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G.R. No. 83767. October 27, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a Special Civil Action for certiorari to nullify and set aside the Resolutions of the Senate Electoral Tribunal dated February 12, 1988 and May 27, 1988, denying, respectively, the petitioners' Motion for Disqualification or Inhibition and their Motion for Reconsideration thereafter filed.

On October 9, 1987, the petitioners filed before the respondent Tribunal an election contest docketed as SET Case No. 002-87 against 22 candidates of the LABAN coalition who were proclaimed senators-elect in the May 11, 1987 congressional elections by the Commission on Elections. The respondent Tribunal was at the time composed of three (3) Justices of the Supreme Court and six (6) Senators, namely: Senior Associate Justice Pedro L. Yap (Chairman), Associate Justices Andres R. Narvasa and Hugo E. Gutierrez, Jr., and Senators Joseph E. Estrada, Neptali A. Gonzales, Teofisto T. Guingona, Jose Lina, Jr., Mamintal A.J. Tamano and Victor S. Ziga.

On November 17, 1987, the petitioner, with the exception of Senator Estrada but including Senator Juan Ponce Enrile (who had been designated Member of the Tribunal replacing Senator Estrada, the latter having affiliated with the Liberal Party and resigned as the Opposition's representative in the Tribunal filed with the respondent Tribunal a Motion for Disqualification or Inhibition of the Senators-Members thereof from the hearing and resolution of SET Case No. 002-87 on the ground that all of them are interested parties to said case, as respondents therein. Before that, Senator Rene A.V. Saguisag, one of the respondents in the same case, had filed a Petition to Recuse and later a Supplemental Petition to Recuse the same Senators-Members of the Tribunal on essentially the same ground. Senator Vicente T. Paterno, another respondent in the same contest, thereafter filed his comments on both the petitions to recuse and the motion for disqualification or inhibition. Memoranda on the subject were also filed and oral arguments were heard by the respondent Tribunal, with the latter afterwards issuing the Resolutions now complained of.

Senator Juan Ponce Enrile in the meantime had voluntarily inhibited himself from participating in the hearings and deliberations of the respondent Tribunal in both SET Case No. 002-87 and SET Case No. 001-87, the latter being another contest filed by Augusto S. Sanchez against him and Senator Santanina T. Rasul as alternative respondents, citing his personal involvement as a party in the two cases.

The petitioners, in essence, argue that considerations of public policy and the norms of fair play and due process imperatively require the mass disqualification sought and that the doctrine of necessity which they perceive to be the foundation of the questioned Resolutions does not rule out a solution both practicable and constitutionally unobjectionable namely: the amendment of the respondent Tribunal's Rules of procedure so as to permit the

contest being decided by only three Members of the Tribunal.

The proposed amendment to the Tribunal's Rules (Section 24) -- requiring the concurrence of five (5) members for the adoption of resolutions of whatever nature -- is a proviso that where more than four (4) members are disqualified, the remaining members shall constitute a quorum, if not less than three (3) including one (1) Justice, and may adopt resolutions by majority vote with no abstentions. Obviously tailored to fit the situation created by the petition for disqualification, this would, in the context of that situation, leave the resolution of the contest to the only three Members who would remain, all Justices of this Court, whose disqualification is not sought.

We do not agree with petitioners' thesis that the suggested device is neither unfeasible nor repugnant to the Constitution. We opine that in fact the most fundamental objection to such proposal lies in the plain terms and intent of the Constitution itself which, in its Article VI Section 17, creates the Senate Electoral Tribunal, ordains its composition and defines its jurisdiction and powers.

"Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman."

It seems quite clear to us that in thus providing for a Tribunal to be staffed by both Justices of the Supreme Court and Members of the Senate, the Constitution intended that both those "judicial" and "legislative" components commonly share the duty and authority of deciding all contests relating to the election returns and qualifications of Senators. The respondent Tribunal correctly stated one part of this proposition when it held that said provision "**** is a clear expression of an intent that all (such) contests *** shall be resolved by a panel or body in which their (the Senators) peers in that Chamber are represented." [1] The other part, of course, is that the constitutional provision just as clearly mandates the participation in the same process of decision of a representative or representatives of the Supreme Court.

Said intent is even more clearly signalled by the fact that the proportion of Senators to Justices in the prescribed membership of the Senate Electoral Tribunal is 2 to 1 - an unmistakable indication that the "legislative component" cannot be totally excluded from participation in the resolution of senatorial election contests, without doing violence to the spirit and intent of the Constitution.

Where, as here, a situation is created which precludes the substitution of any Senator sitting in the Tribunal by any of his other colleagues in the Senate without inviting the same objections to the substitute's competence, the proposed mass disqualification, if sanctioned and ordered; would leave the Tribunal no alternative but to abandon a duty that no other court or body can perform, but which it cannot lawfully discharge if shorn of the participation of its entire membership of Senators.

To our mind, this is the overriding consideration -- -that the Tribunal be not prevented from discharging a duty which it alone has the power to perform, the performance of which is in the highest public interest as evidenced by its being expressly imposed by no less than the fundamental law.

It is aptly noted in the first of the questioned Resolutions that the framers of the Constitution could not have been unaware of the possibility of an election contest that would involve all 24 Senators-elect, six of whom would inevitably have to sit in judgment thereon. Indeed, such possibility might surface again in the wake of the 1992 elections when once more, but for the last time, all 24 seats in the Senate will be at stake. Yet the Constitution

provides no scheme or mode for settling such unusual situations or for the substitution of Senators designated to the Tribunal whose disqualification may be sought. Litigants in such situations must simply place their trust and hopes of vindication in the fairness and sense of justice of the Members of the Tribunal. Justices and Senators, singly and collectively.

Let us not be misunderstood as saying that no Senator-Member of the Senate Electoral Tribunal may inhibit or disqualify himself from sitting in judgment on any case before said Tribunal. Every Member of the Tribunal may, as his conscience dictates, refrain from participating in the resolution of a case where he sincerely feels that his personal interests or biases would stand in the way of an objective and impartial judgment. What we are merely saying is that in the light of the Constitution, the Senate Electoral Tribunal cannot legally function as such, absent its entire membership of Senators and that no amendment of its Rules can confer on the three Justices-Members alone the power of valid adjudication of a senatorial election contest.

The charge that the respondent Tribunal gravely abused its discretion in its disposition of the incidents referred to must therefore fail. In the circumstances, it acted well within law and principle in dismissing the petition for disqualification or inhibition filed by herein petitioners. The instant petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Cruz, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., see separate concurring statement.

Narvasa, Gutierrez, Jr., and Paras, JJ., no part.

CONCURRING

FELICIANO, J.,

I quite agree with what Mr. Justice Gancayco has written into his opinion for the Court. I would merely like to carry forward however slightly the analysis found in the penultimate paragraph of his opinion.

Should any three (3) Senator-Member of the Senate Electoral Tribunal voluntarily inhibit or disqualify themselves from participating in the proceeding in SET Case No. 002-87, a Tribunal would result that be balanced between the three (3) Justice-Members and the three (3) Senator-Members and still constitute more than a barge quorum. In such a Tribunal, both the consideration of public policy and fair play raised by petitioners and constitutional intent above noted concerning the mixed "Judicial" and "legislative" composition of the Electoral Tribunals would appear to be substantially met and served. This denouement, however, must be voluntarily reached and not compelled by certiorari.

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