the ruling of this Honorable Court in *Lino Luna vs. Rodriguez*, 29 Phil, 208, and *De Guzman vs. Board of Canvassers*, 48 Phil. 211;

"It has been announced in many decisions that the rules and regulations for the conduct of elections are mandatory before the election, but when it is sought to enforce them after the election, they are held to be directory only, if that is possible especial-ly where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of government and not to defeat that object."

I concluded therein that "(I)t is to be devoutly wished that the Comelec apply equally and consistently this salutary position in all pend-ing pre-proclamation cases (many of which are still pending in this Court involving on the whole opposition party winners sought to be disqualified)."

12. The public interest demands the prompt proclamation and assumption of office by the true and rightful winner of the election and he and the sovereign will of the electorate may be thwarted if at all – not in administrative and summary pre-proclamation proceedings of the Comelec-but only after a full-dress hearing in accordance with due

process where the parties are afforded full opportunity to present evidence relevant to the issue of disqualification of the winner because of alleged turncoatism and the verdict of the Comelec (for provincial and city officials) or of the CFI (for municipal officials) shall have passed the final action of this Court.

Pending such final action, the losing candidate repudiated by the people (who would not be entitled to proclamation even if the winner were to be disqualified for turncoatism, since he has not received the required plurality of the votes cast in the election) should not offend the sovereign will of the people who rejected him by assuming office (as an aftermath of the Comelec's arbitrary disqualification of the winner) as the "remaining winning candidate" with "no opponent."

13. When one takes into account all the relevant issues on "turn-coatism" (see memoranda, *infra*, at pp. 20-26 hereof) and considers that by this Court's own pronouncements in the Peralta and Laban cases of 1978 that the KBL until the sudden calling of the January 30, 1980 local elections (the first ever to be held) was but an umbrella organization of all pre-martial law political parties whose activities were all suspended during martial law, the "turncoatism" provision should in all fairness be declared inoperative for the said 1980 elections in the same manner that it was declared inoperative in the 1978, elections, for it would have thereby disqualified all KBL candidates in the said elections as turncoats for switching to the dominant KBL.

14. In the course of the long pendency of these cases before the Court, I submitted two memoranda of March 25, and May 7, 1980 to the Court on the antecedents and issues of the cases at bar which because of time constraints I can no longer re-write and therefore reproduce verbatim^[18] hereinbelow, in amplification of the foregoing considerations for my dissent which were focused on the plurality decision's rationale.

Memorandum on the overruling compelling considerations for enforcing the Court's restraining orders of February 5, 1980, February 14, 1980 and February 15 1980 and upholding the Supreme Courts dignity and the force and effect of its orders and processes in the Ticzon vs. Comelec cases, G. R. Nos. 52451 and 52678. (March 25, 1980)

I. Antecedents. – Before, the loser's slogan was to "grab the proclamation and prolong the protest." Now, the loser with the active support of the Comelec, would not even count the votes of the winner but would grab the proclamation and the election by a post-election disqualification of the winner. One would be hard put to find a series of brazenly oppressive and arbitrary actions on the part of the Comelec in pursuing such an unworthy purpose and nullifying the will of the electorate.

The petitioner, Zacarias A. Ticzon, came timely to this Court four (4) times for relief from the oppressive and arbitrary orders of the Comelec and three (3) times this Court issued separate restraining orders to stop the Comelec, which orders were nevertheless frustrated and disregarded by the Comelec as may be seen from the following summary.

1. On February 1, 1980 the Comelec Chairman without any given reason issued a directive to the provincial election officer of Laguna "to stop the canvassing of the votes for city positions from Mayor, Vice-Mayor and Members of Sangguniang Panglungsod in the City of San Pablo and that no canvass or proclamation shall be undertaken until further orders from this Commission." Upon petition of petitioner Ticzon who attached thereto the quick-count certificate based on the duplicate originals of election returns of San Pablo City as submitted by the chairman of the Citizens' Election Committee showing that Ticzon had won the mayoralty by a majority of 2,204 votes together with his entire Nacionalista ticket, the Court issued its restraining order of February 5, 1980 "restraining the Comelec from enforcing the said directive insofar as it suspended the canvassing" and "directing the City Board of Canvassers to proceed with the canvassing of the election returns "

2. While the City Board of Canvassers in a telegram dated February 7, 1980 informed this Court that it would

comply with said restraining order, petitioner filed an urgent motion on February 8, 1980 complaining that the Comelec without any explanation changed the original composition of the Board of Canvassers and designated in their stead three (3) lawyers who arrived at San Pablo City to comply with still another directive of the Comelec to bring the election returns, and other records to Manila for the canvassing notwithstanding that untoward incident had been reported nor any anomaly recorded during the canvassing by the original Board of Canvasser that was peremptorily suspended by the Comelec. The Court issued its restraining order of February 14, 1980 enjoining the Comelec from enforcing (its) directive that the canvassing of the election returns be conducted by a new Board of Canvassers in Manila at the Comelec's Election and Barangay Affairs Department (instead of by the City Board of Canvassers in San Pablo City). The second restraining order of the Court was issued too late, six (6) days after the filing of the urgent motion to stop the returns from being transferred to Manila. The new Board of Canvassers escorted by heavily armed troopers had lost no time in taking possession the ballot boxes and transporting them in a closed van to which the assigned NP representative was denied access.

3. On February 15, 1980, Ticzon had to file a still more urgent petition complaining that on the preceding day, February 14, 1980, while the new Board of Canvassers was still in the process of canvassing results from 213 voting centers out of a total of 275 which had been already tallied showing that Ticzon was leading his opponent Cezar P. Dizon (the incumbent KBL mayor) by an insurmountable margin of 2,994 votes (22, 871 votes for Ticzon and 19,877 votes for Dizon) with only 62 election returns not yet canvassed which could not affect the result, the Comelec released its resolution dated February 12, 1980 granting a voter's petition for the disqualification of Ticzon for alleged turncoatism (while at the same time leaving unresolved another voter's petition for the disqualification of Dizon who had been elected as mayor as a Nacionalista in 1971 and changed his political affiliation to KBL on January 3, 1980) and resolved "not to give due course to the Certificate of Candidacy of respondent Zacarias Africa Ticzon, who is hereby ordered as disqualified, and hereby orders the City Board of Canvassers of the city of San Pablo to consider all votes cast in favor of respondent Ticzon as stray votes; and, consequently, orders the City Board of Canvassers of San Pablo City to proclaim the remaining winning candidate for the position of Mayor of San Pablo City, Laguna."

The Court held a hearing on the case in the afternoon of February 15, 1980 and Assistant Solicitor General Vicente V. Mendoza who represented the Comelec formally manifested in open court that he was given assurance by the Comelec officials that they would not implement the questioned resolution (No. 985) pending the Court's action on Ticzon's petition. After the hearing, the Court did issue its restraining order of February 15, 1980 restraining the Comelec "from implementing the questioned resolution 'not to give due course to the certificate of candidacy of respondent Zacarias Africa Ticzon' (Annex K of the Petition), the City Board of Canvassers thus being enjoined from proclaiming the only other candidate for City Mayor of San Pablo City, the canvassing of the election returns to continue with the votes of both candidates counted."

4. But Ticzon's travails were still far from over. His complete votes which did show him to be the clear and uncontested winner of the elections remained uncounted and uncanvassed notwithstanding this Court's direct orders of February 6 and February 14, 1980 to the Comelec and to the Board of Canvassers to do so. Worse, late on that very same afternoon February 15, 1980, the new Board of Canvassers, in gross disregard and defiance of this Court's restraining order of February 14, 1980 enjoining the enforcement of the Comelec "directive that the canvass of the election returns be conducted by a new Board of Canvassers in Manila" on the pretext that it had not been advised of the Comelec's commitment that it would not implement its questioned resolution disqualifying Ticzon and directing the canvassing board to proclaim the loser and repudiated candidate Dizon as "the remaining winning candidate" (notwithstanding that it was in the very premises of the Comelec in Manila), nevertheless issued its certificate of canvass and proclamation proclaiming "Cezar P. Dizon (no opponent)" as having received the plurality of the votes legally cast for the office of mayor, after discarding all the votes of

Ticzon as stray votes. (In the same proclamation certificate, the entire Nacionalista ticket carried by Ticzon was perforce proclaimed.) Once again for the fourth time, Ticzon appealed to this Court for relief through his urgent petition and contempt petition, both dated February 18, 1980, and his urgent motion of February 22, 1980 and urgent petition of March 1, 1980, all asking the Court to maintain the status quo and as prayed for in the urgent petition of February 18, 1980 to set aside the proclamation of Dizon if he would have already been proclaimed by the Board of Canvassers as of the time of the issuance of this Court's restraining order of February 15, 1980 after the hearing on that day as originally prayed for by Ticzon both in his petition of February 15, 1980 and at the said hearing.

Ticzon's urgent petitions of February 18 and 22, 1980 were set for hearing and heard by us in the afternoon of February 26. At the hearing, Assistant Solicitor General Mendoza was frank enough to state on his own that he recommended to the Comelec and to this Court the setting aside of the proclamation of Dizon and that upon proper petition all the NP's or Liberals who turned KBL at the last elections should also be disqualified on the charge of turncoatism. At the end of the hearing, there was a clear consensus to apply the same formula applied in the Pimentel case of Cagayan de Oro City, i.e., annul the proclamation of Dizon and complete the canvassing and proclaim the winning candidate (Ticzon) and remand the case of disqualification to the Comelec for a full-dress hearing thereon with the winning candidate Ticzon being proclaimed and allowed to assume office if the question of his disqualification has not been resolved by the Comelec on March 3 (the date set by law for assumption of office). The issuance of the formal resolution to this effect, however, was deferred to February 28, 1980 in deference to some absent members and has since bogged down and been left un-resolved up to now. Justice Vicente Abad Santos who was scheduled to leave on February 28, 1980 in fact left his written vote of February 27 with the Chief Justice stating the following:

"I have to refer to the cases of Zacarias A. Ticzon vs. COMELEC, et al. (G. R. Nos. 52451 and 52678). Since I will be abroad in the service of our country, I beg leave to set forth my position in respect of several issues, namely:

"1. I am for setting aside the proclamation of Cesar P. Dizon as Mayor of San Pablo City.

"2. I am for the continuance of the canvass of all election returns for the office of Mayor of San Pablo City. In the canvass the votes cast in favor of Zacarias A. Ticzon should be counted and should not be considered as stray votes.

"3. If Ticzon turns out to have the plurality of votes and the question of his disqualification is not resolved by the COMELEC in a full dress hearing before March 3, 1980, he should be proclaimed as the duly elected Mayor of San Pablo City and allowed to assume office.

"4. The proclamation and assumption of office by Ticzon will be without prejudice to any appropriate proceeding against him.

"My position in the Ticzon case applies to all other similar cases pending before us, and I request that you certify my vote therein accordingly."

Even if we were to apply solely the criterion of substantial evidence, I hold that Ticzon is entitled to an outright dismissal by this Court of the disqualification case against him. The Comelec in its belated re-solution of disqualification of February 12, 1980 disqualified Ticzon on the following rationale:

"x x x It appears from the pleadings and exhibits that on December 28, 1979 respondent filed his certificate of candidacy as an Independent (Exhibit 'B'). That on December 31, 1979, he withdrew his Certificate of Candidacy (Exhibit 'C') and on January 7, 1980, he filed his second certificate of candidacy as a member of the Nacionalista Party (Exhibit 'D'). It appears, however, that on November 8, 1971, he filed his certificate of

can-didacy for Mayor in San Pablo City, as a member of the Liberal Party (Exhibit 'A'). The records do not disclose that he resigned his membership from the said Liberal Party. Neither was he expelled from his party. On the contrary the affidavit of Ex-Vice Mayor Pedro Magcase shows respondent remained with the Liberal Party. All other documentary evidence on record indicate his con-tinuance as member of good standing of the Liberal Party."

But the Comelec's statement was far from fair nor complete. It failed to mention the evidence of record that Ticzon had run as a rebel Liberal candidate in 1971 for the same office of mayor by virtue of which he was expelled from the Liberal Party as attested in a verified statement of former Congressman Manuel Concordia then Liberal Party district chair-man for the Laguna first congressional district and in the sworn certificate of Sen. Gerardo Roxas, president of the Liberal Party, confirming such expulsion. It failed to mention further that it had failed to act on the pending petition for disqualification against Dizon for being an NP turncoat who changed his party affiliation to KBL only upon filing of his certificate of candidacy on January 3, 1980. The Solicitor General's answer to the petition assailing the questioned disqualification resolution is a bit more candid, as follows:

"x x x Even if, as argued, Comelec should not have relied on this evidence alone but should, likewise, consider the affidavit of Manuel Concordia, the contents of which are certified to by Gerardo Roxas, the result would substantially be the same. The two affidavits would merely offset and neutralize each other which would leave the following undisputed facts: that petitioner was a Liberal in 1971 and that on January 7, 1980 he filed his certificate of candidacy as a Nacionalista candidate."

The undisputed facts that remain after mutual neutralizing or offsetting of the contradictory affidavits as stated by the Solicitor General should be that Ticzon was a Liberal in 1971 and that on January 7, 1980 or 9 years later he filed his certificate of candidacy as a Nacionalista candi-date after having filed an earlier certificate of candidacy as an indepen-dent. This bare evidence certainly cannot constitute in any language substantial evidence that would warrant his disqualification for turncoatism. On the contrary, it amply shows that he had long left his party affiliation of a Liberal which incidentally was not taking part in the elections since it had boycotted the same as well as the 1978 Interim Batasang Pambansa elections.

Finally, the possible argument that may be raised that these pro-ceedings have become moot since Dizon has already been proclaimed and assumed office is of no consequence. We have already issued a good num-ber of restraining orders setting aside such assumption office pending our determination of the cases before us as in the cases of Renato Reyes, Yason et al. This is but in accordance with settled precedents such as the resolution that we issued on December 10, 1973 in L-37384, Villegas vs. Salvador, wherein "upon motion of petitioner, the Court RESOLVED to clarify the writ of preliminary injunction issued on October 19, 1973, enjoining the respondent judge from enforcing his decision dated June 15, 1973 in Civil Case No. C-2261 and private respondent Domingo de Jesus from continuing further in exercising the office as councilor of Malabon, Rizal, to the effect that said writ of preliminary injunction affirms the right of and authorizes petitioner Villegas to assume and exercise the office of councilor of Malabon, Rizal, until further orders, pursuant to Section 218 of Republic Act No. 6388, otherwise known as the Election Code of 1971." The Court's authority to uphold its restraining orders or injunctions so as to restore matters to the status quo in cases where the adverse party has beaten the injunction or restraining order has consist-ently been affirmed by us as in Banzon vs. Cruz (45 SCRA 506), where we reaffirmed that "the Court does not look with favor upon parties 'racing to beat an injunction or restraining order' which they have reason to believe might be forthcoming from the Court by virtue of the filing and pendency of the appropriate petition therefor. Where the restraining or-der or preliminary injunction are found to have been properly issued, as in the case at bar, mandatory writs shall be issued by the Court to res-tore matters to the status quo ante."

II. Disqualification cases. - All such pre-election cases seeking to disqualify the winner on the ground of turncoatism should be dismissed subject to the filing of an appropriate quo warranto action or election protest against the winner in the appropriate forum. I believe that this is the only practical course for the Court to follow (as indicated by Justice Vicente Abad Santos in his vote) if we are to get on with the Court's business in the other equally important cases that confront us and if we are to remove the spectacle where two months after the elections of January 30th the real winners in some localities are still unproclaimed or have not yet assumed office. The President seems to share this view, having been reported in the February 27, 1980 newspapers to have "ordered the lawyers of the KBL to withdraw all disqualification charges to allow already proclaimed opposition candidates involved in such cases to assume office. Even with the withdrawal of these cases, the KBL lawyers can still reserve the right to file an election protest, the President said. The President noted the numerous disqualification cases filed by the KBL against some winning opposition candidates." This position is based on a good number of compelling considerations which we may in the main briefly summarize, as follows:

1. The people's will and undeniable right to have officials of their unfettered choice should be respected in the meantime and innocent voters should not be deprived of their votes without any fault on their part. What I said in the Pimentel case applies to all other cases *mutatis mutandis*, as follows:

"As the Court has consistently held in an unbroken line of cases, 'after the termination of the election, public interest must be made to prevail over that of the defeated candidate' (De Guzman vs. Board of Canvassers, 48 Phil 211 [1925], citing Lino Luna vs. Rodriguez, 39 Phil 208 [1918]. As stressed by the now Chief Justice in Badelles vs. Cabili (27 SCRA 121 [1969], 'it is [the people's] undeniable right to have officials of their unfettered choice.' Thus, we have invariably held that the will of the electorate should ever be respected, not defeated or frustrated by material defects in the winning candidates certificate of candidacy (including one not being a registered elector in the very municipality where he was nevertheless elected president of Meycauayan, Yra vs. Abaño, 52 Phil 380 [1928]), which while mandatory before the elections (and would therefore render null and void the certificate of candidacy) were held to be directory only after the election, as otherwise 'innocent voters we deprived of their votes without any fault on their part.' (Lino Luna, *supra*; also Canceran vs. Comelec, 107 Phil 607 [1960], Corocoro vs. Bascara, 9 SCRA 522 [1963], Pungutan vs. Abubakar, 43 SCRA 11 [1972]; and Lacson, Jr. vs. Posadas, 72 SCRA 170 [1976]).

"Consistently with the above-cited jurisprudence, and with the Court's now setting aside the Comelec summary resolution of January 28, 1980 disqualifying Pimentel by not giving due course to his certificate of candidacy for alleged turncoatism (when he has always been identified with the oppositionist cause and has now been elected as such but which was restrained in our Order of January 29, 1980, the summary case in the Comelec has now become *functus officio*, with the electorate having been allowed to express their sovereign will and clear choice of Pimentel at the elections (instead of what would have been a non-election where the electorate could not even vote yes or no for his defeated opponent who would have been the remaining unopposed candidate). Now that Pimentel has been overwhelmingly elected, the only course left is to file an election contest under section 189 of the 1978 Election Code."

2. Equally important under the prevailing doctrine of Topacio vs. Paredes (23 Phil 238), the repudiated candidate and loser in the election who succeeds in disqualifying the winner is not entitled to be proclaimed much less to assume office, since he has not received the plurality of the votes cast in the elections. If during the pendency of an action for disqualification, no one qualifies for the questioned position (of mayor in the Ticzon case), under the law it is the duly proclaimed and elected vice mayor who assumes the contested office (section 8, Batas Pambansa Blg. 51).

3. The winning candidate especially after he has received the approbation of the electorate is entitled to due process and a full-dress hearing so that the circumstances relied upon to sustain the charge of alleged turncoatism may be duly threshed out with confrontation and examination of witnesses and his good faith or bad faith, as the

case may be, may be duly determined. Ticzon also has ground to complain as he has in his urgent motion of March 1, 1980 where unlike other candidates in the same situation as his facing charges of disqualification for turn-coatism such as Pimentel of Cagayan de Oro City and Nepomuceno in Sta. Rosa, Laguna, these candidates notwithstanding their previous dis-qualification by the Comelec were nevertheless proclaimed as winning candidates by order of the Comelec itself.

4. There are a number of vital facts that have to be established and duly taken into consideration in a full-dress hearing, among them the lack of fair notice and suddenness with which the January 30th elections were called when as late as November 21, 1979 it was being reported by the newspapers that local elections have been set for December 7, 1980 with the President having been reported on November 22, 1979 as notifying the Comelec that "local elections will be held either before the end of next year 1980 or in early 1981 until suddenly on December 16, 1979 it was reported that the President asked the Batasang Pambansa to set the local elections for January 30th which was so fixed by the Batasang Pambansa. On January 4, 1980, the deadline for filing of certificates of candidacy, "the President was reported to 'uphold NP's right to field candidates' stating that 'the po-licy should be to allow fair, free and open fight among the aspirants from the gubernatorial to the sanggunian position' and that 'it is obvious, the President told newsmen, that in most places, the fight will be between the KBL and the NP. 'That would make the NP the opposition in the coming elections, ' the President continued."3

It is important that all the circumstances and facts be duly brought out because even in the cases of those who were seeking an official nomination and affiliation as KBL candidates in the light of the undisputed situation that during this entire period of martial law - going into the 8th year now - the activities of political parties had been suspended and there was only one dominant organization serving as an umbrella organization which is the KBL which admittedly was organized as a political party only in December 1979 after the calling of the elections and that all local offi-cials held office at the pleasure of the President and were exhorted to support the KBL organization and could be removed even before the elec-tions as in fact a number of them were so removed as in the case of the Mandaluyong mayor.

The question of fairness and equal protection of the laws also comes into serious consideration when we take the case of Assemblyman Edelmiro Amante whose contention before this Court was that he has always been a Nacionalista and his disqualification by the Comelec from running for the office of governor of his home province of Agustin del Sur on the ground that he had been elected as a KBL assemblyman was set aside by this Court and yet after the elections he and a number of others who supported or ran as Nacionalista candidates had been accepted back into the KBL ranks in the Batasan Pambansa.

5. Some of the KBL candidates with pending cases of disqualification against them invoke P.D. 1667 decreed January 26, 1980 amending section 1 of P. D. 1661 by inserting the proviso "that a person who participated as an officer in the campaign of a political party, group aggrupation in the immediately preceding elections shall be deemed a member of such party as of the date of the political campaign for pur-poses of nomination as official candidate of such party in succeeding elec-tions. " The Comelec in the cases resolved by it in favor of the KBL candidates has simply dismissed the petitions of turncoatism "for lack of sufficient basis" without invoking P. D. 1667. Indeed, this P. D. has been assailed for having been tailored to rescue the KBL candidates from the clear charges of turncoatism against them and for denying equal protection of the laws and for violating the cited constitutional in-junction that all "bonafide candidates shall be free from any form of harassment and discrimination."

6. The cited prohibition against change of political party af-filiation must be so construed so as not to collide with the right gua-ranteed by the Constitution such as the right of free association. As stated by the Court itself in the Peralta case, "a narrow_ construction may discourage the robust exercise of the right of association guaranteed by

the Bill of Rights," and "(I)t is, therefore, necessary at this stage to encourage the emergence or growth of political parties that will truly reflect the opinions and aspirations of our people. The right of individuals to form associations as guaranteed by the fundamental law, to includes the freedom to associate or refrain from association. In ac-cord with this constitutional precept, it is-recognized that no man is compelled by law to become a member of a political party, or, after having become such, to remain a member."

7. The question as to whether P.D. 1661 which partook of the nature of an implementing legislation and outlawing guest candidacy as published in the newspapers only on Jan. 5, 1980 after the expira-tion of the Jan. 4, 1980 deadline for filing of certificates of candidacy, could not be justly relied upon to disqualify candidates who were not aware of its provisions since it had not yet been promulgated much less published as of the time they filed their certificates of candidacy; that the P.D. is unquestionably penal in nature and imposes penalties for violators and therefore could not be made to retroact without transgressing the ex post facto provisions of the Bill of Rights; and those questions of substantive due process and the application of the constitutional mandate in Art. XII-C, section 9 (1) that "bona fide candidates for any public office shall be free from any form of harassment and discrimination" and the question of real import and meaning of turncoatism such as whether one who after a gap of 9 years of no contested elections runs as an oppo-sitionist as against the overwhelming power and resources of the dominant party or organization can genuinely be denounced as a turncoat following the spirit and not the mere letter of the Constitution and of the law, are all issues of great importance and significance that have to be addressed by this Court only after the affected party shall have been given in the first instance a full dress hearing by this Court and resolved only after the fullest deliberations.

Letter-memo of

May 7, 1980

"To my esteemed colleagues:

In connection with our scheduled deliberation to-morrow on disqualification cases, particularly the Tic-zon vs. Comelec cases involving the mayoralty of San Pablo City, where the repudiated candidate Cesar P. Dizon continues (although we are now into the fourth month after the January 30th elections) to sit as mayor due to the Court's failure up to now to enforce its last restraining order of February 15, 1980 against the post election disqualification of Ticzon and proclamation of the repudiated candidate, theretofore incumbent mayor Dizon (notwithstanding the candid recommendation of Assistant Solicitor General Vicente Mendoza, who had been assured by Comelec that they would respect the Court's restraining order), I am submitting the following con-siderations supplementing my original memorandum of March 25, 1980 which was distributed to you on the same date (and copy whereof is hereto attached for your ready reading/reference):-

1. I submit for your serious consideration the vote which our colleague Justice Antonio [19] left on April 18, 1980 with the Chief Justice as follows:

'MEMORANDUM for:

Hon. Enrique M. Fernando

Chief Justice

O f f i c e

Re: The cases of Zacarias A. Ticzon

vs. COMELEC, et al. - G. R. Nos.

52451 and 52678

1. I am for setting aside the proclamation of Cesar P. Dizon as Mayor of San Pablo City;
2. I am for the definite resolution of the question of disqualification after a full dress hearing in accordance with due process; and
3. Pending the resolution of that question the Vice Mayor who has been elected and proclaimed should act as Mayor.

(Sgd.) FELIX Q. ANTONIO

Associate Justice'

2. The very least that should be done is enforce now the Court's last restraining order (and maintain the integrity of the Court's orders and the respect owing thereto) and set aside the proclamation of Dizon, since as the repudiated loser, he has no right to claim the mayoralty as an also-ran even though Ticzon may ultimately be declared dis-qualified.

3. If the Court is to be consistent with its ruling in Pimentel and other cases, Ticzon should in the meantime be duly proclaimed and allowed to assume office as mayor, with-out prejudice to holding 'a full dress hearing' on his alleged disqualification, in accordance with the vote of Justice Abad Santos. (See pp. 3-4 of my March 25th Memorandum.)

4. The question of the disqualification of Ticzon (and of other winning candidates as well) should be threshed out only 'after a full dress hearing in accordance with due pro-cess, ' as urged by Justice Antonio in his above vote.

5. Such a full dress hearing is necessary and impera-tive. In addition to the compelling questions of due process, lack of fair notice and suddenness of the call for the Jan. 30th elections, the equally important constitutional right of free association, the ex post facto nature of P. D. 1661 published only after the January 4, 1980 deadline (for filing of certi-ficates of candidacy), it must be borne in mind that the Court has up to now never squarely addressed the question that the KBL became a political party only in late December, 1979 after the calling of the Jan. 30th elections.

Before then, by the Court's own pronouncements in the Peralta and Laban cases of 1978, the dominant KBL was not a political party but an umbrella organization of all pre-martial law political parties. So, the jockeying of prospec-tive candidates like Assemblyman Amante for a place in the KBL ticket (whom we did not disqualify, unlike Gabatan and Evasco) could not be deemed as opportunism. Neither could their going their own way with the NP as an opposition party (as expressly recognized by the President) be termed as turncoatism. (Assemblyman Amante, after running as NP candidate is back with the KBL after his defeat.)

6. The Court must have the full big picture before it can disqualify any candidate for alleged turncoatism. (For example, in the face of the KBL having become a political party only in late December, 1979, then Dizon, who was elected mayor in 1971 as an NP, should be the one disqualified for turncoatism for having joined the KBL.) The Court's minute resolutions in the Gabatan and Evasco cases upholding their disqualification on alleged substantial evidence are not precedents, for the facts of the KBL having become a party only in December, 1979 and the many issues of substantive due process and fair play, etc. were never dealt with in those cases.

7. It is only fair and just that the Court remand or turn over all such disqualification cases for a full dress hearing and that the winners be allowed meanwhile to assume their offices. The sovereign will of the electorate cannot be lightly treated or cavalierly disregarded by the Court.

Thank you."

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Upon the final voting on the cases last month, I understood that even though Dizon's proclamation would stand, by virtue of the plurality of seven votes in his favor, Ticzon would be reserved the right of protest and the dismissal of Ticzon's petitions would be without prejudice to his pursuing the pending election protest against Dizon (which he had filed *ad cautelam* with the Comelec in February, 1980, expressly subject to the outcome of the cases at bar), consistently with the Court's reservation in all other cases. The plurality decision's action now upholding Ticzon's disqualification on the bare pro-nouncement that the Comelec's finding of turncoatism against him "is not a whimsical and capricious finding" and "is binding and conclusive on this Court" (at pages 12-13, decision), has regrettably and wrongfully foreclosed totally and shut out any right of protest or vindication on Ticzon's part.

I vote accordingly to grant the petitions at bar, specifically (a) to set aside the proclamation of Dizon; and (b) to set aside the Comelec resolution disqualifying Ticzon and to direct the original canvassing board to forthwith reconvene and complete the canvass and proclaim Ticzon as the winning candidate, so that he may assume his rightful office of Mayor of San Pablo City without further delay; and (c) therewith to declare moot the Armedilla petition (G. R. 53393) to declare Dizon disqualified as a turncoat for having changed his political party affiliation during his term of office.

[1] At the time of the 11th hour issuance of this resolution, the canvassing board had canvassed the returns from 213 out of 275 voting centers and Ticzon had established an insurmountable lead of 2,994 (22,871 against 19,877 for Dizon) votes with only 62 returns not yet canvassed. The Ministry of Education and Culture quick count based on duplicate originals of the election returns from all voting centers showed Ticzon the winner over Dizon by 2,204 (30,178 vs. 27,974 for Dizon) votes (Annex A of petition in G.R. No. 52451). The proclamation of Dizon with "(No opponent)" listed him with 28,119 votes (1,959 short of Ticzon's 30,178 votes, which the Comelec arbitrarily ordered to be considered as "stray votes"). Ticzon's complete victory over Dizon is reflected by the fact that Ticzon's entire ticket for vice mayor and the Sangguniang Bayan of San Pablo City, whom the Comelec could not disqualify, swept the elections with the Ticzon's vice-mayoralty teammate Jimmy Gonzales posting a 10,757 vote-margin over his opponent (33,128 vs. 22,371) and the two SB top winners garnering more votes than Dizon, Virginia B. Estrada with 29,889 and Reynato A. Estrellado with 29,448 (Rollo in G.R. 52678, at pages 49 and 50).

[2] Chief Justice Castro's dissent in *Aratuc vs. Comelec*, 88 SCRA 251, 287 (1979); emphasis supplied.

[3] 23 Phil 238.

[4] The cited constitutional prohibition reads:

"SEC. 10. No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political affiliation within six months immediately preceding or following an election."

This Court has held that the term of office of the elected local officials in 1971 was the same term, (not a new one) converted beyond the original 4 years to an indefinite term to be held by the incumbent "until otherwise provided by law or decreed by the incumbent President" [*Paredes vs. Men Abad*, '56 SCRA 522] - so there is no question that the constitutional prohibition against change of political affiliation by an elective official during his term absolutely applied to Dizon.

[5] Reported in Metropolitan papers of February 27, 1980.

[6] G.R. No. 52527, September 4, 1980.

[7] G.R. No. 52789, December 19, 1980.

[8] Article XII C, section 9, 1973 Constitution.

[9] G.R. No. 52830, Nov. 28, 1980, with Aquino, J. taking no part.

[10] G.R. No. 54039, Nov. 28, 1980, with Aquino, J. taking no part.

[11] G.R. No. 52791, February 26, 1981.

[12] G.R. Nos. 53416 & 53475, October 14, 1980 and Resolution of November 6, 1980. See dissenting opinion of writer.

[13] Emphasis copied

[14] Article XII C, section 11, 1973 Constitution.

14-a 73 Phil. 247.

[15] G.R. No. 53962, February 3,, 1981; see also writer's dissent.

[16] A partial list of eleven (11) decisions of this Court setting aside the Comelec's resolutions as issued with grave abuse of discretion:

Case No.

Title

Date

52375

Edelmiro Amante vs. Comelec, et al.

January 26, 1980

52406

Hilario C. Lagmay, et al. vs. Comelec, et al.

January 28, 1980

52428

Aquilino Q. Pimentel, Jr. , et al. vs. Comelec

February 21, 1980

52427 &

Cesar E. Nepomuceno, et al. vs.

52506

Comelec, et al.

May 15, 1980

52699

Renato U. Reyes vs. Comelec, et al

May 15, 1980

53730

Aurora Abrazaldo vs. Comelec

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52830

Antonio O. Singco vs. Comelec, et al.

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53581-83

Mariano J. Pimentel, et al. vs. Comelec, et al.

Dec. 19, 1980

52798

Romeo S. Gonzales vs. Comelec, et al.

Dec. 19, 1980

52426

Wenceslao R. Lagumbay, et al. vs. Comelec

Jan. 13, 1981

52692

Jesus E. Sanciango, Jr., et al. vs. Comelec, et al.

Jan. 27, 1981

[17] G. R. 53532, July 25, 1980.

[18] With some minor revisions for accuracy's sake.

1 Times-Journal issue of Nov. 16, 1979 and Bulletin Today issue of Nov. 21, 1979.

2 Bulletin Today issue of Nov. 22, 1979.

3 Daily Express issue of Jan. 4, 1980.

[19] Justice Antonio retired from the Court on his 70th birthday last year on May 18, 1980.

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