

CARMELO F. LAZATIN, PETITIONER, VS. THE HOUSE ELECTORAL TRIBUNAL AND LORENZO G. TIMBOL, RESPONDENTS.*G.R. No. 84297. December 08, 1988*

Ponente: CORTES, J.

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Petitioner and private respondent were among the candidates for Representative of the first district of Pampanga during the elections of May 11, 1987. During the canvassing of the votes, private respondent objected to the inclusion of certain election returns. But since the Municipal Board of Canvassers did not rule on his objections, he brought his case to the Commission on Elections. On May 19, 1987, the COMELEC ordered the Provincial Board of Canvassers to suspend the proclamation of the winning candidate for the first district of Pampanga. However, on May 26, 1987, the COMELEC ordered the Provincial Board of Canvassers to proceed with the canvassing of votes and to proclaim the winner. On May 27, 1987, petitioner was proclaimed as Congressman-elect. Private respondent thus filed in the COMELEC a petition to declare petitioner's proclamation void ab initio. Later, private respondent also filed a petition to prohibit petitioner from assuming office. The COMELEC failed to act on the second petition so petitioner was able to assume office on June 30, 1987. On September 15, 1987, the COMELEC declared petitioner's proclamation void ab initio. Petitioner challenged the COMELEC resolution before this Court in a petition entitled "Carmelo F. Lazatin v. The Commission on Elections, Francisco R. Buan, Jr. and Lorenzo G. Timbol", docketed as G.R. No. 80007. In a decision promulgated on January 25, 1988, the Court set aside the COMELEC's revocation of petitioner's proclamation. On February 8, 1988, private respondent filed in the House of Representatives Electoral Tribunal (hereinafter referred to as "HRET") an election protest, docketed as Case No. 46.

Petitioner moved to dismiss private respondent's protest on the ground that it had been on filed late, citing Sec. 250 of the Omnibus Election Code (B.P. Blg. 881). However, the HRET ruled that the protest had been filed on time in accordance with Sec. 9 of the HRET Rules. Petitioner's motion for reconsideration was also denied. Hence, petitioner has come to this Court, challenging the jurisdiction of the HRET over the protest filed by private respondent.

A. The Main Case

This special civil action for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction and/or restraining order seeks the annulment and setting aside of (1) the resolution of the HRET, dated May 2, 1988, in Case No. 46, holding that the protest filed by private respondent had been filed on time, and (2) its July 29, 1988 resolution denying the motion for reconsideration.

Without giving due course to the petition, the Court required the respondents to comment on the petition. The Solicitor General filed a comment in behalf of the HRET while the private respondent filed his comment with a motion to admit counter/cross petition and the petitioner filed his consolidated reply. Thereafter, the Court resolved to give due course to the petition, taking the comments filed as the answers to the petition, and considered the case submitted for decision.

Resolution of the instant controversy hinges on which provision governs the period for filing protests in the HRET. Should Sec. 250 of the Omnibus Election Code be held applicable, private respondent's election protest would have been filed out of time. On the other hand, if Sec. 9 of the HRET Rules is applicable, the filing of the protest would be timely. Succinctly stated, the basic issue is whether or not private respondent's protest had been seasonably filed.

To support his contention that private respondent's protest had been filed out of time and, therefore, the HRET did not acquire jurisdiction over it, petitioner relies on Sec. 250 of the Omnibus Election Code, which provides:

Sec. 250. Election contests for Batasang Pambansa, regional, provincial and city offices. -- A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. [Emphasis supplied.]

Petitioner argues that even assuming that the period to file an election protest was suspended by the pendency of the petition to annul his proclamation, the petition was filed out of time, considering that he was proclaimed on May 27, 1987 and therefore private respondent had only until June 6, 1987 to file a protest; that private respondent filed a petition to annul the proclamation on May 28, 1987 and the period was suspended and began to run again on January 28, 1988 when private respondent was served with a copy of the decision of the Court in G.R. No. 80007; that private respondent therefore only had nine (9) days left or until February 6, 1988 within which to file his protest; but that private respondent filed his protest with the HRET only on February 8, 1988.

On the other hand, in finding that the protest was filed on time, the HRET relied on Sec. 9 of its Rules, to wit:

Election contests arising from the 1987 Congressional elections shall be filed with the Office of the Secretary of the Tribunal or mailed at the post office as registered matter addressed to the Secretary of the Tribunal, together with twelve (12) legible copies thereof plus one (1) copy for each protestee, within fifteen (15) days from the effectivity of these Rules on November 22, 1987 where the proclamation has been made prior to the effectivity of these Rules, otherwise, the same may be filed within fifteen (15) days from the date of the proclamation. Election contests arising from the 1987 Congressional elections filed with the Secretary of the House of Representatives and transmitted by him to the Chairman of the Tribunal shall be deemed filed with the Tribunal as of the date of effectivity of these Rules, subject to payment of filing fees as prescribed in Section 15 hereof. [Emphasis supplied.]

Thus, ruled the HRET:

On the basis of the foregoing Rule, the protest should have been filed within fifteen (15) days from November 22, 1987, or not later than December 7, 1987. However, on September 15, 1987, the COMELEC, acting upon a petition filed by the Protestant (private respondent herein), promulgated a Resolution declaring the proclamation void ab initio. This resolution had the effect of nullifying the proclamation, and such proclamation was not reinstated until Protestant received a copy of the Supreme Court's decision annulling the COMELEC Resolution on January 28, 1988. For all intents and purposes, therefore, Protestee's (petitioner herein) proclamation became effective only on January 28, 1988, and the fifteen-day period for Protestant to file his protest must be reckoned from that date.

Protestant filed his protest on February 8, 1988, or eleven (11) days after January 28. The protest, therefore, was filed well within the reglementary period provided by the Rules of this Tribunal. [Rollo, p. 129.]

The Court is of the view that the protest had been filed on time and, hence, the HRET acquired jurisdiction over it.

Petitioner's reliance on Sec. 250 of the Omnibus Election Code is misplaced. Sec. 250 is couched in unambiguous terms and needs no interpretation. It applies only to petitions filed before the COMELEC contesting the election of any Member of the Batasang Pambansa, or any regional, provincial or city official. Furthermore, Sec. 250 should be read together with Sec. 249 of the same code which provides that the COMELEC "shall be the sole judge of all contests relating to the elections, returns and qualifications of all Members of the Batasang Pambansa, elective regional, provincial and city officials," reiterating Art. XII-C, Sec. 2(2) of the 1973 Constitution. It must be emphasized that under the 1973 Constitution there was no provision for an Electoral Tribunal, the jurisdiction over election contests involving Members of the Batasang Pambansa having been vested in the COMELEC.

That Sec. 250 of the Omnibus Election Code, as far as contests regarding the election, returns and qualifications of Members of the Batasang Pambansa is concerned, had ceased to be effective under the 1987 Constitution is readily apparent. First, the Batasang Pambansa has already been abolished and the legislative power is now vested in a bicameral Congress. Second, the Constitution vests exclusive jurisdiction over all contests relating to the election, returns and qualifications of the Members of the Senate and the House of Representatives in the respective Electoral Tribunals [Art. VI, Sec. 17.] The exclusive original jurisdiction of the COMELEC is limited by constitutional fiat to election contests pertaining to elective regional, provincial and city offices and its appellate jurisdiction to those involving municipal and barangay offices [Art. IX-C, Sec. 2(2).]

Petitioner makes much of the fact that the provisions of the Omnibus Election Code on the conduct of the election were generally made applicable to the congressional elections of May 11, 1987. It must be emphasized, however, that such does not necessarily imply the application of all the provisions of said code to each and every aspect of that particular electoral exercise, as petitioner contends. On the contrary, the Omnibus Election Code was only one of several laws governing said elections.[*]

An examination of the Omnibus Election Code and the executive orders specifically applicable to the May 11, 1987 congressional elections reveals that there is no provision for the period within which to file election protests in the respective Electoral Tribunals. Thus, the question may well be asked whether the rules governing the exercise of the Tribunals' constitutional functions may be prescribed by statute.

The Court is of the considered view that it may not.

The power of the HRET, as the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives, to promulgate rules and regulations relative to matters within its jurisdiction, including the period for filing election protests before it, is beyond dispute. Its rule-making power necessarily flows from the general power granted it by the Constitution. This is the import of the ruling in the landmark case of *Angara v. Electoral Commission* (63 Phil. 139 (1936)), where the Court, speaking through Justice Laurel, declared in no uncertain terms:

. . . [T]he creation of the Electoral Commission carried with it ex necessitate rei the power regulative in character to limit the time within which protests intrusted to its cognizance should be filed. It is a settled rule of construction that where a general power is conferred or duly enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, *Constitutional Limitations*, eighth ed., vol. I, pp. 138, 139). In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral Commission, therefore, the incidental power to promulgate such rules necessary for the proper exercise of its exclusive power to judge all contests relating to the election, returns and qualifications of members of the National Assembly, must be deemed by necessary implication to have been lodged also in the Electoral Commission. [At p. 177; emphasis supplied.]

A short review of our constitutional history reveals that, except under the 1973 Constitution, the power to judge all contests relating to the election, returns and qualifications of the members of the legislative branch has been

exclusively granted either to the legislative body itself [i.e., the Philippine Assembly under the Philippine Bill of 1902 and the Senate and the House of Representatives under the Philippine Autonomy Act (Jones Law)] or to an independent, impartial and non-partisan body attached to the legislature [i.e., the Electoral Commission under the 1935 Constitution and the Electoral Tribunals under the amended 1935 and the 1987 Constitutions.]

Except under the 1973 Constitution, the power granted is that of being the sole judge of all contests relating to the election, returns and qualifications of the members of the legislative body. Article VI of the 1987 Constitution states it in this wise:

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.

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred [Angara v. Electoral Commission, *supra*, at 162.] The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as "intended to be as complete and unimpaired as if it had remained originally in the legislature" [Id. at 175.] Earlier, this grant of power to the legislature was characterized by Justice Malcolm as "full, clear and complete" *Veloso v. Board of Canvassers of Leyte and Samar*, 39 Phil. 886 (1919).] Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal (*Suanes v. Chief Accountant of the Senate*, 81 Phil. 818 (1948)) and it remained as full, clear and complete as that previously granted the legislature and the Electoral Commission [*Lachica v. Yap*, G.R. No. L-25379, September 25, 1968, 25 SCRA 140.] The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution.

The 1935 and 1987 Constitutions, which separate and distinctly apportion the powers of the three branches of government, lodge the power to judge contests relating to the election, returns and qualifications of members of the legislature in an independent, impartial and non-partisan body attached to the legislature and specially created for that singular purpose (i.e., the Electoral Commission and the Electoral Tribunals) [see *Suanes v. Chief Accountant of the Senate*, *supra*.] It was only under the 1973 Constitution where the delineation between the powers of the Executive and the Legislature was blurred by constitutional experimentation that the jurisdiction over election contests involving members of the Legislature was vested in the COMELEC, an agency with general jurisdiction over the conduct of elections for all elective national and local officials.

That the framers of the 1987 Constitution intended to restore fully to the Electoral Tribunals exclusive jurisdiction over all contests relating to the election, returns and qualifications of its Members, consonant with the return to the separation of powers of the three branches of government under the presidential system, is too evident to escape attention. The new Constitution has substantially retained the COMELEC's purely administrative powers, namely, the exclusive authority to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall; to decide, except those involving the right to vote, all questions affecting elections; to deputize law enforcement agencies and government instrumentalities for election purposes; to register political parties and accredit citizens' arms; to file in court petitions for inclusion and exclusion of voters and prosecute, where appropriate, violations of election laws [Art. IX(C), Sec. 2(1), (3)-(6)], as well as its rule-making power. In this sense, and with regard to these areas of election law, the provisions of the Omnibus Election Code are fully applicable, except where specific legislation provides otherwise. But the same

cannot be said with regard to the jurisdiction of the COMELEC to hear and decide election contests. This has been trimmed down under the 1987 Constitution. Whereas the 1973 Constitution vested the COMELEC with jurisdiction to be the sole judge of all contests relating to the elections, returns and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials [Art. XII(C), Sec. 2(2), the 1987 Constitution, while lodging in the COMELEC exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial and city officials and appellate jurisdiction over contests relating to the election of municipal and barangay officials [Art. IX(C), Sec. 2(2)], expressly makes the Electoral Tribunals of the Senate and the House of Representatives the sole judge of all contests relating to the election, returns and qualifications of their respective Members [Art. VI, Sec. 17.]

The inescapable conclusion from the foregoing is that it is well within the power of the HRET to prescribe the period within which protests may be filed before it. This is founded not only on historical precedents and jurisprudence but, more importantly, on the clear language of the Constitution itself.

Consequently, private respondent's election protest having been filed within the period prescribed by the HRET, the latter cannot be charged with lack of jurisdiction to hear the case.

B. Private Respondent's Counter/Cross Petition

Private respondent in HRET Case No. 46 prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin petitioner herein from discharging his functions and duties as the Representative of the first district of Pampanga during the pendency of the protest. However, on May 5, 1988, the HRET resolved to defer action on said prayer after finding that the grounds therefor did not appear to be indubitable. Private respondent moved for reconsideration, but this was denied by the HRET on May 30, 1988. Thus, private respondent now seeks to have the Court annul and set aside these two resolutions and to issue a temporary restraining order and/or writ of preliminary injunction on the premise that the grounds therefor are too evident to be doubted.

The relief prayed for in private respondent's counter/cross petition is not forthcoming.

The matter of whether or not to issue a restraining order or a writ of preliminary injunction during the pendency of a protest lies within the sound discretion of the HRET as sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives. Necessarily, the determination of whether or not there are indubitable grounds to support the prayer for the aforementioned ancillary remedies also lies within the HRET's sound judgment. Thus, in G.R. No. 80007, where the Court declined to take cognizance of the private respondent's electoral protest, this Court said:

The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of the protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal.

Moreover, private respondent's attempt to have the Court set aside the HRET's resolution to defer action on his prayer for provisional relief is undeniably premature, considering that the HRET had not yet taken any final action with regard to his prayer. Hence, there is actually nothing to review or annul and set aside. But then again, so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of Members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court. As stated earlier, the power granted to the Electoral Tribunal is full, clear and complete and "excludes the exercise of any authority on the part of this Court that would in any wise restrict or curtail it or even affect the same." [Lachica v. Yap, *supra*, at 143.] As early as 1938 in *Morrero v. Bocar* [66 Phil. 429, 431 (1938)], the Court declared that "[t]he judgment rendered by the

[Electoral] Commission in the exercise of such an acknowledged power is beyond judicial interference, except, in any event, upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law." Under the 1987 Constitution, the scope of the Court's authority is made explicit. The power granted to the Court includes the duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" [Art. VIII, Sec. 1.] Thus, only where such grave abuse of discretion is clearly shown shall the Court interfere with the HRET's judgment. In the instant case, there is no occasion for the exercise of the Court's corrective power, since no grave abuse of discretion that would amount to lack or excess of jurisdiction and would warrant the issuance of the writs prayed for has been clearly shown.

WHEREFORE, the instant Petition is hereby DISMISSED. Private respondent's Counter/Cross Petition is likewise DISMISSED.

SO ORDERED.

Gutierrez, Jr., Paras, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., took no part, having served as chairman of the HRET.

Melencio-Herrera, J., took no part, being a member of the HRET.

Cruz and Feliciano, JJ., took no part as members of respondent HRET.

Sarmiento, J., took no part; private respondent having been associated with me in the practice of law.

Narvasa, J., on leave.

[*] Among the other applicable laws were Executive Order No. 134 (Enabling Law for the Elections for Members of Congress on May 11, 1987, and for Other Purposes) and E.O. No. 144 (Supplemental Law on the May 11, 1987 Elections for Members of Congress), together with some other executive orders on elections in general.

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