

ROSETTE YNIGUEZ LERIAS, PETITIONER, VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND ROGER G. MERCADO, RESPONDENTS.

G.R. No. 97105. October 15, 1991

Ponente: PARAS, J.

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PARAS, J.:

Politicians who are members of electoral tribunals, must think and act like judges. Accordingly, they must resolve election controversies with judicial, not political, integrity.

The independence of the House of Representatives Electoral Tribunal, (HRET, for brevity) as a constitutional body has time and again been upheld by this Court in many cases. (*Lazatin v. House Electoral Tribunal*, 168 SCRA 391; *Robles v. House of Representatives Electoral Tribunal*, 181 SCRA 780). The power of the HRET, as the “sole judge” of all contests relating to the election returns and qualifications of its members is beyond dispute. (Art. VI, Sec. 17 of the 1987 Constitution) Thus, judicial review of decisions or final resolutions of the HRET is possible only in the exercise of this Court’s so-called “extra-ordinary jurisdiction” — upon a determination that the tribunal’s decision or resolution was rendered without or in excess of its jurisdiction or with grave abuse of discretion or upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such a grave abuse of discretion that there has to be a remedy for such abuse. (*Morrero v. Bocar*, 66 Phil. 429, 431; *Lazatin v. House Electoral Tribunal*, *supra*; *Robles v. HRET*, *supra*) Then only where such grave abuse of discretion is clearly shown that the Court interferes with the HRET’s judgment or decision.

Accordingly, it is in this light that We shall proceed to examine the contentions of the parties in this case.

Petitioner Rosette Y. Lerias filed her certificate of candidacy as the official candidate of the UPP-KBL for the position of Representative for the lone district of Southern Leyte in the May 11, 1987 elections. In her certificate of candidacy she gave her full name as “Rosette Ynigues Lerias”. Her maiden name is Rosette Ynigues. Respondent Roger G. Mercado was the administration candidate for the same position.

During the canvass of votes for the congressional candidates by the Provincial Board of Canvassers of Southern Leyte, it appeared that, excluding the certificate of canvass from the Municipality of Libagon which had been questioned by Mercado on the ground that allegedly it had been tampered with, the candidates who received the two (2) highest number of votes were Roger G. Mercado with 34,442 votes and Rosette Y. Lerias with 34,128 votes, respectively.

In the provincial board’s copy of the certificate of canvass for the municipality of Libagon, Lerias received 1,811 votes while Mercado received 1,351. Thus, if said copy would be the one to be included in the canvass, Lerias would have received 35,939 votes as against Mercado’s 35,793 votes, giving Lerias a winning margin of 146 votes. But, the provincial board of canvassers ruled that their copy of the certificate of canvass contained erasures, alterations and superimpositions and therefore, cannot be used as basis of the canvass. The provincial board of

canvassers rejected the explanation of the members of the municipal board of canvassers of Libagon that said corrections were made to correct honest clerical mistakes which did not affect the integrity of the certificate and said corrections were made in the presence of the watchers of all the nine (9) candidates for the position, including those of Mercado who offered no objection.

Lerias appealed the ruling of the provincial board of canvassers to the Comelec praying that the Commission order the provincial board of canvassers to use their copy of the certificate of canvass for Libagon.

At the scheduled hearing on June 5, 1987, Atty. Valeriano Tumol, then counsel for Lerias, agreed to use the Comelec copy of the certificate of canvass provided that it be found to be authentic and genuine. A similar reservation was made by counsel for Mercado.

The Comelec copy of the certificate of canvass was produced and when opened it showed that Lerias received only 1,411 votes in Libagon because in Precincts 6, 10, 18 and 19 she received in each of the said precincts 100 votes less than what she received as shown in the provincial board of canvasser's copy of the certificate of canvass. The alleged discrepancy is as follows:

Provincial Board of Canvassers' Copy

Comelec Copy

Precinct

6

162

votes

62

votes

“

“

“

“

10

123

“

23

“

“

18

132

“

32

“

“

19

156

“

56

“

Nevertheless, the Comelec, (Second Division) in its Resolution dated June 6, 1987, directed the provincial board of canvassers to complete the canvass by crediting Mercado 1,351 votes and Lerias 1,411 votes, the votes received by them, respectively, as shown in the Comelec copy of the certificate of canvass. So, on June 7, 1987, the provincial board of canvassers reconvened, resumed the canvass and proclaimed Mercado, as the winning candidate, having received the highest number of votes — 35,793. Lerias, his closest rival, received 35,539 votes or a difference of 254 votes. On June 7, 1987, Lerias filed an urgent ex-parte motion for the reconsideration of the June 6, 1987 resolution. She prayed that the members of the municipal board of canvassers be summoned to testify on the authenticity and veracity of the Comelec copy of the certificate of canvass and statement of votes submitted to the Comelec and that the election returns for precincts 6, 10, 18 & 19 be produced.

On June 15, 1987 Lerias filed with the Comelec a petition (SPC No. 87-488) for the annulment of the canvass and proclamation of Mercado, praying that the ballot boxes of precincts 6, 10, 18 & 19 of Libagon be ordered opened and the votes therein recounted. On June 21, 1987, she filed a motion to suspend the effects of the proclamation of Mercado.

There being no action taken by the Comelec on the said motion and since the term of office of the members of the House of Representatives would commence on June 30, 1987, Lerias filed on June 30, 1987 before this Court a petition (G.R. No. 78833) for the annulment of the Comelec resolution of June 6, 1987 and the proclamation of Mercado.

Meanwhile, in SPC-87-488, the Comelec en banc required Mercado to file an answer. Instead of filing an answer, however, Mercado filed a motion to dismiss on the grounds that (a) the resolution dated June 6, 1987 had already become final because the motion for reconsideration filed by Lerias was ex-parte and did not stop the running of the period to appeal therefrom and (b) since Lerias filed with the Supreme Court a petition for the annulment of the Comelec's June 6, 1987 resolution and the subsequent proclamation of Mercado, she had abandoned her previous petition with the Comelec.

At the scheduled hearing on June 16, 1987 of SPC-87-488, the members of the municipal board of canvassers of Libagon and the school teachers who served as inspectors of Precincts 6, 10, 18 and 19 were present and manifested that they were ready to testify and affirm that the Comelec copy of the certificate of canvass was not authentic for it did not correctly state the number of votes received by the parties since Lerias actually obtained 1,811 votes in Libagon, not 1,411 votes. The Comelec did not want to hear the case on the merits opting instead to merely hear Mercado's motion to dismiss. The said witnesses were not given the chance to testify.

On June 17, 1987, the Comelec resolved to dismiss SPC-87-488 because the petitioner had filed a case with the Supreme Court and had, therefore, abandoned her case with the Comelec.

On July 22, 1987 Lerias filed with this Court a second petition to set aside not only the Comelec's resolution of July 6, 1987 but also the resolution of July 17, 1987.

The petition was heard on oral argument and on September 10, 1987, this Court dismissed the petition because (a) the Comelec resolution of June 6, 1987 and the proclamation of Mercado had already become executory inasmuch as five days had elapsed from receipt of a copy of said resolution by petitioner and no restraining order had been issued by the Court citing Sec. 246 of the Omnibus Election Code, and (b) Lerias thru counsel had agreed before the Comelec (Second Division) during the hearing therein on June 5, 1987 to use the Comelec copy of the certificate of canvass.

Lerias filed a motion for reconsideration but the same was denied. Hence, on October 1, 1987, she filed an election protest with respondent HRET.

In her protest, Lerias contested the results of the election in Precincts Nos. 6, 10, 18 & 19 of Libagon asserting that the total votes credited to her in the said four precincts (1,411 votes) were less than or short by 400 votes from that actually obtained by her (1,811 votes) and if the provincial board of canvassers' copy of the certificate of canvass for Libagon were to be used as basis of the canvass instead of the Comelec copy, she would have garnered 35,939 votes as against Mercado's 35,793 votes or a winning margin of 146 votes. Thus, Lerias prayed that (a) precautionary measures be undertaken for the safekeeping and custody of the ballot boxes and election documents used in the protested precincts and that they be brought to the Tribunal to prevent tampering and to protect their integrity; (b) a recount of the votes cast in said precincts be immediately ordered; and (c) the proclamation of Mercado be set aside and that she be declared the duly elected Representative for the lone district of Southern Leyte. She further prayed that Mercado be ordered to pay damages, attorney's fees and costs.

Mercado filed his Answer with Counter-Protest, denying the material allegations of the protest and counter-protesting the results of the elections in 377 precincts. He alleged that the votes cast for him were (a) intentionally misread in favor of Lerias; (b) not counted or tallied, and/or counted or tallied in favor of Lerias; (c) considered marked or were intentionally marked and; (d) tampered and changed. The counter-protest also charged that blank spaces in the ballots were filled with Lerias' name; that various ballots for Lerias, pasted with stickers, were considered valid and counted for Lerias; that votes in the election returns were tampered with and altered in favor of Lerias, and that terrorism and massive vote-buying were employed by her.

The initial hearing was scheduled for August 22, 1988, but on March 7, 1988 unidentified uniformed armed men raided the municipal building of Libagon and stole the ballot boxes for the 20 precincts of Libagon stored in the office of the municipal treasurer. Fortunately, these armed men overlooked the ballot box which was kept in the office of the election registrar at the second floor of said municipal building. Said ballot box contained all the copies of the election returns of Libagon which were used in the municipal canvass. It is in the said office that said ballot box remained until a representative of the HRET went to Libagon on March 23 and 24, 1988 to take possession of the contents of the same particularly the election returns kept in said ballot box.

On December 6, 1990, the Tribunal (by a vote of 5-4) promulgated its now assailed Decision, the pertinent portion of which reads:

"On the basis of all of the foregoing, and the supporting details as contained in ANNEXES A, B and C and in order to determine the final results of the elections for the position of Member of the House of Representatives, representing the lone district of Southern Leyte, a full and final RECAPITULATION is hereunder provided:
FINAL TABULATION

Mercado

Lerias

Votes per tally of the
Provincial Board of
Canvassers, used to

PROCLAIM protestee
Mercado

35,793

35,539

deduct: Votes per
Election Returns – from
81 protested precincts . .

2,154

6,885

UNCONTESTED VOTES. .

33,639

28,654

Add: Votes per REVISION
(physical count)

2,287

6,867

T o t a l s

35,926

35,521

Revision Results:

deduct: Rejected
Ballots (objected). .

362

252

T o t a l s.....

35,564

35,269

add: Claimed and
ADMITTED Ballots

26

273

35,590

35,542

add: Restored Votes

0

2

FINAL RESULTS

35,590

35,544

(Protestee Mercado wins by a plurality of 46 votes).

“ACCORDINGLY, THE PROTEST of protestant Lerias is dismissed; and by virtue of the results of revision of the eighty one (81) counter-protested precincts, the Tribunal declares that protestee Mercado is the duly elected Representative of the Lone District of the Province of Southern Leyte, by a plurality of FORTY SIX (46) votes; having garnered a total of THIRTY FIVE THOUSAND FIVE HUNDRED NINETY (35,590) votes as against the THIRTY FIVE THOUSAND FIVE HUNDRED FORTY FOUR (35,544) votes of protestant Lerias. No pronouncement as to costs.

“WHEREFORE, as soon as this Decision becomes final, notice and copies of the Decision shall be sent to the President of the Philippines, the House of Representatives, through the Speaker, and the Commission on Audit, through its Chairman, pursuant to the Rules of the House of Representatives Electoral Tribunal, Section 28.

“SO ORDERED.” (pp. 136-137)

The Chairperson of the Tribunal, the Honorable Justice Ameurfina M. Herrera dissented, in this wise:

“It becomes only too obvious then that by sheer force of numbers; by overturning, at the post-appreciation stage, the rulings earlier made by the Tribunal admitting the claimed ballots for Protestant Lerias; by departing from the interpretation of the neighborhood rule heretofore consistently followed by the Tribunal; by injecting ‘strange jurisprudence,’ particularly on the intent rule; the majority has succeeded in altering the figures that reflect the final outcome of this election protest and, in the process, thwarting the true will of the electorate in the lone district of Southern Leyte.

“Premises Considered, I vote to declare Protestant Rosette Y. Lerias the winner in this election protest. To the plurality of 20 votes obtained by her in the counter-protested precincts according to the outcome of the appreciation of ballots, must be added the 400 votes that should have been counted in her favor in the municipality of Libagon. All told, Protestant Lerias should, therefore, be credited with a total of thirty six thousand eight (36,008) votes as against thirty five thousand five hundred eighty eight (35,588) votes for Protestee Mercado, or a margin of four hundred twenty (420) votes.” (pp. 169-170 Rollo)

Likewise, the Honorable, Justice Isagani Cruz, concurring with the dissent of Justice Herrera stated:

“I cannot help noting that, as in several earlier cases, all the five members representing the majority party are again voting together in favor of the Protestee, who also happens to belong to their party. Whatever this coincidence may import, I repeat my observation in the Ong cases (HRET Nos. 13 and 15, Nov. 6, 1989) that ‘although the composition of the Tribunal is predominantly legislative, the function of this body is purely judicial, to be discharged on the basis solely of legal considerations, without regard to political, personal and other irrelevant persuasions.” (pp. 258-259, Rollo)

The Honorable, Justice Emilio Gancayco (now retired) concurred with the dissent of Justices Herrera and Cruz.

Another member of the Tribunal, Representative Antonio H. Cerilles, also in his dissent, stated:

“Going over all the foregoing facts and circumstances, I honestly fear that the majority decision will open the Tribunal to a charge of grave abuse of discretion in dismissing the protest and disallowing the admission of the results of Precinct Nos. 6, 10, 18 and 19 of the Municipality of Libagon, Southern Leyte, as reflected in the election returns, and the overwhelming documentary and testimonial evidences introduced, supported by well-settled jurisprudence. The same grave abuse of discretion may be said of the replacement of the results of the Screening Committee where protestant Lerias was originally a winner by twenty (20) votes over Mercado on the counter-protest alone, but which tabulation was reconsidered and ultimately replaced with a revised tabulation which altered the result, this time with protestee Mercado winning by forty-two (42) votes over Lerias, without any identification and ocular review of the ballots of the protestant thus rejected and no proper showing of the grounds for such rejection.

“All these considered, I feel compelled to register my dissent to this shameful and blatant disregard of the evidence, the law, and the rudiments of fairness. I regret that the majority decision will lend truth to the suspicion that a protestant from an opposition party cannot secure substantial justice from this Tribunal. It is the perception of many that the odds are stacked against such party mainly because of the composition of the Tribunal, and no evidence, no law, no jurisprudence, not even elementary principles of fair play, equity or morality can outweigh a determined demonstration of party stand, partiality and bias. I will not be party to such travesty of justice.

“This is not the first time — and it certainly will not be the last — when I as the lone opposition member of this Tribunal joined the three Justices of the Supreme Court in dissent. But I do so guided no less by the pronouncement of Justice Isagani A. Cruz, a member of this Tribunal, when he said: ‘Whatever this division may imply, it is worth stressing that although the composition of the Tribunal is predominantly legislative, the function of this body is purely judicial, to be discharged, on the basis solely of legal considerations without regard to political personal and other irrelevant persuasions.’[1] (Italics supplied)

“I now indicate that I favor the admission of the results of the election returns of Precinct Nos. 6, 10, 18, and 19 of the Municipality of Libagon, Southern Leyte, and to return to protestant Lerias the 400 votes which was fraudulently taken away from her. Likewise, the original revision results of the screening of the ballots of the counter-protested precincts, as submitted to and previously approved by the Tribunal, which reflected that Lerias was ahead of Mercado by 20 votes, should be upheld. Protestant Lerias should thus be credited with a totality of 36,008 votes as against 35,588 votes of protestee Mercado, in a final untarnished count.

“Protestant, should, therefore, be declared the winner in the May 11, 1987 election for the Lone District of Southern Leyte, having obtained a majority of the valid votes cast in the said election, with a plurality of four hundred twenty (420) votes over the protestee, and thus, further declare protestant Rosette Y. Lerias as the duly elected Representative of the Lone District of Southern Leyte.” (Rollo, pp. 287-189)

Lerias filed a motion for reconsideration. Mercado also filed a partial motion for reconsideration.

Acting on the said motions, the Tribunal, on January 31, 1991 promulgated its assailed Resolution, the dispositive portion of which reads:

“WHEREFORE, the Tribunal Resolved to DENY protestant’s Motion for Reconsideration for lack of merit. Protestee’s Partial Motion for Reconsideration, is hereby GRANTED. The Tribunal also DIRECTS motu proprio the appropriate correction of the ‘Votes per Revision’ of the Protestant, pursuant to the verified errors committed, so as to reflect the true and correct votes actually garnered by the protestant and the protestee.

“ACCORDINGLY, the Decision of the Tribunal promulgated on December 6, 1990 is hereby amended and modified, by declaring protestee Mercado as the duly elected Representative of the Lone Legislative District of the Province of Southern Leyte, by a plurality of SIXTY SEVEN (67) VOTES, having garnered a total of THIRTY FIVE THOUSAND FIVE HUNDRED NINETY FIVE (35,595) VOTES, as against the THIRTY FIVE THOUSAND FIVE HUNDRED TWENTY EIGHT (35,528) VOTES of protestant Lerias.” (pp. 344, Rollo)

In her revised Dissenting Opinion, (pp. 346-353 Rollo) the Honorable Justice Herrera made the following clarifications:

“Interpolating the necessary corrections, therefore, the final tabulation of votes obtained by the parties in the counter-protested precincts should be revised as follows:

Mercado

Lerias

Votes per
proclamation

35,793

35,539

Deduct:

Votes in 81 counter-
protested precincts

2,154

6,885

Votes-Uncontested
Precincts

33,639

28,654

Add:

Votes per revision
(physical count, as
corrected)

2,292 (formerly
2,287)

6,851 (formerly
6,867)

TOTAL

35,931 (formerly
35,926)

35,505 (formerly
35,521)

Deduct:

Rejected ballots

363

249

TOTAL

35,568 (formerly
35,563)

35,256 (formerly
35,272)

Add:

Claimed ballots
Admitted(as corrected)

25

347 (formerly
334)

Add: votes restored

0

2

TOTAL VOTES

35,593 (formerly
35,588)

35,605 (formerly
35,608)

Plurality of Protestant Lerias - 12 votes (instead of 20 in the original dissent)

“To this plurality of twelve (12) votes obtained by Protestant Lerias in the counter-protested precincts must be added the 400 votes obtained by her in the four contested precincts in Libagon. Protestant Lerias should, therefore, be credited with a total of thirty six thousand five (36,005) votes as against thirty five thousand five hundred ninety three (35,593) votes for Protestee Mercado, or a margin of four hundred twelve (412) votes, instead of the 420 votes in the original dissent.

“PREMISES CONSIDERED, in so far as the undersigned’s dissent is concerned, Protestee Mercado’s Partial Motion for Reconsideration is denied, and I reiterate my vote to proclaim Protestant Rosette Y. Lerias as the duly elected Representative for Southern Leyte.” (pp. 351-353, Rollo)

Justice Cruz maintained his original dissent.

Representative Cerilles filed a “Dissenting Opinion on Denial of Protestant’s Motion for Reconsideration” (pp. 355-357 Rollo) stating that:

“In sum, Protestant should therefore be declared winner in the May 11, 1987 election for the Lone District of Southern Leyte having obtained a plurality of four hundred four (404) votes over the Protestee, and thus further declare Protestant Rosette Y. Lerias as the duly elected Representative of the Lone District of Southern Leyte.” (pp. 356-357, Rollo)

We have read and examined, with utmost interest and care, the contentions of the parties, the majority opinion of the five members of the Tribunal as well as the separate dissenting opinions of the chairperson and some members of the electoral tribunal, and the Court arrived at the conclusion, without any hesitation, reservation, or doubt, that the Tribunal (the majority opinion) in rendering its questioned Decision and Resolution had acted whimsically and arbitrarily and with very grave abuse of discretion. It is for this reason that We cannot bring ourselves to agree with their decision.

The Protest

Lerias contended that in the four (4) protested precincts of Libagon where her votes were determined to be 1,411 only, the same were allegedly reduced by 100 votes in each precinct, thus totalling 400, the details of which reduction are as follows:

Precinct	
Protested	
Lerias’	
Credited Votes	
Lerias’	
Claimed Votes	

No. 6

62

162

No. 10

23

123

No. 18

32

132

No. 19

56

156

Should her claimed votes as aforesated be sustained Lerias' total votes from the municipality of Libagon shall be 1,811 votes. In such an eventuality, Lerias shall have been able to recover 400 votes, more than sufficient to overcome the winning margin of Mercado, thereby prevailing by a plurality of 146 votes.

To prove her contention, Lerias submitted original copies of the certificate of canvass of the municipal board of canvassers and the provincial board of canvassers. She also invoked the original copy of the election returns for the municipal board of canvassers of Libagon. These documents, particularly the election returns showed that Lerias received 162 votes in Prec. No. 6, 123 votes in Prec. No. 10, 132 votes in Prec. No. 18 and 156 votes in Prec. No. 19 to give her a total of 1,811 votes in the entire municipality of Libagon.

Upon the other hand, Mercado relied mainly on the xerox copy of the certificate of canvass for the Comelec. This certificate showed that Lerias received 62 votes in Prec. No. 6, 23 votes in Prec. No. 10, 32 votes in Prec. No. 18 and 56 votes in Prec. No. 19.

The HRET majority opinion rejected the election returns and sustained the certificate of canvass because (1) the Comelec found that the Comelec copy of the certificate of canvass is "regular, genuine and authentic on its face" and said finding of the Comelec had been sustained by the Supreme Court; (2) the protestant (meaning Lerias) had agreed during the pre-proclamation proceedings to the use of the Comelec copy of the certificate of canvass; and (3) the authenticity of the election returns from the four (4) disputed precincts had not been established.

The reasons given by the majority for doubting the authenticity of the election returns are: (a) the non-production of the election returns during the entire pre-proclamation proceedings definitely creates much doubt as to their authenticity especially so when they surfaced only almost a year later after the ballots had been stolen; (b) during that time, the election returns may have been tampered with and "doctored" to Lerias' advantage; (c) no proof whatsoever was offered to show that the integrity of the ballot box in which they were kept was not violated; and (d) the witnesses presented by Lerias had shown their partisanship in her favor by executing affidavits to support her protest.

The foregoing findings and pronouncements of the HRET (majority opinion) are totally bereft of any support in law and settled jurisprudence.

In an election contest where what is involved is the correctness of the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves. But where the ballots cannot be produced or are not available, the election returns would be the best evidence. Where it has been duly determined that actual voting and election by the registered voter had taken place in the questioned precincts or voting centers, the election returns cannot be disregarded and excluded with the resulting disenfranchisement of the voters, but must be accorded prima facie status as bona fide reports of the results of the voting. Canvassing boards, the Comelec and the HRET must exercise extreme caution in rejecting returns and may do so only upon the most convincing proof that the returns are obviously manufactured or fake. And, conformably to established rules, it is the party alleging that the election returns had been tampered with, who should submit proof of this allegation.

At this juncture, it is well to stress that the evidence before the HRET is the original copy of the election returns while the Comelec's copy of the certificate of canvass, is merely a xerox copy, the original thereof had not been produced.

Under the best evidence rule, "there can be no evidence of a writing, the contents of which are the subject of inquiry, other than the original writing itself" except only in the cases enumerated in Rule 130, Sec. 2 of the Rules

of Court. The exceptions are not present here. Moreover, the xerox copy of the certificate of canvass is inadmissible as secondary evidence because the requirements of Sec. 4 of the same Rule have not been met. (Dissent of J. Cruz, p. 254) Besides this certificate of canvass had been disowned by the chairman and members of the municipal board of canvassers, claiming that the same was falsified since their signatures and thumbmarks appearing thereon are not theirs and the number of votes credited to Lerias in the municipality of Libagon had been reduced from 1,811 to 1,411. (TSN, Sept. 13, 1988 AM, pp. 74-78; TSN, Sept. 13, 1988 PM, pp. 41-46; Dissenting Opinion, Rep. A.H. Cerilles, p. 2)

The finding of the Comelec in the pre-proclamation proceedings that its copy of the certificate of canvass is “genuine and authentic” and which finding was sustained by this Court (G.R. No. 78833; 79882-83) is not binding and conclusive. The HRET must be referring to the following portion of the decision of this Court —

“Public interest demands that pre-proclamation contests should be terminated with dispatch so as not to unduly deprive the people of representation, as in this case, in the halls of Congress. As the Court has stressed in *Enrile v. Comelec*, and other cases, the policy of the election law is that pre-proclamation controversies should be summarily decided, consistent with the law’s desire that the canvass and proclamation should be delayed as little as possible. The powers of the COMELEC are essentially executive and administrative in nature and the question of fraud, terrorism and other irregularities in the conduct of the election should be ventilated in a regular election protest and the Commission on Elections is not the proper forum for deciding such matters; neither the Constitution nor statute has granted the COMELEC or the board of canvassers the power, in the canvass of elections returns to look beyond the face thereof ‘once satisfied of their authenticity’. We believe that the matters brought up by petitioner should be ventilated before the House Electoral Tribunal. Unlike in the past, it is no longer the COMELEC but the House Electoral Tribunal which is ‘the sole judge of all contests relating to the election, returns, and qualifications’ of the members of the House of Representatives.

“In opting to go by the COMELEC copy which on its face did not show any alteration, the COMELEC did not commit any grave abuse of discretion, specially since both parties agreed to the COMELEC using its own copy (Copy No. 3).

“Accordingly, the Court resolved to DISMISS the petition for lack of merit. The temporary restraining order issued on July 23, 1987 is hereby LIFTED effective immediately.” (Rollo, pp. 264-265)

It would appear, therefore, that this Court sustained the use of the Comelec’s copy of the certificate of canvass instead of the copy of the provincial board of canvassers only to establish *prima facie* (but not actually) the winner (as called for by the summary nature of pre-proclamation proceedings), without prejudice to a more judicious and unhurried determination in an election protest, and because Lerias’ thru counsel had previously agreed conditionally and qualifiedly to its tentative use for pre-proclamation proceedings. The decision of this court was merely an affirmance of the action of the Comelec and it cannot be relied upon as a final adjudication on the merits, on the issue of the genuineness and authenticity of the said certificate of canvass. Besides, the use of said Comelec copy of the certificate of canvass by the board of canvassers did not foreclose the right of Lerias to prove that the votes attributed to have been received by her as stated, in said certificate of canvass is not correct. Acceptance of a certificate of canvass as genuine and authentic for purposes of canvass simply means that said certificate of canvass is genuine and authentic for the purpose of determining the *prima facie* winner in the election. But the very purpose of an election contest is to establish who is the actual winner in the election.

Anent the pronouncement of the HRET (majority opinion) that having agreed to the use of the Comelec’s copy of the certificate of canvass, Lerias is now estopped from assailing it, suffice it to state that Lerias agreed to the use of said copy because she was not aware then that the figures therein had been altered. It is a matter of record that she immediately objected after she discovered the discrepancy. At any rate, she cannot be estopped from protesting a falsification of the voters’ will because such estoppel would contravene public policy. (Dissent of J.

Cruz p. 5) Moreover, as indicated in the discussion hereinabove, under the circumstances relating to pre-proclamation, estoppel certainly cannot apply.

As to the delay in presenting the election returns because these were not presented during the whole pre-proclamation proceedings, it must be noted that at that time, the four ballot boxes of Libagon with their corresponding ballots were still intact and as these would have provided the best evidence, resorting to the election returns was uncalled for. It is for this reason that Lerias had asked for a recount of the ballots and this would have obviated the need for the election returns. Under these circumstances the failure of Lerias to ask for the production of the election returns during those times that the ballots were still available cannot be considered as ground for considering said election returns as of dubious character.

The “suspicion” of the HRET (majority opinion) regarding the possible tampering of the election returns are at best merely speculative and dispelled by the incontrovertible evidence in the case. On its face, these election returns have no traces of tampering. Even the majority decision admits that said election returns “appear to be originals and on their faces, authentic.” (Decision, p. 21)

The authenticity of said returns, particularly those of Precincts 6, 10, 18, and 19, the four disputed precincts, had been further established by the testimonies of the members of the Board of Election Inspectors of said precincts during the hearing before the Tribunal and before the hearing officer designated to hear the case. More importantly, examination of said returns conclusively established the identity of said returns as the very same ones prepared by the respective Board of Election Inspectors during the counting of the votes. The election returns for Precinct 6 was marked as Exhibit “F”; that of Precinct 10, Exhibit “AA”; Precinct 18, Exhibit “U”, and Precinct 19, Exhibit “P”.

The election returns for Precinct 6 bears Serial No. 0138; for Precinct 10, No. 0142; for Precinct 18, No. 0150; and for Precinct 19, No. 0151. The minutes of voting for each of said precincts which were submitted to the Comelec and later on presented in evidence before the Tribunal, indicated the serial numbers of the election returns for said precincts and they corresponded to the serial numbers of election returns for the four precincts.

The NAMFREL reposts, (copy from the National Headquarters) which were presented during the initial hearing before the HRET by a representative of the national headquarters of NAMFREL, as well as the copies of said reports of Bencouer Gado, the municipal coordinator of NAMFREL in Libagon, also indicated that the election returns for Precinct 6 bears Serial No. 0138; Precinct 10, Serial No. 0142; Precinct 18, Serial No. 0150 and Precinct 19, Serial No. 0151.[2] The envelopes wherein said election returns were originally placed by the Board of Election Inspectors from said precincts, when they turned over said election returns to the election registrar, were the very same envelopes which contained the election returns from said precincts at the time that they were turned over to Luspo (the Tribunal’s representative) on March 24, 1988. The identity of said envelopes had been conclusively proven by the fact that the serial numbers that they bear and the Comelec paper seal sealing said envelopes are the same. The serial numbers of said envelopes had been noted in the minutes of each of said proceedings.

The envelope containing the election returns for Precinct 6 bears Serial No. 042366 and the Comelec paper seal thereof bears Serial No. 017318.

The envelope containing the election returns for Precinct 10 bears Serial No. 042370 and the Comelec paper seal thereof bears Serial No. 0173226.

The envelope containing the election returns for Precinct 18 bears Serial No. 04373 while the Comelec paper seal thereof bears Serial No. 0173326.

The envelope containing the election returns for Precinct 19 bears Serial No. 042379 while the Comelec paper seal thereof bears Serial No. 173332.

When the chairmen of each of said precincts testified before the Hearing Officer designated by the Tribunal, they all identified their respective signatures and thumbmarks appearing on the envelopes for said four precincts. Ruego, the chairman of the Municipal Board of Canvassers and acting election registrar during the election, also identified his signature on the envelopes acknowledging the receipt of said envelopes containing the election returns for said precincts.

The four chairmen of said precincts also positively identified that the election returns shown to them for their respective precincts taken from the custodian of the Tribunal and placed inside Envelopes A and B were the very same election returns prepared by them. They identified their own signatures and thumbmarks and those of the other members of the board of election inspectors in their respective precincts.

On the basis of the election returns from the four disputed precincts, the votes of Lerias and Mercado in said precincts were as follows:

Precincts No.

Lerias

Mercado

6

162

45

10

123

79

18

132

46

19

156

24

It would appear then that the votes of Lerias as indicated in the Comelec copy of the Certificate of Canvass (Exh. 22) had been systematically reduced by 100 votes in each of the four precincts. With the correction of the votes of Lerias in said four precincts as reflected in the election returns it would result that in the entire Municipality of Libagon protestant received 1,811 votes while Mercado received only 1,351 votes. Consequently, the total number of votes Lerias received in the entire congressional district would be 35,939 votes (400 votes more than what was credited to her in the Comelec copy of the Certificate of Canvass which was the basis of the proclamation of Mercado) while Mercado received 35,793 votes giving a margin in favor of Lerias of 146 votes before the revision of the ballots in the precincts involved in the counter-protest of protestee.

The number of votes received by protestant and protestee in the four disputed precincts of Libagon as shown in the election returns for said precincts is substantiated by the following documentary evidence:

- The NAMFREL Operation Quick Count (OQC) reports, national headquarters' copies and copies of the municipal coordinator of NAMFREL in Libagon (Exhs. EE, FF, GG, HH, H, CC, X);
- The certificate of votes of the candidates (CE form 13) issued to the representatives of the political parties (Exhs. D and E for Precinct 6; Exhs. V and UU for Precinct 18; Exhs. L and M for Precinct 19);
- The certified result of the canvassing prepared by watchers of UPP-KBL (Exhs. G for Precinct 56; Exh. DD for Precinct 10; Exh. Y for Precinct 18 and Exh. O for Precinct 19);
- The Municipal Board of Canvassers' copy of the certificate of votes and its supporting statement of votes (Exh. LL);
- The Provincial Board of Canvassers' copy of the Certificate of Canvass and its supporting statement of votes (Exh. LL);
- The letter report to Comelec, Manila, dated May 18, 1987, of Manuel Paler, OIC Mayor of Maasin as municipal chairman of Lakas ng Bansa (Exh. J);
- The letter report to Comelec, Manila, dated May 18, 1987, of Rito B. Go, PDP-Laban Chairman for Southern Leyte (Exh. I); and
- The tally board (photograph taken by photographer Rodriguez (Exh. NN).

According to NAMFREL Operation Quick Count Report No. 075576 for Precinct 6, both the national headquarters' copy and the copy of the NAMFREL municipal coordinator, Bencouer Gado (Exhs. H and CC), protestant got 162 votes while protestee got only 45 votes.

NAMFREL Operation Quick Count Report No. 075580 prepared by NAMFREL representative Edna Pajo, duly certified by the members of the Board of Election Inspectors of Precinct 10 after verifying its accuracy, checking the same against the election returns and the tally sheet, both national headquarters' copy and the copy of the municipal coordinator, showed that in said Precinct 10 protestant received 123 votes while protestee received 79 votes (Exh. CC and Exh. FF).

NAMFREL Operation Quick Count Report No. 075590 for Precinct 18 prepared by NAMFREL watcher Rito Lopina, certified by the members of the Board of Election Inspectors of said precinct after verifying if they tally with the results as shown in their tally board showed, that in said precinct protestant received 142 votes as against protestee's 46 votes (Exh. X).

NAMFREL Operation Quick Count Report No. 075589, prepared by NAMFREL watchers assigned to Precinct 19, duly certified to by the members of the Board of Election Inspectors of said precinct, after checking whether the votes of the candidates contained in said OQC report tally with the election returns in the tally sheet showed, that protestant obtained in said precinct 156 votes while protestee received 24 votes (Exh. N).

The certificate of votes (CE Form No. 13) issued to the watchers of the political parties (Exhibits E, D, V, WW, L and M), as well as the reports prepared by the watchers of UPP-KBL (Exhibits G, DD, Y and O) also showed the same votes received by protestant and protestee in the four disputed precincts as reflected in the election returns for said precincts.

The tally board used in the canvass remained displayed in the session hall of the municipal building of Libagon for several months after the elections. Pictures of said tally board were taken by Rudy Rodriguez, a professional

photographer (Exh. NN, TSN Sept. 12, 1988, p. 48). According to said tally board the votes of protestant and protestee were the same as those shown in the election returns. If they were erroneous, Mayor Paitan of Libagon who has his office on the same floor who saw said tally board every day, would have complained about the entries particularly for Precincts 6, 10, 18 and 19, which were the subject of the raging election contest between protestant and protestee.

The reports of Manuel Paler, OIC Mayor of Maasin and chairman of Lakas ng Bansa to the chairman of the Commission on Elections dated May 18, 1987, received by the Law Department of Comelec on May 20, 1987, and the report of Rito Go, chairman of PDP-Laban for Southern Leyte, to the chairman of the Commission on Elections dated also May 18, 1987 and received by the Law Department on May 20, 1987 (Exhibits J and I), similarly reflected that Lerias received 1,811 votes in Libagon while Mercado obtained 1,351 votes.

In the entire congressional district Lerias obtained 35,937 votes while Mercado obtained 35,795 votes. These are reports coming from Lakas ng Bansa and PDP-Laban, political parties who had their own candidates. They would not have filed said reports admitting that Lerias obtained more votes than their own candidates unless the same were actually the votes obtained by her as verified by their own representatives.

The Municipal Board of Canvassers' copy of the Certificate of Canvass and supporting statement of votes as well as the Provincial Board of Canvassers' copy of said reports showed that Lerias obtained 1,811 votes in Libagon. True, that the Provincial Board of Canvassers rejected their copy of said Certificate of Canvass because of certain erasures and alterations therein. But the members of the Municipal Board of Canvassers explained to the Provincial Board of Canvassers that the corrections made by them were merely to correct certain clerical errors. It should be pointed out here that the corrections and erasures made did not refer to the votes of the congressional candidates. The votes of Lerias and Mercado in Precincts 6, 10, 18 and 19 of Libagon bear no corrections or erasures. And in the canvass for the senatorial candidates, the Provincial Board of Canvassers' copy which the board rejected in the congressional canvass, was used as basis of the canvass. The board would have rejected the same were it not authentic. The fact that said copy of the Certificate of Canvass was used in the senatorial canvass conducted after the congressional canvass would indicate that the board considered the same authentic. (Dissenting Opinion of Rep. Cerilles, pp. 13-19)

The fact that the members of the board of election inspectors in the disputed precincts had executed affidavits in support of the claim of Lerias cannot be considered as partisanship since it is the duty of said members of the board to inform the Comelec, of the actual results of voting in their respective precincts.

In any event, the test of whether or not the testimonies of said election officials should not be believed because they are biased or prejudiced would be the tenor of their respective testimonies or affidavits, whether the same are credible and corroborated by other evidence. The testimonies of these election inspectors that the election returns were the very same election returns prepared by them were corroborated by the documentary evidence which had not at all been disputed such as the NAMFREL reports, the statement of votes given to the representatives of the other parties, the tally sheets, the certificates of canvass, both the municipal board and provincial board of canvassers' copies (not the Comelec copy which reflected a different result).

In this regard, the dissenting opinion of Justice Hugo Gutierrez, Jr. in G.R. Nos. 78833, 79882-83 entitled "Lerias v. Comelec et al", is very pertinent:

"Another inexplicable act of the COMELEC is the refusal to even hear the members of the Libagon municipal board of canvassers and the election board of inspectors of the four disputed precincts who expressed willingness to testify as to which certificates are genuine. When the very persons whose signatures appear on the questioned certificates attest that those are not their signatures because the correct copies are the two copies

carrying their corrections, it is the height of incongruity to even refuse to hear them. They are the persons in the best position to state what they did, what they entered on the various election forms, etc., but they were unceremoniously ignored. To say that these persons were either purchased or coerced is not only unkind, to say the least, but irrational and without basis. First, their testimonies could be rejected if perceived as not truthful. But they should be heard. Second, these personnel manning the election precincts and canvass boards are all government employees. The head of the municipal canvass board is a COMELEC employee. The rest of the canvassers are other government officials. The precincts are manned totally by school teachers. Why should they be summarily rejected as the most competent of all possible witnesses? (Italics supplied)

x x x x x x x x

“The tactic of ‘win the proclamation and delay the protest’ is even more rampant than when it first surfaced. The ruling in *Espino v. Zaldivar* (21 SCRA 1204, 1213) that we should not wink at a brazen form of wrongdoing to subvert the people’s will and in mockery crown the loser with victory; the genuine returns must be ascertained and the obvious forgery disregarded remains as true now as it was then.” (Italics supplied) (pp. 279-280, Rollo)

But more importantly, another xerox copy of the Comelec copy of the certificate of canvass exactly the same as the xerox copy of the Comelec copy submitted to the HRET is attached to the joint affidavit of the Chairman and members of the municipal board of canvassers of Libagon, to show that their signatures and thumbmarks appearing in the Comelec copy before the HRET are not their own signatures and thumbmarks. For purposes of comparison, they affixed their respective signatures and thumbmarks on the margin of said xerox copy of the supposed Comelec copy of the certificate of canvass. Therefore, the Comelec’s copy of the certificate of canvass used by the Comelec and sustained by the Tribunal’s majority opinion is not only a xerox copy but is a xerox copy of a falsified and forged document. This being the case, it should not be given any evidentiary value. It is incredible that the majority opinion in the HRET decision would deliberately use forged signatures and thumbmarks simply in their desire to produce an infamous political decision. Surely this is pure anathema to all rules of fair play.

All told, the Court is of the considered opinion that the HRET (majority opinion) had no basis at all in considering the election returns from Precincts 6, 10, 18 & 19 as not authentic. And considering the overwhelming and indubitable evidence presented by Lerias in support of her protest, more particularly the election returns which in the absence of the ballots would constitute the best evidence, the actual number of votes received by Lerias and Mercado in the four (4) contested precincts are as follows:

Precinct No.

Lerias

Mercado

6

162

45

10

123

79

18

132

46

19

156

24

and that in the entire municipality of Libagon, Lerias obtained 1,811 votes while Mercado obtained 1,351 votes. Based solely on the protest, in the whole congressional district, Lerias obtained 35,939 votes as against Mercado's 35,793 votes, giving her a winning margin of 146 votes.

The Counter-Protest

After the Tribunal had screened and appreciated both the "objected to" and "claimed" ballots from the 81 precincts subject of the counter-protest of Mercado, the result was 363 ballots of Mercado and 249 ballots of Lerias were rejected and 25 ballots claimed by Mercado and 334 ballots claimed by Lerias were admitted. Two ballots were also restored to Lerias after it was found out that her name written thereon was tampered with or erased by another person and the name of Mercado written in its place. This gave Lerias a winning margin of 20 votes over Mercado as shown in the following tabulations:

LERIAS

MERCADO

Votes Per Proclamation.....

Votes--Counter protested

35,539

35,793

precincts.....

6,885

2,154

Votes-Uncontested

precincts

28,654

33,639

Votes-Per Revision of

+

+

ballots

6,867

2,287

35,521

35,926

-

-

. Rejected Ballots . .

249

363

Claimed Ballots

+

+

Admitted

334

25

35,606

35,588

+

+

Votes Restored to Lerias...

2

35,608

Plurality of Lerias.....

20

This was disregarded by the majority and in the revised tabulation reflected in the majority decision, Mercado no longer lost by 20 votes. Instead he already won by a plurality of 42 votes over Lerias. This came about through the simple expedient of reducing the already admitted claimed ballots of Lerias by 57 votes (from the original 334 to 277); invalidating 3 more ballots of Lerias (from 249 to 252) and adding 1 more to the claimed ballots of Mercado (from 25 to 26) at the same time rejecting 1 more ballot of Mercado (from 363 to 364).

The modification consisted in:

1. Where only the first name of the candidate is written on line 1 for senator, the neighborhood rule will not apply. According to the majority the neighborhood rule itself is but an exception to that accepted rule on appreciation that the candidate's name placed in another line not the proper space for the position he is aspiring is a stray vote, and being already an exception the same must be applied most rigidly and very strictly. (Decision, p. 35)

Thus, according to the majority, ballots with "Rosette" or "roset" or "rosit" written on line 1 for senators, even if the space for congressman is blank and no other candidate for congress is written on the ballot, were rejected and denied admission by the majority.

2. The same principle of strict application of the intent or neighborhood rule was applied to votes placed on line 1

for senator, which merely reflects the initials of the first name of a candidate but whose surname or maiden surname happens to be the same surname of a legitimate candidate for senator. Under this application of the neighborhood rule, votes for protestant cast as “R. Yniguez” or “Yniguez R.” or L. Yniguez” or Yniguez L” were also rejected.

3. A ballot where the name Lerias is written on line 1 for senator is rejected where it appears that it is written by an assistor.

4. Where the only entry in the space for Representative was Yniguez, said ballot is considered as a misplaced vote for senatorial candidate Yniguez since there was an Yniguez who was a candidate for senator who is at the same time an official.

The aforementioned departures from the application of the “neighborhood rule” laid down in “Nogralles v. Dureza” (HRET Case No. 34, June 16, 1990) are unwarranted and clearly designed by the majority to reduce the claimed votes to be admitted for Lerias and make Mercado eventually the winner.

Under Subsec. 1 of Sec. 211 of the Omnibus Election Code, a ballot where only the first name of a candidate or his surname is written is considered a vote for such candidate as there is no other candidate with the same first name or surname for the same office. The majority opinion, therefore, which did not count the ballots cast where only the first name of Lerias was written “Rosette”, “rosit” or “roset” is contrary to said subsec. 1 of Sec. 211 of the Omnibus Election Code.

In her certificate of candidacy, Lerias gave her full name as “Rosette Yniguez Lerias.” It is for this reason that the Tribunal during the appreciation of the ballots in its executive sessions admitted as votes for Lerias ballots containing, “Yniguez R”, “Yniguez L”, Yniguez Roset”, “R. Yniguez” or “L. Yniguez” written on the first line of senators for it is very clear that said ballots were intended to be cast for Lerias. Under Subsec. 3 of Section 211 of the Omnibus Election Code, said ballots should be counted as votes for Lerias inasmuch as there is no other candidate for the same position of Representative who is an incumbent. Subsec. 3, Sec. 211 reads:

“3. In case the candidate is a woman who uses her maiden or married surname or both and there is another candidate with the same surname, a ballot bearing only such surname shall be counted in favor of the candidate who is an incumbent.” (p. 315, Rollo)

In said particular ballots they cannot be considered as votes cast for senatorial candidate Yniguez inasmuch as in the same ballot Yniguez had also been voted for as senator in the proper space for senators.

Some of the ballots rejected by the majority also contain the name “Lerias” on line 1 for Senator. These ballots were written by assistants, and therefore, were admitted as valid. (Timbol v. Lazatin, HRET Case No. 46, 22 March 1990). The majority rejected these ballots by discounting the applicability of the “neighborhood rule”.

On this point, the Honorable Chairperson, J. Herrera in her dissent aptly ruled:

“Strangely enough, according to the majority, the ‘neighborhood rule’ liberalizes the ‘proper space’ rule because the voter may not be literate, ‘but should find no applicability where the ballots are filled by assistants who themselves appear illiterate’ (p. 37, Majority Opinion). This pronouncement has been plucked from thin air and appears nowhere in electoral jurisprudence.

“What is settled is the guideline adopted in the case of Nogralles v. Dureza (HRET Case No. 34, June 16, 1990), and on the basis of which the Tribunal admitted the ballots in question. Thus:

‘2. Ballots where the name of a candidate was written on line 1 for Senators or in the shaded box immediately above the line for Representative, were counted in favor of that candidate, provided, that (1) the line for

Representative had been left blank, and (2) no other name of a candidate for Representative was written on other lines for Senators, in the same ballot (Mandac v. Samaoante, 54 Phil. 706 [1903].’ (Decision, p. 17)

“This rule does not distinguish between ballots written by the voter himself or assisted by another.” (p. 168, Rollo)

Finally, there are 170 ballots of Lerias with stickers which had been rejected. Again, the majority had committed an error in rejecting said ballots. Justice Cruz, in his dissent stated:

“In addition to the above observations, I will also express my objections to the rejection of the 170 ballots cast for the Protestant which were considered marked with stickers by the majority.

“As long as the stickers were pasted on a blank space on the ballot, I agree that the ballot should be invalidated under Section 211, Rule 20, of the Omnibus Election Code. But I maintain that where the stickers appeared to have been hastily and surreptitiously stuck on other parts of the ballots (mostly diagonally and without any uniform location), this was done by persons other than the voters themselves, precisely to invalidate the ballots. It is illogical for a voter to take the trouble of writing down the names of his candidates, sometimes laboriously, only to nullify the ballot (and all his votes) by pasting a sticker on it.” (pp. 257-258, Rollo)

But, what is more revealing are the following observations of Rep. Cerilles in his dissent, as follows:

“Based on the evidence presented, I am thoroughly convinced that Lerias was systematically cheated of one hundred (100) votes in each of the four precincts of Libagon. The majority of the Tribunal refuse to reinstate these 400 votes of Lerias inspite of the overwhelming weight of evidence and the laws and jurisprudence in point. And now that she won by twenty (20) votes in the original tabulation on the counter-protest submitted before the Tribunal, inspite of the dismissal of her protest, the majority simply decided to change the results with Mercado coming out with a plurality of forty-two (42) votes. All told, the results of this election have been magically changed twice and, in both instances, always against the protestant Lerias. This is definitely bad precedent. It may be that in the future candidates will no longer believe in the counting of votes for, after all, the results can easily be changed, or otherwise replaced, substituted, modified or altered as in this case, by the sheer force of the majority, no matter how erroneous, arbitrary and legally unjustified that judgment may be. Although I recognize the reality of the composition of this Tribunal, still I am tempted to ask whatever happened to our conception and application of the Rule of Law?

“Having asked that question, I entertain serious doubt about the legality of the action undertaken by the majority especially so since the winner in the original tabulation suddenly became the loser. Clearly, it was an afterthought on the part of the majority. This, to say the least, is anomalous because the result of the screening of ballots had already been approved previously by the Tribunal after a random checking was made in accordance with established procedures.

“In effect, therefore, the majority re-opened what was already approved and simply reconsidered their previous ruling thus rejecting fifty-seven (57) ballots claimed by the protestant which were already admitted in her favor, and invalidating three (3) more from her valid ballots. This action is arbitrary because these already admitted ballots were reconsidered and rejected without the benefit of an ocular review by the members of the Tribunal. And it becomes all the more irregular because these ballots were just deducted from the total ballots claimed by the protestant and already admitted without identifying which ballots these are.

“Absent such identification, it is downright unfair to have these ballots rejected on the mere say-so of the majority without the benefit of the examination. Might is not necessarily right.” (pp. 283-284, Rollo)

This was the same observation made by the Honorable Justice Herrera, when she stated in her dissent, thus:

“In the executive session of 15 November 1990, the re-appreciation of some of the ballots was sought. Some members of the Tribunal firmly opposed any re-opening of the case on the ground that it would entail delay in

its resolution, besides the fact that all observations/objections should have been raised and ruled upon during the appreciation state. Attention was also called to the fact that rulings on the ballots appreciated were made by at least a majority vote of the members present in meetings where there was a required quorum, hence, the resolutions arrived at were valid and official acts of the Tribunal. When the issue was subsequently put to a vote, a majority of the members voted to overturn the previous rulings of the Tribunal, even as the other members urged that the rulings made by the Tribunal during the appreciation of ballots should no longer be disturbed as the case had already been submitted for decision.

“It becomes only too obvious then that by sheer force of numbers; by overturning at the post-appreciation stage, the rulings earlier made by the Tribunal admitting the claimed ballots for Protestant Lerias; by departing from the interpretation of the neighborhood rule heretofore consistently followed by the tribunal; by injecting ‘strange jurisprudence’, particularly on the ‘intent rule; the majority has succeeded in altering the figures that reflect the final outcome of this election protest and, in the process, thwarting the true will of the electorate in the lone district of Southern Leyte.’ (pp. 168-169, Rollo)

Conclusion

Considering the indubitable evidence on record the 400 votes fraudulently taken away from Lerias should be returned to her. So that in the entire municipality of Libagon, she received 1,811 votes. From the original 35,539 votes, Lerias should be credited with 35,939 votes as against the 35,793 votes of Mercado giving her a margin of 146 votes. Whatever the results of the review of the ballots in the counter-protested precincts would be, wherein Mercado won by 67 votes according to the majority, or as found by the dissenting members, Lerias won by 12 votes (dissent of J. Herrera) or by 20 votes (dissent of Rep. Cerilles) Lerias would still be the winner.

WHEREFORE, the decision of the Honorable Electoral Tribunal in HRET Case No. 16 is REVERSED and SET ASIDE. The Court declares that petitioner Rosette Yniguez Lerias is the duly elected representative of the Lone District of the Province of Southern Leyte.

SO ORDERED.

Narvasa, Gutierrez Jr., Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Fernan, C.J., no part. Formerly HRET Chairman.

Melencio-Herrera, J., no part. HRET Chairman.

Cruz, J., no part; HRET member.

Feliciano, J., no part being a member of the HRET.

Padilla, J., see dissent.

Sarmiento, [**]J., did not take part in the deliberation.

[**] Retired on October 8, 1991.

[1] Mr. Justice Isagani A. Cruz, dissenting together with Tribunal Chairman Justice Ameurфина M. Herrera, Justice Florentino P. Feliciano, and Congressman Antonio H. Cerilles, in *Balanguit Jr. v. Ong Chuan, Jr.* (HRET Case No. 15), 86 D.G. No. 4, January 22, 1990, 720-721.

[2] Exh. H, NAMFREL report, National Headquarters’ copy for Precinct 6; Exh. CC, NAMFREL report, National Headquarters’ copy for Precinct 10; Exh. X, NAMFREL report, National Headquarters’ copy for Precinct 18; and Exh. N, NAMFREL report, National Headquarters’ copy for Precinct 19, and Exhs. EE, FF, GG, HH, Godos copies of the NAMFREL report for Precincts 6, 10, 18 & 19.

DISSENTING OPINION

PADILLA, J.:

In my dissenting opinion in G.R. Nos. 92191-92 entitled "Antonio Y. Co vs. House Electoral Tribunal" and G.R. Nos. 92202-03 entitled "Sixto T. Balanguit vs. House Electoral Tribunal", which involved the question of whether or not therein respondent Jose Ong was a natural-born Filipino citizen and, therefore qualified or not to be a member of the House of Representatives, I stated the following, among others:

"The present controversy, it will be observed, involves more than perceived irregularities in the conduct of a congressional election or a disputed appreciation of ballots, in which cases, it may be contended with great legal force and persuasion that the decision of the electoral tribunal should be final and conclusive, for it is, by constitutional directive, made the sole judge of contests relating to such matters. The present controversy, however, involves no less than a determination of whether the qualifications for membership in the House of Representatives, as prescribed by the Constitution, have been met. Indeed, this Court would be unforgivably remiss in the performance of its duties, as mandated by the Constitution, were it to allow a person, not a natural-born Filipino citizen, to continue to sit as a Member of the House of Representatives, solely because the House Electoral Tribunal has declared him to be so. In such a case, the tribunal would have acted with grave abuse of discretion amounting to lack or excess of jurisdiction as to require the exercise by this Court of its power of judicial review."

In the present case, however, the questioned decision of the House Electoral Tribunal revolves around questions of fact in connection with alleged irregularities in the conduct of a congressional election. Regardless of how far we may differ from the factual findings of the House Electoral Tribunal and its resultant conclusions, I submit that this Court may not review and alter such findings and conclusions because the House Electoral Tribunal, under the Constitution, is the sole judge thereof.

The framers of the 1987 Constitution, in no uncertain terms, provided that:

"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 member. 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 or organizations registered under the party-list system represented therein. The Senior Justice in the Electoral Tribunal shall be its chairman."[1] (*italics supplied*)

It is clear that the intent of the 1987 Constitution is to make the Electoral Tribunals of both the Senate and the House of Representatives the sole judge of all election contests concerning their respective Members. This is vividly highlighted by the following discussion on the matter:

"MR. MAAMBONG.

Thank you, Madam President. One more question on this point. Could we make a general statement that the jurisdiction of this electoral tribunal, either of the Senate or of the House, is exclusive and unlimited and, therefore, there will be no appeal to the Supreme Court?

MR. AZCUNA.

It is the sole judge, I think that further implies that there is no appeal elsewhere.

MR. MAAMBONG.

In other words, its judgment is final and not appealable.

MR. AZCUNA.

Insofar as the qualifications, returns and elections are concerned."^[2]

The use of the word "sole" emphasizes the exclusive character of the jurisdiction conferred on the House Electoral Tribunal such that judicial review of final decisions or resolutions of the House Electoral Tribunal is possible only in the exercise of the Supreme Court's 'extra-ordinary jurisdiction', i.e., upon a determination that the electoral tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or, upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a clear unmitigated error, manifestly constituting such a grave abuse of discretion that there has to be a remedy for such abuse.^[3]

The House Electoral Tribunal is not an ordinary agency established by statute or executive fiat to better handle administrative concerns assumed by line departments of the executive branch. It is a constitutional body created precisely to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives.^[4]

The House Electoral Tribunal, being the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, the Supreme Court may not review its decisions except when the Tribunal is clearly shown to have issued them with grave abuse of discretion as to amount to lack or excess of jurisdiction.^[5] It is fundamental that for grave abuse of discretion to exist, there must be a "capricious and to whimsical exercise of judgment as is equivalent to lack of jurisdiction; or that the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."^[6]

The House Electoral Tribunal is a tribunal in the true and strict sense of the term, with the limited but exclusive jurisdiction granted to it by the fundamental law and its functions are properly judicial. This power granted by the Constitution is not as abstract or empty as a carcass, but real and positive, with all the attributes for effective manifestation in the external world and, like all human powers, needs the tools and instruments linking the cause and effect.^[7]

I submit that the Supreme Court cannot exercise the power of judicial review over decisions and orders of the House Electoral Tribunal, except only upon the strongest showing that a constitutional norm — like the mandate of natural-born citizenship for members of the House of Representatives — has been violated, or a patently manifest

grave abuse of authority committed; for "courts are mere creatures of the state and of its power, and while their life as courts continues, they must obey the law of their creator." [8]

The records of this case, disclose that the petitioner anchors her arguments on alleged election abnormalities. And yet, all her allegations are based on questions of fact the appreciation of which vests solely within the jurisdiction and competence of the House Electoral Tribunal. Nowhere in the records of this case is it disclosed that the House Electoral Tribunal resorted to arbitrary or improvident use of its power as to constitute a denial of due process nor is there any evidence of a clear unmitigated error manifestly constituting such a grave abuse of discretion for which the Court should afford a remedy. The absence of grave abuse of discretion in the appreciation of the facts, is demonstrated by the fact that the Tribunal was so closely divided, which means that the facts were susceptible of appreciation one way or the other. It is precisely because of such situations that the Constitution has constituted the House Electoral Tribunal — not this Court — as the sole judge of all election contests involving members of the House of Representatives. The proper role for the Court to perform is to apply the law based on the findings of fact of the electoral tribunal. This inevitably leads to a dismissal of the petition in this case.

This Court cannot remedy, as the majority would have it, a situation where the House Electoral Tribunal has arrived at a conclusion which, in the perception of the majority in this Court, is gravely erroneous. The Supreme Court is, in my opinion, powerless to review, much more, revise the decision of the House Electoral Tribunal in this case; for otherwise it can be charged with usurping power not granted to it by the Constitution. The Supreme Court, moreover, is not a trier of facts and can do no more than to abide by the House Electoral Tribunal's appreciation of the facts in cases within its unquestioned exclusive jurisdiction. True, the circumstance that the decisions of the House Electoral Tribunal are final and without appeal may seem unreasonable, or better still, inequitable, but then the decisions of this Court in matters within its jurisdiction are likewise final and without appeal. "There must be a final tribunal somewhere for deciding every question in the world. Injustice may take place in all tribunals for all human institutions are imperfect - courts as well as commissions and legislatures.... It may be that our legislatures, (or, in this case, our electoral tribunals), are invested with too much power, open as they are, to influences so dangerous to the interests of individuals, corporations and society. But such is the Constitution of our republican form of government and we are bound to abide by it until it can be corrected in a legitimate way." [9] After all, "the courts are without authority to repress evil save as the law has proscribed it and then only according to law." [10]

Believing, therefore, that what the Court seeks to do today in this case carries unwarranted and even dangerous consequences for our state, government and people, in that it blurs (if not demolishes) the constitutional boundaries between the Court and the Electoral Tribunals in matters where the latter are, by express constitutional design, and mandate, made sole judges, I vote to DISMISS the petition.

[1] Section 17, Article VI of the 1987 Constitution.

[2] Record of the 1986 Constitutional Commission, Tuesday, July 22, 1986 found in volume two, page 113.

[3] Robles vs. House of Representatives Electoral Tribunal, G.R. No. 86647, February 5, 1990, 181 SCRA 780.

[4] Veloso vs. House of Representatives Electoral Tribunal, G.R. No. 88372, July 18, 1989.

[5] Aznar vs. House of Representatives, G.R. No. 65000, January 9, 1990.

[6] People vs. Marave, G.R. No. L-19023, July 31, 1964, 11 SCRA 618.

[7] Suanes vs. Chief Accountant of the Senate, 81 Phil. 818 (1948)

[8] Cardozo, Growth of the Law, p. 49.

[9] Justice Harlan F. Stone's dissent in United States vs. Butler, 297 US 1.

[10] Viereck vs. United States, 318 US 236, 245.

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