

UNITED DEMOCRATIC OPPOSITION (UNIDO), PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC), RESPONDENT.

G.R. No. 56515. April 03, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by the UNIDO, a political organization or aggrupation campaigning for "NO" votes to the amendments to the Constitution of the Philippines of 1973 proposed by the Batasang Pambansa, from the resolutions of the respondent Commission on Elections dated March 18 and March 22, 1981.

As alleged in the petition:

"3. Respondent COMELEC issued three (3) Resolutions all dated March 5, 1981, to wit:

(1) Resolution No. 1467 providing for Rules and Regulations for 'equal opportunity' on public discussions and debates on the plebiscite questions to be submitted to the people on April 7, 1981;

(2) Resolution No. 1468 providing 'equal time on the use of the broadcast media (radio and television) in the plebiscite campaign'; and

(3) Resolution No. 1469 providing for 'equal space on the use of the print media in the 1981 plebiscite of April 7, 1981'.

The pertinent portions of said Resolutions Nos. 1467, 1468 and 1469 are attached to this Petition as Annexes 'A', 'A-1' and 'A-2', respectively;" (P. 2, Petition.)

The questioned resolutions are as follows:

"RESOLUTION NO. 1467

RULES AND REGULATIONS ON PUBLIC

DISCUSSIONS AND DEBATES ON THE

PLEBISCITE QUESTIONS

The Commission on Elections, pursuant to the powers vested in it by the Constitution, the 1978 Election Code and pertinent enactments of the Batasang Pambansa, RESOLVED to promulgate the following rules and regulations governing free discussions and debates on the plebiscite questions to be submitted to the people on April 7, 1981." (Annex "A", Petition.)

x x x x

"RESOLUTION NO. 1468

The Commission on Elections, by virtue of the powers conferred upon it by the Constitution, the 1978 Election Code and pertinent enactments of the Batasang Pambansa, RESOLVED to promulgate, as it hereby promulgates, the following rules and regulations to govern the use of broadcast media in the 1981 plebiscite.

I. GENERAL PROVISIONS

SECTION 1. Policy. - (1) These rules and regulations are intended to insure that broadcast time for campaign purposes equal as to duration and quality shall be available to all supporters or oppositors, political parties, groups or aggrupations at the same rates or given free of charge.

(2) Radio and television stations shall not be allowed to schedule any non-political program or permit any sponsor to manifestly favor or oppose any side of the 1981 plebiscite issues or to unduly or repeatedly refer to or include in the program or broadcast any supporter or oppositor and/or political party, group or aggrupation favoring or opposing any side of the 1981 plebiscite issues.

"(3) In all instances, the right of radio and television stations to broadcast accounts of significant or newsworthy events and views on matters of public interest shall not be impaired." (Annex "A-1", Petition.)

x x x x x

"RESOLUTION NO. 1469

The Commission on Elections, pursuant to its powers under the Constitution, the 1978 Election Code, and pertinent enactments of the Batasang Pambansa, RESOLVED to promulgate, as it hereby promulgates, the following rules and regulations on the use of the print media, the printing and dissemination of printed political propaganda in the campaign for or against the 1981 plebiscite questions.

I. GENERAL PROVISIONS

SECTION 1. Policy. - The policy herein is to enable individual supporters, oppositors, political parties, groups or aggrupations, when they so desire, to purchase or avail of advertising space for campaign purposes under the following rules and regulations which assure that available advertising space in the print media shall be, as far as practicable, equitably allocated.

SECTION 2. Comelec Supervision. - The Commission on Elections shall recognize the principle of self-regulation in the print media and shall exercise as far as practicable only minimal supervision over the print media leaving the enforcement of these rules and regulations largely to the Ministry of Public Information." (Annex "A-2", Petition.)

"4. Petitioner UNIDO addressed a letter dated 10 March 1981 to respondent COMELEC, which reads:

'Your Resolutions Nos. 1467, 1468 and 1469, all promulgated on March 5, 1981, provide for equal opportunity 'on public discussion and debates on the plebiscite', equal time 'on the use of the broadcast media in the plebiscite campaign' and equal space 'on the use of the print media in the 1981 plebiscite'.

'The newspapers this morning have announced that President Marcos will lead the campaign for 'Yes' votes on the proposed constitutional amendments in the April 7 plebiscite in his nationwide 'Pulong-Pulong sa Pangulo' radio-television program on Thursday, March 12, from 9:30 to 11:30 P.M., which will be carried live by 26 television and 248 radio stations throughout the country.

'The undersigned, in behalf of the United Democratic Opposition (UNIDO), hereby demand exactly the same

opportunity, the same prime time and the same number of TV and radio stations all over the country at the earliest possible date, to campaign for 'No' votes in the forthcoming plebiscite.'

Likewise, on 17 March 1981, petitioner thru its undersigned legal counsel addressed its second letter to respondent Commission on Elections, which reads:

'Pursuant to the letter of UNIDO dated 10 March 1981 requesting for equal opportunity, the same prime time and number of TV and radio stations all over the country which were utilized by President Marcos last March 12 from 9:30 to 11:30 P.M., we wish to state that on Saturday, March 21, the UNIDO will hold a public meeting at the Plaza Miranda, Quiapo, Manila, and we hereby request that the same be covered by radio and television from 9:30 to 11:30 P.M.

'We trust that the radio and television facilities will be directed to comply with this request.'

5. Respondent COMELEC issued its Resolution of March 18, 1981 quoting the above letters of petitioner UNIDO, but held that they 'cannot be granted and the same is hereby denied.' Said COMELEC Resolution appears as 'Excerpts from the Minutes of the Session of the Commission Held on March 19, 1981', a copy of which is hereto attached to form an integral part of this Petition as Annex 'B';" (Pp. 2-3, Petition.)

Said Annex 'B' reads thus:

**"EXCERPT FROM THE MINUTES OF THE
SESSION OF THE COMMISSION HELD ON
MARCH 18, 1981
(UNDER THE SAME QUORUM)**

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81-54. In the matter of the letter-request of the United Democratic Opposition (UNIDO) for free coverage by 'TV and Radio Stations all over the country' of its campaign for 'No' votes in the forthcoming plebiscite.

Before the Commission is a "demand" of the United Democratic Opposition (UNIDO) for coverage by 'TV and radio stations all over the country' of its campaign for 'No' votes in the forthcoming plebiscite. This 'demand' is contained in a letter dated 10 March 1981, received by the Commission on Elections on March 11, 1981, signed by Gerardo Roxas and J.B. Laurel, Jr., quoted in full as follows:

'10 March 1981

'The Commission on Elections

Manila

'Gentlemen:

'Your Resolution Nos. 1467, 1468 and 1469, all promulgated on March 5, 1981, provide for equal opportunity 'on public discussion and debate on the plebiscite', equal time on the use of the broadcast media in the plebiscite campaign' and equal space 'on the use of the print media in the 1981 plebiscite.'

'The newspapers this morning have announced that President Marcos will lead the campaign for 'Yes' votes on the proposed constitutional amendments in the April 7 plebiscite in his nationwide 'Pulong-Pulong sa Pangulo' radio television program on Thursday, March 12, from 9:30 to 11:30 P.M., which will be carried live by 26 television

and 248 radio stations throughout the country.

'The undersigned, in behalf of the United Democratic Opposition (UNIDO), hereby demand exactly the same opportunity, the same prime time and the same number of TV and radio stations all over the country at the earliest possible date, to campaign for 'No' votes in the forthcoming plebiscite.

Very truly yours,

(SGD.) GERARDO ROXAS

(SGD.) J. B. LAUREL, JR.'

Subsequently, on 17 March 1981, the Legal Counsel of the UNIDO, Ambrosio Padilla, reiterated the UNIDO desire for coverage by media, 'the same prime time and number of TV and radio stations all over the country which were utilized by President Marcos last March 12 from 9:30 to 11:30 P. M.' In this letter, the legal counsel manifested that the UNIDO wants media coverage for its projected 'public meeting at the Plaza Miranda, Quiapo, Manila from 9:30 to 11:30 P.M.' on Saturday, March 21.

The letter of the UNIDO Legal Counsel reads:

'17 March 1981

'The Commission on Elections

Manila

'Attention: CHAIRMAN VICENTE M. SANTIAGO, JR.

'Gentlemen:

'Pursuant to the letter of UNIDO dated 10 March 1981 requesting for equal opportunity, the same prime time and number of TV and radio stations all over the country which were utilized by President Marcos last March 12 from 9:30 to 11:30 P.M., we wish to state that on Saturday, March 21, the UNIDO will hold a public meeting at the Plaza Miranda, Quiapo, Manila, and we hereby request that the same be covered by radio television from 9:30 to 11:30 P.M.

'We trust that the radio and television facilities will be directed to comply with this request.

Very truly yours,

(SGD.) AMBROSIO PADILLA

Legal Counsel, UNIDO'

"After due and careful deliberation, this Commission holds, and hereby rules, that the 'demand' of the UNIDO cannot be granted and the same is hereby denied.

It is the considered view of this Commission that when President Marcos conducted his 'pulong-pulong' or consultation with the people on March 12, 1981, he did so in his capacity as President/Prime Minister of the Philippines and not as the head of any political party. Under the Constitution, the 'Prime Minister and the Cabinet shall be responsible for the program of government and shall determine the guidelines of national policy' (Art. IX, Sec. 2). This Commission takes judicial notice of the fact that the proposed amendments, subject of the President's remarks in the 'Pulong-Pulong Pambansa' last March 12, 1981, were initiated under the leadership of Mr. Marcos as President/Prime Minister in the exercise of his constitutional prerogative aforecited. In fact, it was President/Prime Minister Ferdinand E. Marcos who issued the special call

for the Batasang Pambansa to convene as a constituent assembly to propose amendments to the Constitution (Proclamation No. 2040 dated December 5, 1980).

It cannot be denied that seeking constitutional changes through the means sanctioned by the Constitution constitutes a program of government imbued with the nature of highest importance. The President/Prime Minister initiated this program of constitutional remaking. It is, therefore, his corollary prerogative to enlighten the people on the sense, significance, necessity and nuance of the constitutional amendments which he wanted the people to support. It would be an idle, if not absurd proposition, to declare that the President/Prime Minister is 'responsible for the program of government and the guidelines of policy' and yet deprive him of the right and opportunity to inform and enlighten the people of the rationale of such initiatives without at the same time granting the same right to the opposition.

Under our Constitution the President/Prime Minister has no counter-part, not even the Opposition still waiting in the uncertain wings of power.

This, precisely, was what President Marcos sought to accomplish through the 'Pulong-Pulong Pambansa' last March 12, 1981. In the letter dated March 10, 1981 by Messrs. Roxas and Laurel, it was claimed that the program was the nationwide 'Pulong-Pulong sa Pangulo' (underscoring supplied). This is an admission that the 'Pulong-Pulong' was for the 'Pangulo', not as head of a political party but as President/Prime Minister.

This program 'Pulong-Pulong sa Pangulo' is of long standing and has been used by President/Prime Minister Marcos to bring to the attention of the people certain matters that need to be understood by them. For instance, the President used this program once to explain to the people the increase in the price of gasoline and other petroleum products. The program 'Pulong-Pulong sa Pangulo' is not a political or partisan vehicle but an innovative system of participatory democracy where the President as leader of the nation enunciates certain programs or policies and thereafter subjected to interrogation by panelists (common men and women) in various strategic places. This is why the title is 'Pulong-Pulong'. It is not a one way arrangement; its format is intended to result in effective multi-way consultation between the leader of the nation and the people.

The UNIDO or any of its leaders does not have the same constitutional prerogatives vested in the President/Prime Minister as above discussed. As such, it has no right to 'demand' equal coverage by media accorded President Marcos.

The UNIDO, however, is free to enter into appropriate contracts with the TV or radio stations concerned. This Commission, however, cannot direct these media to grant free use of their facilities. First of all, the Comelec cannot assume dictatorial powers and secondly, the rule of equal time for campaigning as to duration and quality is not applicable under the circumstances of this case, for the reasons above-stated.

WHEREFORE, premises considered, the 'demand' of the UNIDO is hereby denied.

Let the Executive Director cause the implementation of this resolution.

SO ORDERED.

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This is to certify that the foregoing is a true and correct excerpt from the minutes of the Session of the Commission held on March 18, 1981.

(Sgd.) RUPERTO P. EVANGELISTA

Secretary of the Commission."

"6. Petitioner UNIDO thru its undersigned counsel addressed its letter dated March 20, 1981 as its 'motion for reconsideration' of the COMELEC Resolution of March 18, 1981 (Annex 'B') and submitted six (6) reasons

why said Resolution should be reconsidered, and the request or demand of petitioner should be granted for nationwide coverage of its public meeting at Plaza Miranda on Saturday, March 21, 1981, similar or equal to the nationwide coverage of the 'Pulong-Pulong' of March 12, 1981. A copy of said letter of March 20, 1981 as petitioner's motion for reconsideration is hereto attached to form an integral part of this Petition as Annex 'C';"

Annex 'C' follows:

"March 20, 1981

The Commission on Elections

Manila

Gentlemen:

UNIDO respectfully submits this Motion for Reconsideration of the COMELEC Resolution of March 18, 1981, which denied the letters of UNIDO dated March 10 and 17, 1981 on the following considerations:

1. The Resolution states that the coverage of the 'Pulong-Pulong' on March 12, 1981 was extended to Pres. Marcos 'in his capacity as President/Prime Minister and not as head of any political party', who is 'responsible * * for the program of government and shall determine the guidelines of national policy'. But the radio and television coverage on March 12th, did not deal with any 'program of government' nor any 'guideline of national policy'. The subject matter of said 'Pulong-Pulong' were a campaign for the approval of the constitutional amendments proposed by the Interim Batasang Pambansa, for ratification of the people with their 'YES' votes.

2. As announced by President Marcos himself and as stated in the letter of UNIDO of March 10, 'President Marcos will lead the campaign for 'YES' votes on the proposed constitutional amendments in the April 7 plebiscite'. The radio and television facilities throughout the country on March 12 was used by President Marcos in his capacity as political leader of the KBL political party, and not in his capacity as President/Prime Minister.

"3. The Resolution states that Mr. Marcos 'initiated the amendments, he convened the Batasang Pambansa as a constituent assembly, and he 'initiated this program of constitutional remaking'. When the proposed amendments were passed by the Batasan under his leadership, his function as President/Prime Minister was completed. His campaign for the ratification by the people of said amendments was no longer President/Prime Minister, but as the political leader of KBL as the dominant political party in the Interim Batasang Pambansa.

4. The Resolution states that the name 'Pulong-Pulong sa Pangulo' is an admission that the television and radio coverage of said program on March 12, was utilized by Mr. Marcos 'not as head of a political party but as President/Prime Minister. The nature of said program is not determined by its name but by the subject matter thereof. In fact, it may be considered as a mis-use of said program as political campaign for the purpose of inducing 'YES' votes.

5. The Resolution states that COMELEC 'cannot direct these media to grant free use of their facilities', but UNIDO 'is free to enter into appropriate contracts with the TV or radio stations concerned'. But Pres. Marcos campaigning for 'YES' votes did not enter into such contracts, but had 'free use' of said facilities. For the Resolution to require UNIDO to pay for time in a national radio and TV coverage is to impose an 'impossible' financial condition.

6. The Resolution states that 'COMELEC can not assume dictatorial powers'. The COMELEC as a constitutional body has the constitutional right and power to have its Resolutions Nos. 1497, 1498 and 1499 on equal opportunity, equal space and equal time respected and obeyed by all. Otherwise, said Resolutions will be only in form without any substance.

In view of the foregoing, UNIDO respectfully prays that the Resolution of March 19, 1981 denying the request and demand of UNIDO for equal time, be reconsidered.

It is likewise prayed that the letter requests of UNIDO be granted for nation-wide coverage of its public meeting at Plaza Miranda on Saturday, March 21, 1981.

Very truly yours,

(SGD.) AMBROSIO PADILLA

Legal Counsel, UNIDO"

"7. Respondent COMELEC RESOLVED TO DENY 'for lack of merit' the letter-motion for reconsideration (Annex 'C') in its Resolution of March 22, 1981 as per its 'Excerpts from the Minutes of the Session of the Commission Held on March 21, 1981'. A copy of said Excerpt-Resolution of March 21, 1981 is hereto attached to form an integral part of this Petition as Annex 'D';"

Annex 'D' reads thus:

**"EXCERPT FROM THE MINUTES OF THE
SESSION OF THE COMMISSION HELD ON
MARCH 21, 1981
(UNDER THE SAME QUORUM)**

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81-56. Considering the allegations in the letter-motion for reconsideration, dated and filed on March 20, 1981, by the UNIDO thru counsel, and there being no strong or cogent reasons to disturb the findings and conclusions in the Resolution sought to be reconsidered, the Commission RESOLVED to DENY the said letter-motion for reconsideration for lack of merit.

Let the Executive Director inform the parties concerned of this resolution.

SO ORDERED.

XXX XXX XXX

This is to certify that the foregoing is a true and correct excerpt from the minutes of the session of the Commission held on March 21, 1981.

(SGD.) RUPERTO P. EVANGELISTA

Secretary of the Commission"

The basic grounds of the present appeal are stated in the petition thus:

"9. Said COMELEC Resolutions, Annexes 'B' and 'D', are also contrary to the Constitution and the law, and moreover, are unjust, unfair and inequitable, for said Resolutions violate the basic principles of equality, good faith and fair play, and they are not conducive to 'insure free, orderly and honest elections';

"10. The request and/or demand of petitioner for equal broadcast media of its public meeting or rally at the Plaza Miranda last Saturday, March 21, 1981 (ante, par. 4) was arbitrarily denied by respondent COMELEC in

its Resolutions (Annex 'B' and 'D'). As the political campaign of the Kilusan ng Bagong Lipunan (KBL) for 'YES' votes used all the radios and televisions in the Pulong-Pulong of its political leader, President Ferdinand E. Marcos, the political campaign for 'NO' votes of petitioner UNIDO should and must be granted the same right and equal use of the same facilities for the remaining days of the political campaign for 'NO' votes up to the plebiscite on April 7, 1981;"

These grounds were eloquently expanded by distinguished counsel for petitioner, Senator Ambrosio Padilla, during the hearing held in the afternoon of Tuesday, March 31, 1981.

Much as it is indeed desirable and idealistic that the widest and fullest opportunity to be heard and explain their side should be given to those opposed to the proposed constitutional amendments, there are certain inexorable rules and principles that govern the situation at hand which, no matter in what direction one's sympathies may be inclined, have to be observed in the best interests of all concerned as this Court sees them. Indubitably, the proposed changes of the Charter are of deep and transcendental importance, since they will affect not only the structure of government and the democratic institutions and ideals vis-a-vis the presidential and parliamentary systems to which our people have been exposed up to the present, and they could outlast most of us and our children and our children's children. Quite a number of those ideals and institutions are fondly cherished and enshrined as sacred by some respectable elements in the country, admittedly as knowledgeable and patriotic as those who are advocating their alteration or modification. It is obvious that the proposed constitutional changes are purported to establish rather drastic innovations in the distribution of at least the executive and legislative powers of the national government, in an avowedly indigenous manner more responsive and attuned not only to the mores, modes and idiosyncracies of our people and the prevailing national and international circumstances, which evidently require unusual means to preserve and defend the state and the territorial integrity of the country, albeit such proposed reforms maintain fundamentally the republican and democratic character of our system of government. Thus, We reiterate, that the more the people are adequately informed about the proposed amendments, their exact meaning, implications and nuances, the better. Herein lies the apparent plausibility of petitioner's pose.

There are, however, certain norms which even petitioner and those that compose it know very well that this Court, all the amplitude of its prerogatives notwithstanding cannot disregard. Denial of due process is considered generally as the first and the most valued right of everyone under the Bill of Rights. For this Court to mandate the Comelec, assuming We had such power, having in view the constriction of the Supreme Court's authority over the actuations of the Comelec under the new constitution as discoursed by Us in *Aratuc vs. Comelec*, G.R. Nos. L-49705-09, February 8, 1979, 88 SCRA 251, petitioner evidently overlooks the fact that the television and radio stations they refer to in their petition who will be directly affected by any injunction of the Comelec upon Our orders are not parties to this case. It is elementary, to state the obvious, that in the premises, We would be overreaching the bounds of our constitutional powers if We acceded to petitioner's request, absent such indispensable parties. In fact, petitioner has not shown, for apparently they have not done so, that they have requested any TV or radio station to give them the same time and style of "pulong-pulong" as that which they afforded the President on March 21, 1981 and that their request has been denied. No doubt the Constitution and the Election Code provisions as well as the general Comelec resolution cited by petitioner's counsel may be availed of, but since, We have not been informed of the circumstances under which the President was accorded the privilege which petitioner wants to be equally granted to them, We are not even in a position to determine under what definite terms the order prayed for should be issued by Us, considering there are other groups and aggrupations, not to speak of individuals who are similarly situated as petitioner who would also want to be heard. We are afraid We would be expecting from the TV and radio networks more than what conceivably the Charter, the law and the Comelec resolutions contemplate, if We granted what UNIDO wants and did less for those other

oppositors to the amendments who may come to Us.

Anent the equal time, equal space and equal quality of exposure claimed by petitioner, it should be informative to quote the pertinent constitutional provisions, laws and Comelec resolutions:

Section 5 of Article XII-C of the Constitution circumscribes the relevant powers of the Comelec thiswise:

"SEC. 5. The enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, may be supervised or regulated by the Commission during the election period for the purpose of ensuring free, orderly, and honest elections."

Section 41 of the Election Code of 1978 pertinently reads as follows:

"SEC. 41. Regulation of election propaganda through mass media - (a) The Commission shall promulgate rules and regulations regarding the sale of air time for political purposes during the campaign period to insure that time equal as to duration and quality is available to all candidates for the same office or political parties, groups or aggrupations at the same rates or given free of charge; that such rates are reasonable and not higher than those charged other buyers or users of air time for non-political purposes; that the provisions of this Code regarding the limitation of expenditures by candidates and contributions by private persons and certain classes of corporations, entities and institutions are effectively enforced; that said radio broadcasting and television stations shall not be allowed to schedule any program or permit any sponsor to manifestly favor or oppose any candidate or political party, group or aggrupation by unduly or repeatedly referring to or including said candidate and/or political party, group or aggrupation respecting, however, in all instances the right of said stations to broadcast accounts of significant or newsworthy events and views on matters of public interest."

Sections 7 and 8 of Comelec Resolution No. 1468 read thus:

"SEC. 7. Free air time. Any radio broadcasting or television station that grants free of charge the use of air time to any supporter, oppositor, political party, group or aggrupation shall also give similar air time free of charge to other supporters, oppositors, political parties, groups or aggrupations, except when such use of air time is part of a news program or coverage involving a newsworthy event.

A radio/television station giving air time free of charge to any supporter, oppositor, political party/group for campaign purposes shall inform the Commission of such fact within two days from the use of such free time."

SEC. 8. Failure to agree on equal time. ? In case the supporter, oppositor, political party/group and the radio-television station, despite mediation by the Ministry of Public Information, cannot agree on the equal time to be sold or given free, the controversy shall be referred to the Commission whose decision on the matter shall be final and immediately executory."

To begin with, We cannot agree with the restrictive literal interpretation the Solicitor General would want to give to the "free, orderly and honest elections" clause of Section 5, Article XII-C above-quoted. Government Counsel posits that the said clause refers exclusively to the manner in which the elections are conducted, that is to say, with the manner in which the voters are supposed to be allowed to vote. Perhaps, such a theory may hold insofar as ordinary elections of officials are concerned. But the Court views the provision as applicable also to plebiscites, particularly one relative to constitutional amendments. Be it borne in mind that it has been one of the most steadfast rulings of this Court in connection with such plebiscites that it is indispensable that they be properly characterized to be fair submission - by which is meant that the voters must of necessity have had adequate opportunity, in the light of conventional wisdom, to cast their votes with sufficient understanding of what they are voting on. We are of the firm conviction that the charter's reference to honest elections connotes fair submission

in a plebiscite. It cannot be otherwise, for then the importance of suffrage for the election of officials would be more significantly valued than voting on the ratification of the constitution or any amendment thereof. We cannot yield to such an unorthodox constitutional concept that relegates the fundamental law of the land which is the source of all powers of the government to a level less valued than the men who would run the same. When a voter either gives or denies his assent to a change of the existing charter of his rights and liberties and the existing governmental form as well as the powers of those who are to govern him, he virtually contributes his little grain of sand to the building of the nation and renders his share in shaping the future of its people, including himself, his family and those to come after them. Indeed, nothing can be of more transcendental importance than to vote in a constitutional plebiscite.

In consequence of the foregoing considerations, We opine and so hold that the provisions of all election laws regulating propaganda through the mass media, for example, Section 41 of the Election Code of 1978, must be deemed applicable to plebiscites. Therefore, it is the duty of the Comelec to see to it that the sale of air time by TV and radio stations "insure(s) that time equal as to duration and quality is available to all candidates for the same office or political parties, groups or aggregations at the same rates or given free of charge."

We cannot share the Solicitor General's submission that the above view would subvert or curtail correspondingly the freedom of speech and of the press to which the TV and radio station owners are entitled. Rather, it is Our considered opinion and We so hold that if such be the effect of the Comelec regulations, it is because they must have been contemplated to precisely constitute an exception to freedom-of-speech-and-press clause, on account of considerations more paramount for the general welfare and public interest, which exceptions after all would operate only during limited periods, that is, during the duration of the election campaign fixed in the charter itself and/or by law.

The Solicitor General points, however, to the explicit proviso in Section 41 to the effect that the equal-time-equal-space privilege must "respect, - - - in all instances the right of said stations to broadcast accounts of significant or newsworthy events and views on matters of public interest", and suggests that the TV and radio stations may not be blamed for considering the "Pulong-Pulong sa Pangulo" as coming within said proviso. In other words, it is contended that such choice by them may not then be subjected to the equal-time-equal-space regulations. On the other hand, counsel for petitioner maintains that it is not fair to deem the President's "Pulong-Pulong" as a "significant and noteworthy (an) event(s) and view(s) on matters of public interest" just because the President campaigned for "Yes" votes, while a "Pulong-Pulong" by those who would appeal for "No" votes cannot be similarly characterized.

Our holding in respect to such conflicting contentions is that, while it may not be exactly proper to say, as the Comelec resolution in question puts it, that "(u)nder our constitution, the President-Prime Minister has no counterpart, not even the Opposition still waiting in the uncertain wings of power", it is undeniable and but natural that the head of state of every country in the world must, from the very nature of his position, be accorded certain privileges not equally available to those who are opposed to him in the sense that, since the head of state has the grave and tremendous responsibility of planning and implementing the plan of government itself, either by virtue of the popular mandate given to him under the corresponding provisions of the Constitution and the laws or any other duly recognized grant of power and authority, the opposition cannot be placed at par with him, since logically the opposition can only fiscalize the administration and punctualize its errors and shortcomings to the end that when the duly scheduled time for the people to exercise their inalienable power to make a better choice, the opposition may have the chance to make them accept the alternative they can offer.

Therefore, when the head of state is afforded the opportunity or when he feels it incumbent upon him to communicate and dialogue with the people on any matter affecting the plan of government or any other matter of

public interest, no office or entity of the government is obliged to give the opposition the same facilities by which its contrary views may be ventilated. If the opposition leaders feel any sense of responsibility in the premises to counter the administration, it is up to them - and they are free - to avail of their own resources to accomplish their purpose. But surely, it is not for the administration to hand them on a silver platter the weapon they need. We are not aware that there is any existing system of government anywhere in the world which is mandated to be so accommodating and generous to the opponents of the current administrators of the national affairs.

In instances where the head of state is at the same time the president of the political party that is in power, it does not necessarily follow that he speaks with two voices when he dialogues with the governed. Unquestionably, there are matters of vital public interest wherein partisan considerations could in some degree be involved, but then such partisan interest would be purely secondary. The President/Prime Minister of the Philippines is the political head of all the people. His is the sacred responsibility to protect and defend the security of all the people, the stability of the government and the integrity of the national territory, not only for the tenure to which he has been elected but for all times. When, as in the instant situation, he deems it warranted by the circumstances to present to them a plan of government which includes the modification of the existing structure of government together with its concomitant allocation of governmental powers, it is not only his right but his duty to take the people directly into his confidence and impart to them to the fullest measure of his capacity and by all available adequate means the reasons therefor and the corollarily advantages thereof to their welfare. The opposition, if it opines otherwise, has naturally the indisputable right to make every effort to thwart his objective. But, surely, this is far from saying that it is the duty of the administration to generously grant to them the means to wage their campaign against it.

The long and short of the foregoing is that it is not true that in speaking as he did in the "Pulong-Pulong sa Pangulo" on March 21, 1981, he spoke not only as President-Prime Minister but also as head of the KBL, the political party now in power. It was in the former capacity that he did so. If in any way, what he said would induce the people to accept the proposed amendments, his exposition of the advantages thereof was not to promote the interest of that party but to improve the quality of the government thereby to enable him or anyone who may be chosen by the people to take his place to better serve the welfare not only of the KBL but of all of us, including those who are minded, for reasons of their own, to oppose the amendments.

In any event, petitioner has failed to persuade Us that the grant of the prayer in its petition compellingly pertains to it under the provisions of the Constitution, the Election Code of 1978 and the general resolutions and regulations of respondent Comelec regarding equal opportunity among contending political parties, groups, aggrupations or individuals. The Comelec has indeed the power to supervise and regulate the mass media in such respect, but such authority arises only when there is a showing that any sector or member of the media has denied to any party or person the right to which it or he is entitled. What is more, there are other political parties similarly situated as petitioner. To grant to petitioner what it wants, it must necessarily follow that such other parties should also be granted. As already indicated earlier, that would be too much to expect from the media that has also its own right to earn its wherewithal. But most importantly, the Comelec is not supposed to dictate to the media when its prerogatives in the premises is not invoked in the proper manner, that is, after denial to the petitioner by the media is shown. And then, it is an inalienable right of the sector or member of the media concerned to be duly heard as an indispensable party.

Thus, for being beyond what the charter, the laws and pertinent Comelec regulations contemplate, for being more than what the opposition is duly entitled vis-a-vis the duty, obligation and/or privilege inherent in the head of state to directly dialogue with the sovereign people when the occasion demands, for being impractical under prevailing circumstances, and for its failure to join in the instant petition indispensable parties, thereby depriving the Court

of jurisdiction to act, and for these alone, among other reasons which there is hardly time to state herein, the prayer in the instant petition cannot be granted.

WHEREFORE, the appeal herein is dismissed, without costs.

Aquino, Fernandez, and Guerrero, JJ., concur.

Fernando, C.J., concurs and in addition submits a separate opinion.

Teehankee, J., dissents in a separate opinion.

Makasiar, J., in the result.

De Castro and Melencio-Herrera, JJ., join with the separate opinion of C.J. Fernando.

Concepcion, Jr., J., no part.

Abad Santos, J., on official leave.

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CONCURRING OPINION

FERNANDO, C.J.:

In the light of the traditional practice, constitutionally sanctioned not only in the Philippines, but also in the United States and France, a President, even if running for reelection, by virtue of the position he holds, is necessarily in a more advantageous position. It is easy for him to make use of the media for the purpose of announcing policies of government and offering the necessary explanations as to why they should be adopted. In the sense, therefore, that with the petition based on the fact that two hours were granted the President for his Pulong-Pulong program and therefore, a similar privilege should be accorded to petitioner, it cannot be said that respondent Commission on Elections abused its discretion, much less in a grave manner, in denying the request of petitioner. Hence this concurrence with the opinion of the Court.

There is, however, to my mind, certain considerations that should not be ignored by respondent Commission in the utilization of what has come to be known as the TV and Radio "Comelec Time." The vitality of the democratic process and the support extended by the people to the national leadership depend on the understanding of the measures undertaken by government. It is to the credit of the present administration that all issues of public interest are fully ventilated. Considering how transcendental in character are the proposed amendments, it is not only desirable but to my mind of the essence of constitutionalism that every government agency be fully aware of the importance of the basic concepts that lie at the foundations of our political institutions. In the electoral process, the equal protection guarantee is of the utmost significance. It connotes fairness to all contending parties whenever the electorate is called upon to express its choice whether of men or on issues. The Constitution has seen to that. Thus: "The enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, may be supervised or regulated by the Commission during the election period for the purpose of ensuring free, orderly, and honest elections." [1] Also, there is this provision in the 1973 Constitution: "Bona fide candidates for any public office shall be free from any form of harassment and

discrimination." [2] There is, moreover, a specific provision in the 1978 Election Code. [3] Thus: "* * * In all instances, the Commission shall supervise the use and employment of press, radio and television facilities so as to give candidates equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in this Code on election spending." [4]

It is my submission that while this paragraph speaks of candidates as does the constitutional provision cited, it lends itself to an interpretation allowing its application to the present situation. Respondent Commission can take pride in the fact that it has not been recreant to the trust imposed on it by virtue of the above provisions. The resolutions brought to the attention of this Court are indicative of how far it has gone to avoid any valid charge of being discriminatory or unfair. It will, in my view, inspire even greater confidence if in the few remaining days before the plebiscite, it exercises its supervisory authority to assure that the mass media accord equal access to the views espoused by petitioner as well as other opposition groups. That would be a signal contribution to the cause of free and honest elections as well as free speech.

I am authorized to state that justice Melencio-Herrera concurs in this opinion.

[1] Article XII, Sec. 5.

[2] Ibid, Sec. 9 (1).

[3] Presidential Decree No. 1296.

[4] Ibid, Sec. 41. This is the last paragraph only.

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DISSENTING OPINION

TEEHANKEE, J.:

I am constrained to dissent from the dismissal of the petition at bar and to vote that it be granted due course.

In the cases of *Occeña vs. Comelec* (G.R. No. 56350) and *Gonzales vs. National Treasurer* (G.R. No. 56404), jointly decided on this date, April 4, 1981, I voted to enjoin the holding of the plebiscite scheduled for April 7, 1981 on the ground, among others, that the controlling doctrine of fair and proper submission as laid down by the Court in *Tolentino vs. Comelec* [1] specially in the light of the proposed complex, complicated and radical changes of our structure of government requires that the people be given adequate time and information as to the amendments to be voted upon for their conscientious deliberation and intelligent consent or rejection.

As stressed by retired Justice Conrado V. Sanchez in his separate opinion in *Gonzales vs. Comelec* [2], "(W)e believe the word 'submitted' can only mean that the government, within its maximum capabilities, should strain every effort to inform every citizen of the provisions to be amended, and the proposed amendments and the meaning, nature and effects thereof. x x What the Constitution in effect directs is that the government, in submitting an amendment for ratification, should put every instrumentality or agency within its structural framework to enlighten the people, educate them with respect to their act of ratification or rejection."

It was in response to these strictures that the 1971 Constitutional Convention provided in Article XII (C), section 5 of the 1973 Constitution that "(T)he enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, may be supervised or regulated by the Commission during the election period for the purpose of ensuring free, orderly, and honest elections." Likewise, the Election Code of 1978 provided for regulation by the Comelec of election propaganda through the mass media and the Comelec itself issued its implementing Resolution No. 1468, the pertinent provisions of which are copied in full in the majority decision.[3]

In consonance with the views expressed by the Chief Justice in his separate opinion, respondent Comelec is fully authorized (as it has done with its "Comelec Time" on TV and radio) to issue all reasonable measures to the mass media, particularly to the government-owned television and radio stations, to grant petitioners as much time and space as is feasible (although understandably less than the President-Prime Minister as head of state and government) to air and disseminate their contrary views on the proposed amendments and enable the voter to exercise intelligently his choice on acceptance or rejection of "changes of the existing charter of his rights and liberties and the existing governmental form as well as the powers of those who are to govern him" - to borrow the language of the ponente Mr. Justice Barredo.[4]

Here we are, on the 36th day after the adoption by the Interim Batasang Pambansa of the proposed amendments with only two more days to go before plebiscite day on April 7, 1981; yet, even lawyers are known to "have a difficult time zeroing in on the practical applications of the [proposed] changes in the basic law of the land." [5]

The Comelec would but faithfully discharge its constitutional duty if it fully implemented the cited statute and regulations of its own to assure the widest dissemination of the affirmative and negative views on the proposed amendments. The technical questions raised in the majority decision as to the non-impleader of the mass media as parties and other groups and aggrupations who also want to be heard are mere administrative problems which the Constitution has precisely entrusted to the Comelec to resolve and determine fairly and equitably.

[1] 41 SCRA 702 and Resolution denying motion for reconsideration dated November 4, 1971.

[2] 21 SCRA 774.

[3] At page 14 thereof.

[4] Decision, at page 15.

[5] Sunday Express Weekend Magazine of March 29, 1981.

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