

JUNIE EVANGELISTA CUA, PETITIONER, VS. COMMISSION ON ELECTIONS AND RICHARD S. PUZON, RESPONDENTS.

G.R. Nos. 80519-21. December 17, 1987

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PER CURIAM:

In SPC No. 87-454 and SPC No. 87-467, the First Division of the COMELEC rendered a 2-1 decision on August 10, 1987, favoring the herein petitioner Cua but nevertheless suspended his proclamation as winner in the lone congressional district of Quirino due to the lack of the unanimous vote required by the procedural rules in COMELEC Resolution No. 1669 dated May 2, 1984. Pursuant to said rules, private respondent Puzon filed on August 14, 1987 a "motion for reconsideration/appeal" of the said decision with the COMELEC en banc, where on October 28, 1987, three members voted to sustain the First Division, with two dissenting and one abstaining (one member having died earlier). On the strength of this 3-2 vote, Cua moved for his proclamation by the board of canvassers, which reconvened on November 9, 1987, and granted his motion. Cua took his oath the same day, but the next day Puzon filed with the COMELEC an urgent motion to suspend Cua's proclamation or to annul or suspend its effect if already made. On November 11, 1987, the COMELEC set the motion for hearing and three days later it issued a restraining telegram enjoining Cua from assuming the office of member of the House of Representatives. The petitioner then came to this Court to enjoin the COMELEC from acting on the said motion and enforcing its restraining order.

Section 5 of COMELEC Resolution No. 1669 reads as follows:

"SEC. 5. Quorum; votes required; substitution. - Two members shall constitute a quorum for the transaction of the official business of the Division.

"A case being heard by it shall be decided with the unanimous concurrence of all three Commissioners and its decision shall be considered a decision of the Commission. If this required number is not obtained, as when there is a dissenting opinion, the case may be appealed to the Commission en banc, in which case the vote of the majority thereof shall be the decision of the Commission. x x x"

The position of the petitioner is that the 2-1 decision of the First Division was a valid decision of the COMELEC itself despite the above rule because of Article IX-A. Section 7 of the new Constitution, providing that "each Commission shall decide by a majority vote of all its members any case or matter brought before it." He argues that this applies to the votings of the COMELEC both in division and en banc and that the private respondent himself recognized this when he filed the motion for reconsideration/appeal with the COMELEC en banc.

Cua also contends that Puzon's move, treated as a motion for reconsideration, is deemed denied for lack of the necessary majority to overturn the challenged decision. As an appeal, it should be considered dismissed, also for the same reason, resulting in the decision being regarded as affirmed in accordance with Rule 56, Section 11 of the Rules of Court applied suppletorily, reading as follows:

"SEC. 11. Procedure if opinion is equally divided. - Where the court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on re-hearing no decision is reached, the

action shall be dismissed if originally commenced in the court; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied."

For their part, the respondents insist that no decision was reached by the First Division on August 10, 1987, because the required unanimous vote was not obtained and there was therefore nothing to be affirmed on appeal by the COMELEC en banc and nothing to reconsider either. Additionally, they argue that in any case no valid decision was reached by the COMELEC en banc because only three votes were cast in favor of the petitioner and these did not constitute a majority of the body.

After considering the issues and the arguments raised by the parties, the Court holds that the 2-1 decision rendered by the First Division was a valid decision under Article IX-A, Section 7 of the Constitution. Furthermore, the three members who voted to affirm the First Division constituted a majority of the five members who deliberated and voted thereon en banc and their decision is also valid under the aforementioned constitutional provision. Hence, the proclamation of Cua on the basis of the two aforementioned decisions was a valid act that entitles him now to assume his seat in the House of Representatives.

It is expected that the above categorical rulings will put an end to the seemingly interminable debates on this matter that have been festering for quite some time now not only in this case but also in other cases still pending in the COMELEC. The indecisiveness of the public respondent in the appreciation and application of its own rules has seriously prejudiced a considerable number of our people who remain unrepresented to date in the House of Representatives despite the fact that the congressional elections were held more than seven months ago.

ACCORDINGLY, the petition is GRANTED and the public respondent is enjoined from further proceeding with the private respondent's motion dated November 10, 1987. The restraining order issued by the COMELEC on November 14, 1987, enjoining petitioner from assuming office as member of the House of Representatives for the lone congressional district of Quirino is LIFTED. This Resolution is IMMEDIATELY EXECUTORY.

Teehankee C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Yap, J., on leave.

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