

CARLOS M. PADILLA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, LEONARDO B. PEREZ, AND THE PROVINCIAL BOARD OF CANVASSERS OF NUEVA VIZCAYA, RESPONDENTS.

G.R. Nos. 68351-52. July 09, 1985

Ponente: DE LA FUENTE, J.

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DE LA FUENTE, J.:

Petition for certiorari brought pursuant to Section 11, Article XII(c) of the 1973 Constitution, to annul and set aside the decision dated August 7, 1984 of respondent Commission on Elections (Second Division), which sustained and affirmed the rulings of the Provincial Board of Canvassers of Nueva Vizcaya excluding from the canvass of votes sixteen (16) election returns from 6 municipalities[1], and including seventy six (76) election returns from 5 municipalities[2], of Nueva Vizcaya with a prayer that respondent Commission be ordered to direct respondent Board to reconvene and recanvass the election returns after taking into account the said excluded returns and excluding the above-mentioned 76 returns.

Upon consideration of the pleadings and the issues raised, we required the respondents to answer the petition.[3] After the hearing held on January 31, 1985, the above-captioned cases were deemed submitted for decision.

The pertinent facts, briefly stated, are as follows:

1. Petitioner Carlos M. Padilla and private respondent Leonardo B. Perez were candidates[4] for the position of Assemblyman for Nueva Vizcaya in the national elections of May 14, 1984; on May 15, 1984, Quirico Pilotin, an independent candidate, filed a petition contesting the composition of the Board of Canvassers for Nueva Vizcaya, which led to the suspension of the canvass; this was followed by Pilotin's telegraphic petition requesting the respondent Commission to transfer the canvass to Manila. On May 17 petitioner Padilla filed a Counter-Petition likewise contesting the said board's composition and praying for dismissal of Pilotin's petition (PPC No. 19-84); and on May 21 the Board submitted a manifestation asking for replacement of its members.
2. On May 24 petitioner filed with the Supreme Court a petition with a prayer for a restraining order to prevent the transfer of the venue of the canvass to Manila, which was granted by this Court in G.R. No. 67444.
3. In PPC No. 19-84, petitioner also filed an urgent ex parte motion to direct the said Board to commence with the canvass of election returns and "thereafter, to proclaim the winner." [5] On May 30 the respondent Commission issued in said case its resolution (a) denying Pilotin's petition to transfer the situs of the canvass, (b) replacing all the members of the Board, and (c) directing the new Board to meet at the PC/INP provincial headquarters at Bayombong, Nueva Vizcaya, "where the election return copies ... are safely deposited, and to immediately resume, until terminated, the canvass and to immediately proclaim the winner in the May 14, 1984 elections for Assemblyman of Nueva Vizcaya." [6]
4. On June 1 the new Board canvassed the returns as instructed; written objections were seasonably made by both petitioner and private respondent to the inclusion/exclusion of certain returns; the respondent Board ruled on said objections; after the completion of the canvass the returns were: private respondent obtained 56,182 votes against 53,063 votes for the petitioner; and the respondent Board forthwith proclaimed, on June 2,

private respondent Perez as the duly elected Assemblyman to represent Nueva Vizcaya in the Batasang Pambansa.

5. Both petitioner and private respondent appealed to the respondent Commission the adverse rulings of the respondent Board on their respective written objections. On August 7, 1984, the respondent Commission promulgated its decision upholding the rulings of the respondent Board and affirming the proclamation of the private respondent.

To begin with, we find no merit in the alternative prayer of petitioner "that this petition be considered as an appeal" from the decision of the respondent Commission, which was reiterated in his reply invoking this Court's resolution of October 31, 1984, in the case of Pimentel.[7] There, an urgent motion was deemed "an appeal by certiorari" in the exercise of this Court's "powers of equity on a matter of extreme urgency and of great public interest"; and we ordered that the "ballots be brought to the Supreme Court ... for the purpose of counting the votes" in order to determine "who is entitled to the office of Assemblyman". But this treatment may not be applied here, the factual situation in Pimentel being dissimilar to that under consideration. In Pimentel, the board's proclamation was set aside on appeal and Roa was the one proclaimed as duly-elected Assemblyman for Cagayan de Oro City; but this Court restrained both Pimentel and Roa "from discharging functions of a member of Batasang Pambansa", thereby depriving temporarily said city of its representation in that legislative body; and the Commission's decision in favor of Roa disenfranchised more than 29,000 voters (about 25% of the city's electorate) solely on the basis of affidavits submitted by Roa. In the case of Padilla, since the proclamation of Perez was not set aside the province of Nueva Vizcaya has not been deprived of its representation in the Batasang Pambansa; the Commission's decision upholding the board's ruling which excluded 16 election returns would have the effect of disenfranchising 3581 voters representing about 3% only of the total number of voters in Nueva Vizcaya who participated in the May 14 election.[8] There is no sufficient justification for the application of the Pimentel precedent for the purpose of determining, by counting the votes, "who is entitled to the office of assemblyman" for Nueva Vizcaya.

The principal relief sought by petitioner is predicated on the certiorari jurisdiction of this Court as provided in Section 11, Article XII-C, 1973 Constitution. It is, as explained in *Aratuc vs. Commission on Elections*, "not as broad as it used to be" under the old Constitution and it "should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process." [9] Moreover, the legislative construction [10] of the constitutional provision has narrowed down "the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review." And in *Lucman vs. Dimaporo*, [11] a case decided under the Constitution of 1935, this Court, speaking through then Chief Justice Concepcion, ruled that "this Court can not xxx review rulings or findings of fact of the Commission on Elections", [12] as there is "no reason to believe that the framers of our Constitution intended to place the [said] Commission — created and explicitly made 'independent' by the Constitution itself — on a lower level" than statutory administrative organs (whose factual findings are not "disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings"). [13] Factual matters were deemed not proper for consideration in proceedings brought either "as an original action for certiorari or as an appeal by certiorari ... [for] the main issue in ... certiorari is one of jurisdiction — lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction" while "petitions for review on certiorari are limited to the consideration of questions of law." [14]

The aforementioned rule was reiterated in the cases of *Ticzon* and *Bashier*. [15] Indeed, as early as the year 1938, applying Section 4, Article VI of the 1935 Constitution, [16] this Court held that the Electoral Commission's "exclusive jurisdiction" being clear from the language of the provision, "judgment rendered ... in the exercise of such an acknowledged power is beyond judicial interference, except ... 'upon a clear showing of such arbitrary and

improvident use of the power as will constitute a denial of due process of law'. "[17] Originally lodged in the legislature, that exclusive function of being the "sole judge" of contests "relating to the election, returns and qualifications" of members of the legislature was transferred "in its totality" to the Electoral Commission by the 1935 Constitution. That grant of power, to use the language of the late Justice Jose P. Laurel, "was intended to be as complete and unimpaired as if it had remained originally in the legislature ..." [18] These observations remain valid and applicable to the exercise of that function, as now vested in the respondent Commission by the 1973 Constitution.

Alleging grave abuse of discretion on the part of respondent Commission, petitioner insists on the genuineness of the 16 excluded returns. He also impugns the authenticity of the 76 contested returns included in the canvass of votes, citing "irregularities" or "anomalies" in the preparation of the contested election returns as indicated by the alleged non-alignment, smudging, lack of uniformity in the size and placement of serial numbers, alleged "unreasonable delay" in the delivery of some returns, etc. As evidence, petitioner submitted the contested returns, alleged KBL or DOP copies of election returns, certificates of votes, affidavits, counter-affidavits, etc. On the other hand, these allegations and submissions have been denied or disputed by the private respondent who likewise submitted counter-affidavits and other supporting evidence. In its decision affirming the rulings of the board of canvassers, the respondent Commission noted that petitioner failed to authenticate the supposed copies of the election returns, that mere certificates of votes cannot be considered authentic copies of the returns, that the reports relied upon by the petitioner were not official, and there was no "unreasonable delay" in the submission of returns considering that the questioned returns came from remote barangays in mountainous areas (accessible only by hiking), taking into account past experience in the delivery of returns from said places. It also pointed out that the inclusion in the canvass of the 16 returns (which would give petitioner 2511 votes and private respondent 608 votes) would not change the result as private respondent would still be the winner by "over 600 votes." [19]

It is readily seen, upon examination of the 115-page petition (with annexes consisting of 395 pages) and the other pleadings filed, that the questions raised therein are mostly factual. We are called upon to look into the credibility and probative value of evidence presented and relied upon by one party and weigh the same in relation to that submitted by the adverse party. A review of the respondent Commission's factual findings/conclusions made on the basis of the evidence evaluated is urged by the petitioner, "if only to guard against or prevent any possible misuse or abuse of power." [20] To do so would mean "digging into the merits and unearthing errors of judgment" rendered on matters within the exclusive function of the Commission, which is proscribed by the Aratuc and other decisions of this Court. And the possibility of abuse is not a valid argument for, as observed in Angara: "All the possible abuses of the government are not intended to be corrected by the judiciary"; "if any mistake" was committed in investing the respondent Commission with such "exclusive jurisdiction ... the remedy is political, not judicial, and must be sought through ordinary processes of democracy." [21]

Petitioner, it appears, believes that there was preponderance of evidence in his favor in view of the voluminous evidence he presented to the respondent Commission. It is not necessarily so. For the alleged absence of "substantial evidence" [22] in support of the questioned decision "is not shown by stressing that there is contrary evidence on record, direct or circumstantial ... for the appellate court cannot substitute its own judgment or criterion for that of the trial court in determining wherein lies the weight of evidence or what evidence is entitled to belief." [23] Granting, arguendo, the petitioner's claim that alone would not be adequate basis for us to conclude that the Commission's affirmance of the board's rulings was not supported by substantial evidence; hence arbitrary, whimsical, and without any rational basis.

Anent the petitioner's submission that the board was not authorized to proclaim the winner, it is noted that the Commission's resolution of May 30, 1984 directed the new board "to immediately resume ... the canvass ... and to

immediately proclaim the winner in the May 14, 1984 election." This was issued prior to the objections of petitioner during the canvass. It is, however, important to consider that immediate proclamation was prayed for by the petitioner himself in an urgent ex parte motion filed in the pending case. Also, up to the hearing on May 21, 1984 (and its continuation on May 29), he had no complaint whatsoever about the alleged tampering or substitution of returns delivered to the PC/INP headquarters in Bayombong (some of which he denounced later on as "spurious" or "manufactured" because of "unreasonable delay"). At that time unofficial reports indicated that petitioner won by a wide margin. Such was the factual setting when he made an urgent plea for immediate canvass of the election returns and, thereafter, immediate proclamation of the winner, which was granted.

The said authorization, it is true, was not strictly in accordance with Section 54 of B.P. 697. It was defective, premature as in the case of an authority to proclaim given within the 5-day period for appeal. It may be argued that the directive was not the authorization contemplated by the law. Politics, however, "is a practical matter, and political questions must be dealt with realistically —not from the standpoint of pure theory." [24] It is relevant to ask whether it would be realistic to say that, notwithstanding the directive to "immediately proclaim" the winner per results of their canvass, the board members should have deferred the proclamation under the circumstances and considered the legality or sufficiency of the authorization. There is, moreover, jurisprudence to the effect that some requirements "are mandatory before election but ... after the elections they are held to be directory only." [25] In any event, the respondent Commission entertained the petitioner's appeal and passed upon his objections to the board's rulings; after due hearing, the said rulings were affirmed. The Commission likewise confirmed or ratified the proclamation of private respondent. [26] There was no denial, then, of the right to appeal. The ratification cured the alleged defect of the authority to proclaim, rendering moot the issue raised.

The matter elevated to this Court was a pre-proclamation controversy. The decision of the respondent Commission was promulgated on August 7, 1984. The instant petition was filed with this Court on August 20, 1984, or three months after the May 14, 1984 election. Private respondent was proclaimed on June 2, 1984, as the duly-elected Assemblyman for Nueva Vizcaya. He took his oath of office in due time, discharging thereafter his duties and functions as Assemblyman. Such pre-proclamation controversy is no longer viable at this point of time and should be dismissed as held by this Court in *Venezuela* and other cases. [27] Pre-proclamation proceedings are summary in nature. There was no full-dress hearing essential to the task of adjudication with respect to the serious charges of "irregularities", etc. made by petitioner. An election contest would be the most appropriate remedy. Instead of the submission of mere affidavits, the parties would be able to present witnesses subject to the right of confrontation, etc. Recourse to such remedy would settle the matters in controversy "conclusively and once and for all".

Finally, as emphatically stated by the distinguished Chief Justice in the case of *Sidro*, [28] this Court has invariably followed the principle that in the absence of any jurisdictional infirmity or an error of law of the utmost gravity, the conclusion reached by respondent Commission on a matter that falls within its competence is entitled to the utmost respect ... There is justification in this case to apply and reiterate the principle again.

WHEREFORE, the petition should be, as it is hereby DISMISSED without prejudice to the filing of an election protest within a period of ten (10) days from notice, if so desired by the petitioner.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Abad Santos, Escolin, Gutierrez, Jr., Cuevas, and Alampay, JJ., concur.

Relova, concur, in this pre-proclamation controversy, as held in *Valezuela vs. COMELEC*, 98 SCRA 701, the matter should be passed upon in an election protest.

Teehankee, J., see separate dissenting opinion.

Melencio-Herrera, see concurring and dissenting opinion.

Fernando, C.J., and Plana, J., no part.

[1] Ambaguio, Aritao, Bagabag, Bayombong, Dupax del Norte and Dupax del Sur.

[2] Kayapa, Diadi, Kasibu, Castañeda and Bambang.

[3] Page 508; rollo.

[4] Independent and official KBL, respectively.

[5] Page 7 of Decision (Annex G of Petition).

[6] Ibid., pages 10-11; underscoring supplied.

[7] G. R. No. 68113.

[8] About 120,000 voters, page 7, Annex F of Petition.

[9] 88 SCRA 251.

[10] Ibid., page 270.

[11] 33 SCRA (1970) 387.

[12] Citing Sotto vs. Commission on Elections, 76 Phil. 516.

[13] Lucman, Id., page 401, underscoring supplied.

[14] Ibid., page 399.

[15] 103 SCRA 671; 43 SCRA 238.

[16] which provided: "... The Electoral Commission shall be the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

[17] Morrero vs. Bocar, 66 Phil. 429, 431.

[18] Angara vs. Electoral Commission, 63 Phil. 139, 175.

[19] Page 113 of Decision; Annex G, Petition.

[20] Page 2, Petition.

[21] 63 Phil. 139, 177.

[22] Defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion".

[23] Picardal vs. Lladas, 21 SCRA 1483, 1489, underscoring supplied, citing Chavez vs. CAR, 9 SCRA 412, Lustre vs. CAR, 10 SCRA 659.

[24] Sumulong vs. Commission on Elections, 73 Phil. 288, 295.

[25] Lino Luna vs. Rodriguez, 39 Phil. 208; de Guzman vs. Board of Canvassers, 48 Phil. 211.

[26] Equivalent to a reproclamation, assuming that the board's proclamation was null and void ab initio.

[27] 98 SCRA 790; Arcenas v. Comelec, 101 SCRA 437; Aguinaldo v. Comelec, 102 SCRA 1; Singco v. Comelec, 101 SCRA 420; Laguda v. Comelec, 102 SCRA 857; Agcaoili v. Santos & Comelec, 103 SCRA 350; Mitmug v. Comelec, 103 SCRA 455; Jagunap v. Comelec, 104 SCRA 204; Mogueis v. Comelec, 104 SCRA 576; Faderanga v. Comelec, 105 SCRA 123; Pasion v. Comelec, 109 SCRA 238; Mangca v. Comelec, 112 SCRA 273; Disini v. comelec, 119 SCRA 511; and Robes v. Comelec, 123 SCRA 193.

[28] 123 SCRA 759, 762.

CONCURRING & DISSENTING OPINION

MELENCIO-HERRERA, J.:

At first blush, it would seem that there was parity between the Pimentel case and this case in that the authenticity of election returns was seriously put in issue in both cases and there was imperative need to determine the true will of the electorate by examining the objective evidence itself. Added to that were the grave charges of petitioner regarding "discrepancies" between the Certificates of Votes "as confirmed by the semi-official tabulation of Office of Media Affairs and the NAMFREL of Nueva Vizcaya" and the election returns submitted; the "unexplained delays" incurred in the delivery of election returns to the Provincial Board of Canvassers; and the "patently spurious and obviously manufactured returns" ordered included by the Board of Canvassers, all of which, if substantiated, would have cast a cloud of doubt on the results of the elections in Nueva Vizcaya.

However, a careful scrutiny of the COMELEC 117-page Decision of August 7, 1984 will show that it had painstakingly evaluated, point by point, the allegations and counter-allegations of the parties and had drawn its conclusions only after a meticulous study of the evidence. I find no room to fault it with grave abuse of discretion.

However, the COMELEC Decision was silent on a point which I consider critical. Stripped of minutiae unessential for purposes of this dissent, the records disclose that on June 1, 1984, the new Board of Canvassers convened at Bayom-bong, Nueva Vizcaya, to canvass the election returns. This was pursuant to a COMELEC Resolution of May 30, 1984 "to immediately resume, until terminated, the canvass and to immediately proclaim the winner", upon plea of petitioner himself.

On June 1, 1984, during the canvass, written objections were made by both petitioner and private respondent to the inclusion/exclusion of returns with the Board of Canvassers.

One day afterwards, or on June 2, 1984, in accordance with the COMELEC May 30 Resolution, the Board proclaimed respondent Perez as the duly elected Assemblyman to represent Nueva Vizcaya, having obtained 56,182 votes, or a margin of 3,119 votes over petitioner's 53,063 votes.

To my mind, private respondent's proclamation was made in violation of Section 54 of B.P. Blg. 697, which explicitly provides that "the Board shall not proclaim any winning candidate unless authorized by the Commission, and any proclamation made in violation hereof shall be void ab initio."

The authorization to proclaim given by the COMELEC on May 30, 1984 was prior to the canvass and before the objections were even made. It was not, therefore, the authorization contemplated by Section 54. It was prematurely granted within the 5-day period for appeal and its effect was to foreclose the right of appeal assured a party adversely affected by a ruling of the Board.

The authorization COMELEC had granted would have been valid if no written objections to the inclusion/exclusion of election returns had been presented and resolved adversely by the Board. In fact, absent those objections, authorization would have even been unnecessary since it would have been the ministerial duty of the Board to duly proclaim the winning candidates after termination of the canvass.

To justify the deprivation of the right of appeal under Section 54 with the excuse that politics is a "practical matter" is to open the door to maneuvers in violation of election laws. Provisions of election laws have a purpose and should be observed. Besides, the requirement in Section 54 for COMELEC authority to proclaim, otherwise the proclamation is null and void ab initio affects the very essence of the proclamation itself. It can hardly be said to be a requirement that is mandatory before but only directory after the elections. It is not like the hours fixed for holding the polls, or failure to provide voting booths (*Lino Luna vs. Rodriguez*, 39 Phil. 208 [1918]), or defects in certificates of candidacy (*Lambonao vs. Tero*, 15 SCRA 716 [1965]), which are formal requirements and do not affect validity.

The appeals which were interposed by the parties herein are not those contemplated by Section 54. They were instituted after the proclamation had been made. The five-day period for appeal granted by Section 54 contemplates that no authority to proclaim shall be issued within that five-day period.

As in *Guiao* (G.R. No. 68056), I believe that the COMELEC authorization to proclaim was premature and deprived the petitioner, as the adverse party, of the right to appeal and to procedural due process.

DISSENTING OPINION

TEEHANKEE, J.:

I am constrained to dissent from the majority decision and to vote for the granting of the petition and the setting aside of the premature and unauthorized proclamation of respondent Perez as assemblyman for the lone seat of assemblyman for the province of Nueva Vizcaya in the May 14, 1984 first regular national assembly election on the authority of section 54 of B. P. Blg. 697 which declares such proclamations as null and void ab initio, section 53 of the same Act which mandatorily requires the canvassing board to suspend the canvass "when the composition or proceedings of the board is contested" to allow the aggrieved party a five-day period to elevate the matter to the Comelec, and for denial to petitioner Padilla of substantive and procedural due process and equal protection of the law.

I. My vote is based on the following vital facts and considerations:

1. The cited sections of B. P. Blg. 697 unequivocally grant the aggrieved party adversely affected by the proceedings of the board or its rulings on the objections five days from notice within which to appeal to the Comelec. Section 53[1] mandatorily requires that in contested composition or proceedings of the board that "during the pendency of the case, the board shall suspend the canvass." Here, the Comelec, while it had earlier on May 21, 1984 turned down a challenge against the composition of the board, abruptly turned about at the last hour on May 30, 1984 and replaced all members of the original board with its three selected lawyers without cause or explanation and gave Padilla no chance to appeal the action. Here, also the board and the Comelec pre-empted Padilla's right to appeal the board's adverse rulings against him on the inclusion/exclusion of a total of 82 election returns which nullified his reported lead of some 19,200 votes. After a protracted delay of 17 days, the Comelec finally had the board commence the canvass on June 1, 1984, dismissed Padilla's objections while granting Perez', and on the next day, June 2nd, proclaimed Perez without Comelec authority and "before expiration of the five-day period for appeal" which preempted Padilla's right to avail of an appeal. Under Section 54[2], such premature proclamations are null and void ab initio, as held in

this Court's unanimous Resolution of June 14, 1984 in *Javier vs. Comelec*.^[3] To borrow from the separate dissent of Mme. Justice Ameurfina Melencio Herrera from the majority decision in the companion case of *Bren Z. Guiao vs. Comelec*^[4], such actions of the board and the Comelec were "tantamount to 'railroading' the proclamation and thwarting the very purpose of section 54, which is obviously to do away with the past practice of 'grabbing the proclamation at all costs and prolonging the protest' ..." and deprived Padilla of his right to due process. For brevity's sake, I reproduce by reference my separate dissent in the said case of Guiao, insofar as the legal considerations and principles set forth therein are applicable, *mutatis mutandis*, to the case at bar.

2. The proclamation of June 2, 1984 is admitted by the majority decision to be "not strictly in accordance with Section 54 of B. P. Blg. 697. It was defective, premature as in the case of an authority to proclaim given within the 5-day period for appeal." (at page 6) It was therefore null and void *ab initio* which is not susceptible of ratification as the majority holds. Acts that are declared by the law to be null and void *ab initio* in pursuance of public policy — to prevent "railroading" of proclamation and "proclamation-grabbing" — may not be validated by ratification. As stated also in the majority decision, Padilla up to the hearing of May 29, 1984 "had no complaint whatsoever about the alleged tampering or substitution of returns delivered to the PC/INP headquarters in Bayombong... At that time, unofficial reports indicated that petitioner won by a wide margin. Such was the factual setting when he made an urgent plea for immediate canvass of the election returns and thereafter, immediate proclamation of the winner, which was granted [by Comelec]."^[5] (at page 6) The pre-canvassing directive issued on May 30, 1984 by Comelec for immediate canvass and proclamation — after Padilla complained of "foot-dragging" and canvassing delay in violation of the mandate in section 46 of B. P. Blg. 697 that the board "meet not later than seven o'clock in the evening of election day ... (and) meet continuously from day to day until the canvass is completed" — cannot be cited as the authorization to proclaim, mandatorily required by section 54. The prohibition against premature and precipitate proclamation comes into effect the moment bona fide objections to the inclusion/exclusion of election returns are presented, so that the party adversely affected by the board's rulings may appeal within five days, and secure a decision from the Comelec which it must hand down (after summary proceedings under section 55) within ten days after submittal of the appeal for resolution. The purpose and public policy of the prohibition is precisely to outlaw "proclamation-railroading and-grabbing." It seems self-evident that the Comelec pre-canvassing directive to canvass and proclaim when there were as yet no objections, cannot be invoked as the mandatory Comelec authorization to proclaim — which is imperatively required only after the canvassing has begun and objections are submitted.

3. In upholding the board's admittedly defective and unauthorized proclamation notwithstanding its being null and void *ab initio*, the majority decision rationalizes that "Politics, however, 'is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory.' It is relevant to ask whether it would be realistic to say that, notwithstanding the directive to 'immediately proclaim' the winner per results of their canvass, the board members should have deferred the proclamation under the circumstances and considered the legality or sufficiency of the authorization." (at page 6). The obvious answer to this, of course, is that the new Comelec-selected board, composed of 3 Comelec lawyers, is conclusively presumed to know that under the mandatory and prohibitory provisions of section 54 in view of the serious objections raised thereunder as well as against its composition and proceedings under section 53, any proclamation it made was null and void *ab initio*. The separate dissent herein of Mme. Justice Melencio-Herrera touches a raw nerve that is the bane of elections and bears reproducing: "To justify the deprivation of the right of appeal under Section 54 with the excuse that politics is a 'practical matter' is to open the door to maneuvers in violation of election laws. Provisions of election laws have a purpose and should be observed. Besides, the requirement in Section 54 for Comelec authority to proclaim, otherwise the proclamation is null and void *ab initio* affects the very essence of the proclamation itself. It can hardly be said to be a requirement that is mandatory before but only directory after the elections." The only way to enforce the salutary intent of the law to outlaw "proclamation-grabbing" is to enforce it without exception, as stressed in paragraph 2 of my dissent in the companion case of Guiao (*supra*, par. 1 hereof). Such im-provident and unauthorized proclamations have to be

enjoined or set aside as null and void ab initio. Since the replacement of the regular board was arbitrarily made without cause or explanation, it was illegal and "the canvass and resulting proclamation are both null and void" as held in *Pacis v. Comelec*, which was to be the source of section 53 of B. P. Blg. 697.[6] Only such strict adherence to the letter and spirit of the law would close "the door to maneuvers in violation of election laws," specifically "grabbing the proclamation at all costs and prolonging the protest." A new article on pre-proclamation controversy (XIII, B. P. Blg. 697 with sections 50 to 57) incorporating this Court's jurisprudence into the law was precisely enacted last February 27, 1984. Section 50 gives the following: "Definition. — Pre-proclamation contro-versy refers to any question pertaining to or affecting the proceedings of the Board of Canvassers which may be raised by any candidate, political party or coalition of political parties before the board or directly with the Commission." A pre-proclamation controversy — pertaining to or affecting the canvass proceedings means just that now: no proclamation by the canvassing board until resolution of the canvassing controversy by the Comelec after summary proceedings after notice and hearing [[6-a]] in the Comelec, subject to this Court's ultimate disposition on certiorari.[6-b]

4. Respondent Comelec has applied conflicting and double stan-dards and violated Padilla's rights to substantive and procedural due process and equal protection of the law, contrary to the constitutional injunction that "Bona fide candidates for any public office shall be free from any form of harassment and discrimination." [6-c]

— In this case, it delayed the canvassing for 17 days, hearing an also-ran candidate's (who hardly received any votes) baseless petitions to change the board's composition and transfer the canvass and returns to Manila, until June 1, 1984 but permitted the "blitzing" of the canvass and proclamation in 36 hours thereafter, giving Padilla no chance for any hearing before it on serious objections to the inclusion/exclusion of a total 92 returns (almost 1/5 of the votes) despite the law's express mandate that the canvass be suspended and no proclamation made in such cases;

— In this case, it allowed the inclusion of 76 questioned returns with badges of falsity and overlapping numbers, which were delivered late two to eight days after the election and separately from the genuine and unquestioned bulk of the returns in three towns[7] on the general principle of non-disenfranchisement of voters (and without examination and comparison of their discrepancies with other copies of returns and conducting a recount of the votes conditioned upon the preservation of their integrity, as mandated by sections 173 and 174 of the 1978 Election Code) but ordered the exclusion of 16 other returns questioned by Perez on "flimsy if not outright ridiculous grounds" and did not apply the same rule against disenfranchisement of voters; and

— Comelec used ex-parte the so-called Octavio memorandum which came to light only in its decision (to explain the badges of falsity of the 76 included questioned returns, e. g. the 4 questioned returns from Bayombong supposedly detached from the same pad of election returns but of entirely different size, type, density and quality of numbering)[8] and likewise without informing Padilla, made known for the first time in its decision that it had referred the excluded 16 returns, free from any taint of falsity on their face, to its handwriting experts who "confirmed" its observations as to the defects or infirmities in the signatures appearing thereon, in violation of the cardinal requirements of procedural due process as set forth by the late Justice Jose P. Laurel in the *Ang Tibay* case.[9]

5. In the *Pimentel-Roa* case,[10] this Court and the Comelec required the examination of the returns used in the canvassing and its comparison with the other copies, and despite finding no discrepancies in the returns ordered that not only the 87 returns (set aside by Comelec on the basis of 87 self-serving stereotyped affidavits of Roa's partisan watchers that they were prepared before completion of the counting to justify its setting aside of Pimentel's proclamation), but all the 227 returns questioned by Roa (including those where Roa obtained more votes than Pimentel) be brought to the Supreme Court and opened for recounting and appreciation of the ballots,

to determine the true winner of the election. But the majority decision has refused to apply the same formula here of recounting the ballots, despite the submittal here of much more serious and substantial objections to the 76 included returns. I had urged to no avail in my aide memoire of March 7, 1985 that this case together with other similar cases be taken up and resolved together with the Pimentel case so that there may be non-discriminatory and equal treatment of all cases where the Court bears the same burden "to ascertain correctly the wishes of the electorate" and their rightful representative in the Batasang Pambansa. (See part II hereof). Self-evidently, a conflicting and different standard has been likewise applied here and in Guiao that the proper recourse of the aggrieved parties is to file an election protest, than in Pimentel (where there had been an earlier consensus on October 23, 1984 that Roa's remedy was to file an election protest which was swept aside[11] and the Court resolved to recount the ballots instead and to unseat Pimentel from the Batasang Pambansa).

6. The old song that "an election protest would be the most appropriate remedy" — fostered the old game of "railroading the proclamation" and "grabbing the proclamation at all costs and prolonging the protest" and was sought to be eliminated with the adoption of sections 53 and 54 of B. P. Blg. 697. The late Chief Justice Fred Ruiz Castro in his dissent in the oft-cited 1979 case of *Aratuc vs. Comelec*[12] which was concurred in by Justices Felix V. Makasiar and Ameurfin Melencio-Herrera[13] even then had assailed such a passive and negative approach, stressing that "it is a notorious fact in the history of Philippine politics that an election protest not only is usually inordinately protracted but as well entails heavy and prohibitive expenditure of time, money and effort on the part of the protestant. More than this, should the protestant in the end win, very little time or none at all is left for him to assume and discharge the duties of his office. In the meantime, the person previously proclaimed elected continues to fraudulently represent the people who had in law and in fact duly elected someone else to represent them," and demanding that "(I)s it not time the Supreme Court asserted its powers in order to excise completely the Old Society pernicious evil of 'grab the proclamation at all costs?'"

7. Unlike in the Pimentel case, where all 225 questioned returns and ballot boxes have been brought to the Supreme Court to be recounted, even Padilla's motion for issuance of subpoena duces tecum for Comelec to elevate to the Court the documentary evidence submitted by and forming part of the record in the Comelec, particularly the 92 included/excluded returns, was summarily turned down. Padilla was an independent candidate and had no representation in the citizens election committees nor in the canvassing board. Now, as to the included 76 returns, Padilla submitted 55 Certificates of Votes duly signed and authenticated by the citizens elections committees pursuant to section 28, B. P. Blg. 697 which provides that "Refusal of the members of the committee to sign and furnish such certificate [of the number of votes cast for each candidate] shall constitute an offense and shall be punished under the 1978 Election Code." They showed the spurious character of the 76 included returns not only on their face but in that Padilla had such Certificates of Votes in 409 out of a total of 509 voting centers (excluding the 92 questioned returns) and in 401 voting centers (with insignificant discrepancies in 8 voting centers which cancelled out each other), such certificates tallied identically and accurately with the unquestioned returns and established the province-wide well-nigh irreversible trend for Padilla.[14] As to the 16 excluded returns, Padilla submitted 15 certificates of votes which confirmed the authenticity and count of the votes in 15 voting centers. Said duly signed and authenticated certificates of votes are official documents with great evidentiary value and certainly call for application of the Pimentel formula to conduct a recount of the ballots themselves to determine the true results of the election.

II. The specific facts and issues involved in the case at bar are set forth in an aide memoire submitted by me on March 7, 1985 for the Court's deliberations. With some minor revisions and the insertion of captions and additional paragraph, the same is herein reproduced:

1. Padilla's 19,200-vote lead. — As of May 15, 1984, one day after the Nueva Vizcaya elections for their lone assemblyman, petitioner Padilla was leading respondent Perez by some 19,200 votes, as per official Certificate

of Votes issued by the CEC's of some 500 voting centers of the province with only less than 7% thereof representing less than 10,000 votes unaccounted for. This clear trend was confirmed by semi-official tabulations of the Office of Media Affairs and the NAMFREL of Nueva Vizcaya.

2. Delay of Canvassing. — On May 15, 1984, respondent board of canvassers already had in its custody 11 ball of boxes containing election re-turns from 10 out of 15 towns comprising the whole province of Nueva Vizcaya. But upon petition of one Quirico Pilotin, the Dominant Opposition Party candidate, NP Roy Wing, who got a negligible amount (less than 500) of the total votes cast, questioning the board's composition (including his own DOP repre-sentative), the Comelec with alacrity "suspended" the canvassing which had never started in the first place. Padilla, an independent candidate, had no representative in the board. Pilotin followed up his first petition with another telegraphic petition that the election returns of Nueva Vizcaya be transferred to the Comelec in Manila where the canvassing would be held. Padilla opposed both petitions of Pilotin and urged the Comelec to order the board to proceed with the canvassing and proclamation of the winner. On May 21, 1984, the Comelec (2nd Division) denied Pilotin's main petition impugning the composition of the board. On May 30, 1984, the same Comelec division issued its resolution denying Pilotin's petition for transfer of the venue of the canvass to Manila, but replaced all members of the original board with three Comelec lawyers and directed it "to immediately resume, until terminated, the canvass of the election returns from the voting centers of Nueva Vizcaya and to immediately proclaim the winner in the May 14, 1984 election for assembly-man of Nueva Vizcaya."

3. Rush to proclamation. — On June 1, 1984, the Comelec hand-picked 3-man board commenced the canvass, received written objections from both parties for inclusion/exclusion of returns, sustained Perez' objections and ordered the exclusion of 16 returns from 6 municipalities and inclusion of 76 returns from 5 municipalities. On the next day, June 2, 1984, despite the mandatory provisions declaring null and void ab initio such premature proclamations before the expiration of the five-day period for appeal (as per the Court's unanimous ruling of June 14, 1984 in *Javier vs. Comelec*, G. R. Nos. 67994-95), the board proclaimed Perez as the duly elected assemblyman.

4. Exclusion of 16 returns. — As per petition, paragraph 22, even before the actual canvassing of the returns could commence, Perez thru counsel submitted in advance to the board written objections to the inclusion of 16 returns from seven municipalities wherein Padilla had defeated Perez by a total of 2,694 votes. These 16 returns were ordered excluded from the canvass with the result that Padilla instead lost therein to Perez by a total of 2, 451 votes. Padilla forthwith appealed the said ruling of exclusion to the Comelec.

5. Inclusion of 76 returns. &151 The inclusion of 76 returns from five municipalities duly objected to in writing by Padilla during the canvass as "spurious, fake, falsified and obviously manufactured returns" visible on the face of the returns (please see pp. 14-16, petition) almost wiped out the 19,200-vote margin of Padilla and with the exclusion of the 16 returns where Padilla got a strong majority, resulted in Perez being credited with 56,182 votes as against Padilla's 53,063 votes or a margin of 3,119 votes for Perez. The effects of the inclusion of these 76 returns are summarized by Padilla in Annex "K" of his petition, as follows:

"TOWN

No. of VC's

PADILLA

PEREZ

NET EFFECT TO PEREZ

Loss

Gain

Loss

Gain

BAMBANG

3

500

(-)

1298

(+)

1838(+)

(1 VC w/o Certificate)

CASTAÑEDA

7

460

(-)

493

(+)

953(+)

KASIBU

5

844

(-)

922

(+)

1766(+)

(2 w/o Certificate)

KAYAPA (12 w/o Certificate)

3590

(-)

3588

(+)

7178(+)

DIADI

23

2475

(-)

2546

(+)

5021(+)

16791

PLUS - Effect of 16 Excluded Returns -

2451

ORIGINAL MARGIN OF PADILLA OVER PEREZ --

19242"[*]

6. "Flimsy" grounds for exclusion. — The 16 returns questioned by Perez in advance wherein Padilla obtained a margin of 2,511 votes over Perez were ordered excluded by the canvassing board although according to Padilla all of them "appear authentic, genuine and regular on their face" (p. 20, petition). Padilla specifies in his petition the "flimsy if not out-right ridiculous grounds" cited by the board for ordering their exclusion. (In one instance, the returns were excluded because of 2 votes over the registered voters — 99 as against 97. Please see also pp. 6-7, Reply)

7. Inclusion of "fake and falsified" returns. — In the case of the 76 returns objected to by Padilla during the canvassing as "fake, spurious, falsified and obviously manufactured," Padilla cites the characteristics and

badges of falsity. The most telling proofs of such alleged falsity are the genuine, authentic and uncontested returns presented by Padilla (KBL and DOP copies), as well as the CEC certificates of votes. The questioned 76 returns radically differed in appearance, in type and in the results in that Perez got lopsided vote margins against Padilla (totalling 16,791-vote margin, almost enough to overcome Padilla's provincewide 19,200-vote margin).

8. Late deliveries of returns after 2-8 days. — These 76 questioned returns coming from the five municipalities of Bambang, Castañeda, Kasibu, Diadi and Kayapa were featured by other serious anomalies and irregularities spelled out by Padilla, viz. (a) 4 questioned returns from Bambang were delivered separately from the 41 other returns from the same municipality and only two days after the election, whereas the 41 returns were promptly delivered on the very same night of the election and their serial numberings were radically different from the genuine returns; (b) 7 questioned returns from Kasibu were likewise delivered separately from 22 genuine uncontested returns from the same municipality and were reported lost on the night of the election but "reappeared under mysterious circumstances two days later." The results reflected therein were, of course, radically different from and the reverse of the genuine and authentic KBL and DOP copies submitted in evidence, which gave Padilla overwhelming margins over Perez; (c) the pattern of late delivery is also true of the 7 questioned returns from the municipality of Castañeda which were delivered in a separate ballot box only after 8 days; (d) 23 questioned returns of Diadi were likewise delivered two days after the elections notwithstanding that it is just "one hour's lazy drive by first class concrete road to Bayombong." The CEC certificate of votes presented and submitted in evidence showed that Padilla garnered 2,663 votes as against Perez' 1,673 votes but "the twenty-three (23) spurious returns in question credited Padilla with a total of only 188 votes and gave Respondent Perez a total of 4219 votes. The exclusion of these 23 returns alone could result in Padilla's having a total victory margin of 912 votes, Perez — 51,953 votes as against Padilla ?,875 votes; and (e) there are 35 election returns from Kayapa which petitioner questions as bearing the same vices of falsity as the others and delivered two days late. Petitioner adds that "but what is unique in the case of Kayapa is the fact that up till now, the ballot boxes containing the ballots and other election paraphernalia used in the election continue to be under the control of the mayor of that municipality."

9. Proclamation null and void ab initio. — The board's proclamation on June 2, 1984 of Perez as the winner was without Comelec authority and therefore null and void under sec. 54 of Batas Pambansa Blg. 697. The Comelec in its decision under review did not touch this point at all although it was squarely raised by Padilla. The justification that the board could so proclaim Perez by virtue of its May 30, 1984 resolution (at Padilla's insistent prodding that the canvass which had been delayed by 16 days finally be started and he [Padilla] be proclaimed the winner with his reported unsurmountable lead) directing the board to finally start the canvassing (as it did on June 1-2, 1984) and proclaim the winner could not be the authorization mandated by sec. 54. Padilla had submitted written objections during the canvassing on June 1-2, 1984 and under sec. 54, the board was to rule thereon with Padilla's right to appeal the same with the Comelec within five (5) days. Such objections did not yet exist as of the time of the May 30, 1984 resolution (when the canvass had not yet even started) and could not have been contemplated by said resolution.

10. Remedy of recount squarely raised. — The Comelec's failure to order a recount of the votes in the questioned voting centers where there are discrepant returns as provided in sec. 174 of the 1978 Election Code, Comelec in its decision (p. 19) had adverted to this remedy to determine the true results of the election in the questioned voting centers, but did not order the recount on the technicality that "it was necessary for petitioner to formally move for a recount before Comelec can afford the remedy sought."

11. Application of Pimentel ruling. — In Padilla's Reply to Comment and subsequent pleadings (not only in his Request for Subpoena Duces Tecum for the hearing), he prays for the application of the Pimentel ruling to his case and likewise prays that "to avoid the anomaly of the Province of Nueva Vizcaya being represented at the Batasang Pambansa by someone they have resoundingly rejected at the polls, it is also prayed that the injunction which this Honorable Court issued against Pimentel during the pendency of his appeal be likewise

issued against Respondent Perez in this case. What is sauce for the gander must also be sauce for the goose." (Padilla's Reply, pp. 23-24). The Court's examination of the included 76 "palpably falsified, spurious and obviously manufactured returns" is imperative so that it can see for itself the difference and dissimilarity between the genuine and uncontested KBL and DOP copies of the returns and the spurious returns. It is not explained why the Comelec did not compare the denounced returns with its own copies nor did it examine and check them as against the canvassers' original copies, unlike in the Pimentel case wherein it had so ordered the production of the canvassers' original returns. Padilla further urged that

"x x x It is not even necessary to call for the production of all the ballot boxes involved in the 16 illegally excluded returns and the 76 illegally included returns. It would be sufficient, in fact, to resolve the question of the twenty-three (23) challenged returns from Diadi. Should the Honorable Court be convinced of the illegal inclusion of these 23 returns on the ground of palpable badges of fraud extant on the face of these returns and the other evidences on record, the 23 returns can simply be ordered excluded from the canvass and, as earlier pointed out, such exclusion would already wipe out entirely, respondent Perez's apparent margin of 3,182 votes and still leave Petitioner herein with a comfortable margin of victory of 912 votes." (Padilla's Re-ply, p. 22)

In the words of the Chief Justice in the Pimentel case, only the Supreme Court's "broad powers of equity lend itself to such functional approach, one moreover impressed with the merit of ascertaining correctly the wishes of the electorate." So that such treatment accorded Roa in the Pimentel case may not be considered as unique and special and a denial of due process and equal protection of the Rule of Law to those similarly situated, then this Court must likewise accord the same treatment to this case as its treatment of the Pimentel case so as to "ascertain correctly the wishes of the electorate" of Nueva Vizcaya and their rightful representative in the Batasang Pambansa here and now. In the Pimentel case, the Comelec annulled and ordered the exclusion of 87 voting centers and disenfranchised 29,937 voters on the basis of 87 self-serving affidavits of Roa's partisans as against Pimentel, an independent candidate. Here, the record shows far graver and more serious irregularities "particularly as to the averment of the spuriousness of the 76 included obviously manufactured returns" as against Padilla who, although an independent, had by established province-wide trends built up an insurmountable 19,200-vote margin over his opponent.

As the Chief Justice stressed in his opinion in the Pimentel case, "(W)hile the approach followed by the Court may appear to be a departure from what has been considered traditional, I have no hesitancy in joining my brethren. For me, what is paramount is that through this mode of resolving a dispute where urgency is of the essence, the basic right of suffrage is safeguarded and vitalized. That is the controlling consideration."

III. A final word about the oft-cited case of Aratuc which has been misused or miscited as authority that it proscribes "'digging into the merits and unearthing errors of judgment' rendered on matters within the exclusive function of the commission"[15] and that this Court's jurisdiction on certiorari under the 1973 Constitution is limited to setting aside the Comelec's acts of grave abuse of discretion. The Court's decision in Aratuc — with a bare majority of eight, of whom only two remain with the Court as of now[16] — itself recognized that "the effects of an error of judgment may not differ from that of an indiscretion" and it is "reserved to the Supreme Court to insure the faithful observance of due process (only) in cases of patent arbitrariness." [17] The late Chief Justice, Fred Ruiz Castro squarely asserted this Court's power to set aside errors of judgment and law as tantamount to grave abuse of discretion, asserting in his dissent that "I squarely traverse the statement that no grave abuse of discretion can be imputed to the Comelec. The grave misgivings I have above articulated demonstrate what to my mind constitute the size and shape of the remissness of the Comelec. And more compelling and overriding a consideration than the over-wrought technicality of 'grave abuse of discretion' is the fundamental matter of the faith of the people of Region XII in the electoral process. There will always be the nagging question in the minds of the voters in that Region as to the legitimacy of those who will be proclaimed elected under the Comelec

resolution should the Court refuse to direct that body to continue the meticulous search for legitimacy and truth." [18] The same is fully applicable to the fundamental matter of the faith of the people in the electoral process anywhere else in the country, and specifically, to the province and people involved in the case at bar.

I had likewise stressed in my separate dissenting opinion in *Garcia vs. Comelec* [19] which is of application here, *mutatis mutandis*, that "(T)he broad powers given to Comelec under the 1973 Constitution merely incorporate the liberality with which the Court has always treated the Comelec's performance of its duty to guard against the use and inclusion of false, tampered or manufactured returns as per the cases of *Usman* and *Aratuc* cited in the majority opinion. This does not mean that Comelec may flip or flop as it wishes in any given case. It is governed by the decisive criterion of the law and the controlling doctrinal jurisprudence Where Comelec goes against the law and controlling jurisprudence, it commits a grave abuse of power and discretion and the Court must strike down its arbitrary action, if it is not to abdicate its responsibility of judicial review under the Constitution and 'slip into a judicial inertia.'" [20]

It is vital and indispensable that "overwrought technicalities" be set aside and that the people have faith in the electoral process as a means of public accountability through free and honest elections and in the impartiality and independence of the Comelec as administrator and steward of the process of free and honest elections that reflect the true will of the people rather than "comelecting" favored candidates, as charged by petitioner. [21] It is imperative that there be no unjust or unconstitutional application of the law "fair on its face and impartial in appearance (but) applied and administered by public authority with an evil eye and an unequal hand." [22]

[1] "SEC. 53. Contested composition or proceedings of the board. — When the composition or proceedings of the board is contested, it shall immediately make a ruling thereon with notice to the party contesting who, if adversely affected, may refer the matter to the Commission within five days after the ruling, with proper notice to the board. The Commission, after due notice and hearing, shall decide the case within ten days from the filing of the case. During the pendency of the case, the board shall suspend the canvass unless the Commission orders the continuation or resumption thereof."

[2] "SEC. 54. Contested election returns. - Any candidate, political party or coalition of political parties, contesting the exclusion or inclusion in the canvass of any election returns shall submit their written objections to the Chairman of the Board of Canvassers. The board shall defer the canvass of the contested returns and shall not make any ruling thereon until after all the uncontested election returns have been canvassed. The board shall not proclaim any winning candidate unless authorized by the Commission and any proclamation made in violation hereof shall be void ab initio.

"The ruling of the board may be elevated to the Commission by the party adversely affected by filing a verified petition within five days from notice thereof. After due notice and hearing, the Commission shall decide the case within ten days after the case has been submitted for resolution."

[3] G.R. Nos. 67994-67995.

[4] G. R. No. 68056.

[5] Emphasis supplied.

[6] See par. 8 of writer's dissenting opinion in *Guiao*.

6-a Section 55, B. P. Blg. 697.

6-b Article XIIC, section 11, 1973 Constitution.

6-c Idem, section 9(1).

[7] Bambang, Castañeda and Kasibu.

[8] Petition at pp. 37-53, 77, et seq.

[9] 69 Phil. 635 (1940).

[10] G.R. No. 68113, Resolutions of October 31, 1984, December 18, 1984, January 23, 1985 and April 25, 1985.

[11] Idem, Res. of October 31, 1984, see Part II, par. 1 of writer's separate opinion therein.

[12] 88 SCRA 251, 287.

[13] The writer took no part, as he was on leave during the deliberations.

[14] Petition, p. 84.

[*] Breakdown of 76 questioned returns: 4 of 45 returns from Bambang; 7 of 60 returns from Castañeda; 7 of 29 returns from Kasibu; all 35 returns from Kayapa and all 23 returns from Diadi.

[15] Majority decision at p. 5.

[16] Of the eight member majority, only Chief Justice Fernando and Justice Hermogenes Concepcion Jr. remain in the Court. The other six, namely, Justices Antonio P. Barredo, ponente, Felix Q. Antonio, Guillermo S. Santos, Ramon C. Fernandez, Juvenal K. Guerrero and Pacifico de Castro are now retired.

[17] Idem, at page 271.

[18] Idem, at page 287.

[19] 105 SCRA 250, 311.

[20] NLRB vs. Brown, 13 Law Ed. 2d 839.

[21] Petition, at page 80.

[22] Free Telephone Workers Union vs. Minister of Labor & Employment, cit. Yick Wo vs. Hopkins, 118 U.S. 356, 372 (1886).

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