

ANTONIO Y. CO, PETITIONER, VS. ELECTORAL TRIBUNAL OF THE HOUSE OF REPRESENTATIVES AND JOSE ONG, JR., RESPONDENTS.

G.R. Nos. 92191-92. July 30, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners come to this Court asking for the setting aside and reversal of a decision of the House of Representatives Electoral Tribunal (HRET).

The HRET declared that respondent Jose Ong, Jr. is a natural born Filipino citizen and a resident of Laoang, Northern Samar for voting purposes. The sole issue before us is whether or not, in making that determination, the HRET acted with grave abuse of discretion.

On May 11, 1987, the congressional election for the second district of Northern Samar was held.

Among the candidates who vied for the position of representative in the second legislative district of Northern Samar are the petitioners, Sixto Balinquit and Antonio Co and the private respondent, Jose Ong, Jr.

Respondent Ong was proclaimed the duly elected representative of the second district of Northern Samar.

The petitioners filed election protests against the private respondent premised on the following grounds:

- 1) Jose Ong, Jr. is not a natural born citizen of the Philippines; and
- 2) Jose Ong, Jr. is not a resident of the second district of Northern Samar.

The HRET, in its decision dated November 6, 1989, found for the private respondent.

A motion for reconsideration was filed by the petitioners on November 12, 1989. This was, however, denied by the HRET, in its resolution dated February 22, 1989.

Hence, these petitions for certiorari.

We treat the comments as answers and decide the issues raised in the petitions.

ON THE ISSUE OF JURISDICTION

The first question which arises refers to our jurisdiction.

The Constitution explicitly provides that the House of Representatives Electoral Tribunal (HRET) and the Senate Electoral Tribunal (SET) shall be the sole judges of all contests relating to the election, returns, and qualifications of their respective members. (See Article VI, Section 17, Constitution)

The authority conferred upon the Electoral Tribunal is full, clear and complete. The use of the word sole emphasizes the exclusivity of the jurisdiction of these Tribunals.

The Supreme Court in the case of *Lazatin v. HRET* (168 SCRA 391 [1988]) stated that under the 1987 Constitution, the jurisdiction of the Electoral Tribunal is original and exclusive, viz:

"The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred (*Angara v. Electoral Commission*, supra at p. 162). The exercise of power by the Electoral Commission under the 1935 Constitution has been described as 'intended to be as complete and unimpaired as if it had originally remained in the legislature.' (id., at p. 175) Earlier this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete; (*Veloso v. Board of Canvassers of Leyte and Samar*, 39 Phil. 886 [1919]) Under the amended 1935 Constitution, the power was unqualifiedly reposed upon the Electoral Tribunal and it remained as full, clear and complete as that previously granted the Legislature and the Electoral Commission, (*Lachica v. Yap*, 25 SCRA 140 [1968]) The same may be said with regard to the jurisdiction of the Electoral Tribunal under the 1987 Constitution." (P. 401)

The Court continued further, ". . . so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court . . . the power granted to the Electoral Tribunal is full, clear and complete and excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same." (pp. 403-404)

When may the Court inquire into acts of the Electoral Tribunals under our constitutional grants of power?

In the later case of *Robles v. HRET* (181 SCRA 780 [1990]) the Supreme Court stated that the judgments of the Tribunal are beyond judicial interference save only "in the exercise of this Court's so-called extraordinary jurisdiction, x x x 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 paraphrasing *Morrero*, 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 GRAVE ABUSE OF DISCRETION that there has to be a remedy for such abuse." (at pp. 785-786)

In the leading case of *Morrero v. Bocar*, (66 Phil. 429 [1938]) the Court ruled that the power of the Electoral Commission "is beyond judicial interference except, in any event, upon a clear showing of such arbitrary and improvident use of power as will constitute a denial of due process." The Court does not venture into the perilous area of trying to 'correct perceived errors of independent branches of the Government. It comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution calls for remedial action.

The Supreme Court under the 1987 Constitution, has been given an expanded jurisdiction, so to speak, to review the decisions of the other branches and agencies of the government to determine whether or not they have acted within the bounds of the Constitution. (See Article VIII, Section 1, Constitution)

Yet, in the exercise thereof, the Court is to merely check whether or not the governmental branch or agency has gone beyond the Constitutional limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing that the HRET has committed grave abuse of discretion amounting to lack of jurisdiction, there is no occasion for the Court to exercise its corrective power; it will not decide a matter which by its nature is for the HRET alone to decide. (See *Marcos v. Manglapus*, 177 SCRA 668 [1989]) It has no power to look into what it thinks is apparent error.

As constitutional creations invested with necessary power, the Electoral Tribunals, although not powers in the tripartite scheme of the government, are, in the exercise of their functions independent organs -- independent of Congress and the Supreme Court. The power granted to HRET by the Constitution is intended to be as complete

and unimpaired as if it had remained originally in the legislature. (Angara v. Electoral Commission, 63 Phil. 139 [1936])

In passing upon petitions, the Court with its traditional and careful regard for the balance of powers, must permit this exclusive privilege of the Tribunals to remain where the Sovereign authority has placed it. (See Veloso v. Boards of Canvassers of Leyte and Samar, 39 Phil. 886 [1919])

It has been argued that under Article VI, Section 17 of the present Constitution, the situation may exist as it exists today where there is an unhealthy one-sided political composition of the two Electoral Tribunals. There is nothing in the Constitution, however, that makes the HRET because of its composition any less independent from the Court or its constitutional functions any less exclusive. The degree of judicial intervention should not be made to depend on how many legislative members of the HRET belong to this party or that party. The test remains the same - manifest grave abuse of discretion.

In the case at bar, the Court finds no improvident use of power, no denial of due process on the part of the HRET which will necessitate the exercise of the power of judicial review by the Supreme Court.

ON THE ISSUE OF CITIZENSHIP

The records show that in the year 1895, the private respondent's grandfather, Ong Te, arrived in the Philippines from China. Ong Te established his residence in the municipality of Laoang, Samar on land which he bought from the fruits of hard work.

As a resident of Laoang, Ong Te was able to obtain a certificate of residence from the then Spanish colonial administration.

The father of the private respondent, Jose Ong Chuan was born in China in 1905. He was brought by Ong Te to Samar in the year 1915.

Jose Ong Chuan spent his childhood in the province of Samar. In Laoang, he was able to establish an enduring relationship with his neighbors, resulting in his easy assimilation into the community.

As Jose Ong Chuan grew older in the rural and sea-side community of Laoang, he absorbed Filipino cultural values and practices. He was baptized into Christianity. As the years passed, Jose Ong Chuan met a natural born--Filipina, Agripina Lao. The two fell in love and, thereafter, got married in 1932 according to Catholic faith and practice.

The couple bore eight children, one of whom is the private respondent who was born in 1948.

The private respondent's father never emigrated from this country. He decided to put up a hardware store and shared and survived the vicissitudes of life in Samar.

The business prospered. Expansion became inevitable. As a result, a branch was set-up in Binondo, Manila. In the meantime, the father of the private respondent, unsure of his legal status and in an unequivocal affirmation of where he cast his life and family, filed with the Court of First Instance of Samar an application for naturalization on February 15, 1954.

On April 28, 1955, the CFI of Samar, after trial, declared Jose Ong Chuan a Filipino citizen.

On May 15, 1957, the Court of First Instance of Samar issued an order declaring the decision of April 28, 1955 as final and executory and that Jose Ong Chuan may already take his Oath of Allegiance.

Pursuant to said order, Jose Ong Chuan took his Oath of Allegiance; correspondingly, a certificate of

naturalization was issued to him.

At the time Jose Ong Chuan took his oath, the private respondent then a minor of nine years was finishing his elementary education in the province of Samar. There is nothing in the records to differentiate him from other Filipinos insofar as the customs and practices of the local populace were concerned.

Fortunes changed. The house of the family of the private respondent in Laoang, Samar was burned to the ground.

Undaunted by the catastrophe, the private respondent's family constructed another one in place of their ruined house. Again, there is no showing other than that Laoang was their abode and home.

After completing his elementary education, the private respondent, in search for better education, went to Manila in order to acquire his secondary and college education.

In the meantime, another misfortune was suffered by the family in 1975 when a fire gutted their second house in Laoang, Samar. The respondent's family constructed still another house, this time a 16-door apartment building, two doors of which were reserved for the family.

The private respondent graduated from college, and thereafter took and passed the CPA Board Examinations.

Since employment opportunities were better in Manila, the respondent looked for work here. He found a job in the Central Bank of the Philippines as an examiner. Later, however, he worked in the hardware business of his family in Manila. In 1971, his elder brother, Emil, was elected as a delegate to the 1971 Constitutional Convention. His status as a natural born citizen was challenged. Parenthetically, the Convention which in drafting the Constitution removed the unequal treatment given to derived citizenship on the basis of the mother's citizenship formally and solemnly declared Emil Ong, respondent's full brother, as a natural born Filipino. The Constitutional Convention had to be aware of the meaning of natural born citizenship since it was precisely amending the article on this subject.

The private respondent frequently went home to Laoang, Samar, where he grew up and spent his childhood days.

In 1984, the private respondent married a Filipina named Desiree Lim.

For the elections of 1984 and 1986, Jose Ong, Jr. registered himself as a voter of Laoang, Samar, and correspondingly, voted there during those elections.

The private respondent after being engaged for several years in the management of their family business decided to be of greater service to his province and ran for public office. Hence, when the opportunity came in 1987, he ran in the elections for representative in the second district of Northern Samar.

Mr. Ong was overwhelmingly voted by the people of Northern Samar as their representative in Congress. Even if the total votes of the two petitioners are combined, Ong would still lead the two by more than 7,000 votes.

The pertinent portions of the Constitution found in Article IV read:

"SECTION 1, the following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of the Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.

SECTION 2, Natural-born Citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship. Those who elect Philippine citizenship in accordance with paragraph 3 hereof shall be deemed natural-born citizens."

The Court interprets Section 1, Paragraph 3 above as applying not only to those who elect Philippine citizenship after February 2, 1987 but also to those who, having been born of Filipino mothers, elected citizenship before that date.

The provision in Paragraph 3 was intended to correct an unfair position which discriminates against Filipino women. There is no ambiguity in the deliberations of the Constitutional Commission, viz:

"Mr. Azcuna: With respect to the provision of section 4, would this refer only to those who elect Philippine citizenship after the effectivity of the 1973 Constitution or would it also cover those who elected it under the 1973 Constitution?

Fr. Bernas: It would apply to anybody who elected Philippine citizenship by virtue of the provision of the 1935 Constitution whether the election was done before or after January 17, 1973." (Records of the Constitutional Commission, Vol. 1, p. 228; Emphasis supplied)

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"Mr. Trenas: The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights has more or less decided to extend the interpretation of who is a natural-born citizen as provided in section 4 of the 1973 Constitution by adding that persons who have elected Philippine Citizenship under the 1935 Constitution shall be natural-born? Am I right Mr. Presiding Officer?

Fr. Bernas: yes."

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"Mr. Nollado: And I remember very well that in the Reverend Father Bernas' well written book, he said that the decision was designed merely to accommodate former delegate Ernesto Ang and that the definition on natural-born has no retroactive effect. Now it seems that the Reverend Father Bernas is going against this intention by supporting the amendment?

Fr. Bernas: As the Commissioner can see, there has been an evolution in my thinking. (Records of the Constitutional Commission, Vol. 1, p. 189)

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"Mr. Rodrigo: But this provision becomes very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen entitling him to run for Congress. . .

Fr. Bernas: Correct. We are quite aware of that and for that reason we will leave it to the body to approve that provision of section 4.

Mr. Rodrigo: I think there is a good basis for the provision because it strikes me as unfair that the Filipino citizen who was born a day before January 17, 1973 cannot be a Filipino citizen or a natural-born citizen." (Records of the Constitutional Commission, Vol. 1, p. 231)

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"Mr. Rodrigo: The purpose of that provision is to remedy an inequitable situation. Between 1935 and 1973 when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers would have to elect Philippine citizenship upon reaching the age of majority; and if they do elect, they become Filipino citizens but not natural-born

Filipino citizens." (Records of the Constitutional Commission, Vol. 1, p. 356)

The foregoing significantly reveals the intent of the framers. To make the provision prospective from February 3, 1987 is to give a narrow interpretation resulting in an inequitable situation. It must also be retroactive.

It should be noted that in construing the law, the Courts are not always to be hedged in by the literal meaning of its language. The spirit and intendment thereof, must prevail over the letter, especially where adherence to the latter would result in absurdity and injustice. (Casela v. Court of Appeals, 35 SCRA 279 [1970])

A Constitutional provision should be construed so as to give it effective operation and suppress the mischief at which it is aimed, hence, it is the spirit of the provision which should prevail over the letter thereof. (Jarrolt v. Mabblerly, 103 U.S. 580)

In the words of the Court in the case of J.M. Tuason v. LTA (31 SCRA 413 [1970]):

"To that primordial intent, all else is subordinated. Our Constitution, any constitution is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form but are organic living institutions, the significance of which is vital not formal. . . ." (p. 427)

The provision in question was enacted to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born.

Under the 1973 Constitution, those born of Filipino fathers and those born of Filipino mothers with an alien father were placed on equal footing. They were both considered as natural-born citizens.

Hence, the bestowment of the status of "natural-born" cannot be made to depend on the fleeting accident of time or result in two kinds of citizens made up of essentially the same similarly situated members.

It is for this reason that the amendments were enacted, that is, in order to remedy this accidental anomaly, and, therefore, treat equally all those born before the 1973 Constitution and who elected Philippine citizenship either before or after the effectivity of that Constitution.

The Constitutional provision in question is, therefore curative in nature. The enactment was meant to correct the inequitable and absurd situation which then prevailed, and thus, render those acts valid which would have been nil at the time had it not been for the curative provisions. (See Development Bank of the Philippines v. Court of Appeals, 96 SCRA 342 [1980])

There is no dispute that the respondent's mother was a natural born Filipina at the time of her marriage. Crucial to this case is the issue of whether or not the respondent elected or chose to be a Filipino citizen.

Election becomes material because Section 2 of Article IV of the Constitution accords natural born status to children born of Filipino mothers before January 17, 1973, if they elect citizenship upon reaching the age of majority.

To expect the respondent to have formally or in writing elected citizenship when he came of age is to ask for the unnatural and unnecessary. The reason is obvious. He was already a citizen. Not only was his mother a natural born citizen but his father had been naturalized when the respondent was only nine (9) years old. He could not have divined when he came of age that in 1973 and 1987 the Constitution would be amended to require him to have filed a sworn statement in 1969 electing citizenship inspite of his already having been a citizen since 1957.

In 1969, election through a sworn statement would have been an unusual and unnecessary procedure for one who had been a citizen since he was nine years old.

We have jurisprudence that defines "election" as both a formal and an informal process.

In the case of *In Re: Florencio Mallare* (59 SCRA 45 [1974]), the Court held that the exercise of the right of suffrage and the participation in election exercises constitute a positive act of election of Philippine citizenship. In the exact pronouncement of the Court, we held:

Esteban's exercise of the right of suffrage when he came of age, constitutes a positive act of election of Philippine citizenship". (p. 52; emphasis supplied)

The private respondent did more than merely exercise his right of suffrage. He has established his life here in the Philippines.

For those in the peculiar situation of the respondent who cannot be expected to have elected citizenship as they were already citizens, we apply the *In Re Mallare* rule.

The respondent was born in an outlying rural town of Samar where there are no alien enclaves and no racial distinctions. The respondent has lived the life of a Filipino since birth. His father applied for naturalization when the child was still a small boy. He is a Roman Catholic. He has worked for a sensitive government agency. His profession requires citizenship for taking the examinations and getting a license. He has participated in political exercises as a Filipino and has always considered himself a Filipino citizen. There is nothing in the records to show that he does not embrace Philippine customs - and values, nothing to indicate any tinge of alien-ness, no acts to show that this country is not his natural homeland. The mass of voters of Northern Samar are fully aware of Mr. Ong's parentage. They should know him better than any member of this Court will ever know him. They voted by overwhelming numbers to have him represent them in Congress. Because of his acts since childhood, they have considered him as a Filipino.

The filing of a sworn statement or formal declaration is a requirement for those who still have to elect citizenship. For those already Filipinos when the time to elect came up, there are acts of deliberate choice which cannot be less binding. Entering a profession open only to Filipinos, serving in public office where citizenship is a qualification, voting during election time, running for public office, and other categorical acts of similar nature are themselves formal manifestations of choice for these persons.

An election of Philippine citizenship presupposes that the person electing is an alien. Or his status is doubtful because he is a national of two countries. There is no doubt in this case about Mr. Ong's being a Filipino when he turned twenty-one (21).

We repeat that any election of Philippine citizenship on the part of the private respondent would not only have been superfluous but it would also have resulted in an absurdity. How can a Filipino citizen elect Philippine citizenship?

The respondent HRET has an interesting view as to how Mr. Ong elected citizenship. It observed that "when protestee was only nine years of age, his father, Jose Ong Chuan became a naturalized Filipino. Section 15 of the Revised Naturalization Act squarely applies its benefit to him for he was then a minor residing in this country. Concededly, it was the law itself that had already elected Philippine citizenship for protestee by declaring him as such." (Emphasis supplied)

The petitioners argue that the respondent's father was not, validly, a naturalized citizen because of his premature taking of the oath of citizenship.

The Court cannot go into the collateral procedure of stripping Mr. Ong's father of his citizenship after his death and at this very late date just so we can go after the son.

The petitioners question the citizenship of the father through a collateral approach. This can not be done. In our jurisdiction, an attack on a person's citizenship may only be done through a direct action for its nullity. (See *Queto v. Catolico*, 31 SCRA 52 [1970])

To ask the Court to declare the grant of Philippine citizenship to Jose Ong Chuan as null and void would run against the principle of due process. Jose Ong Chuan has already been laid to rest. How can he be given a fair opportunity to defend himself. A dead man cannot speak. To quote the words of the HRET: "Ong Chuan's lips have long been muted to perpetuity by his demise and obviously he could not rise beyond where his mortal remains now lie to defend himself were this matter to be made a central issue in this case."

The issue before us is not the nullification of the grant of citizenship to Jose Ong Chuan. Our function is to determine whether or not the HRET committed abuse of authority in the exercise of its powers. Moreover, the respondent traces his natural born citizenship through his mother, not through the citizenship of his father. The citizenship of the father is relevant only to determine whether or not the respondent "chose" to be a Filipino when he came of age. At that time and up to the present, both mother and father were Filipinos. Respondent Ong could not have elected any other citizenship unless he first formally renounced Philippine citizenship in favor of a foreign nationality. Unlike other persons faced with a problem of election, there was no foreign nationality of his father which he could possibly have chosen.

There is another reason why we cannot declare the HRET as having committed manifest grave abuse of discretion. The same issue of natural-born citizenship has already been decided by the Constitutional Convention of 1971 and by the Batasang Pambansa convened by authority of the Constitution drafted by that Convention. Emil Ong, full blood brother of the respondent, was declared and accepted as a natural born citizen by both bodies.

Assuming that our opinion is different from that of the Constitutional Convention, the Batasang Pambansa, and the respondent HRET, such a difference could only be characterized as error. There would be no basis to call the HRET decision so arbitrary and whimsical as to amount to grave abuse of discretion.

What was the basis for the Constitutional Convention's declaring Emil Ong a natural born citizen?

Under the Philippine Bill of 1902, inhabitants of the Philippines who were Spanish subjects on the 11th day of April 1899 and then residing in said islands and their children born subsequent thereto were conferred the status of a Filipino citizen.

Was the grandfather of the private respondent a Spanish subject?

Article 17 of the Civil Code of Spain enumerates those who were considered Spanish Subjects, viz:

"ARTICLE 17. The following are Spaniards:

1. Persons born in Spanish territory.
2. Children born of a Spanish father or mother, even though they were born out of Spain.
3. Foreigners who may have obtained naturalization papers.
4. Those without such papers, who may have acquired domicile in any town in the Monarchy." (Emphasis supplied)

The domicile of a natural person is the place of his habitual residence. This domicile, once established is considered to continue and will not be deemed lost until a new one is established. (Article 50, NCC; Article 40, Civil Code of Spain; *Zuellig v. Republic*, 83 Phil. 768 [1949])

As earlier stated, Ong Te became a permanent resident of Laoang, Samar around 1895. Correspondingly, a certificate of residence was then issued to him by virtue of his being a resident of Laoang, Samar. (Report of the Committee on Election Protests and Credentials of the 1971 Constitutional Convention, September 7, 1972, p. 3)

The domicile that Ong Te established in 1895 continued until April 11, 1899; it even went beyond the turn of the 19th century. It is also in this place where Ong Te set-up his business and acquired his real property.

As concluded by the Constitutional Convention, Ong Te falls within the meaning of sub-paragraph 4 of Article 17 of the Civil Code of Spain.

Although Ong Te made brief visits to China, he, nevertheless, always returned to the Philippines. The fact that he died in China, during one of his visits in said country, was of no moment. This will not change the fact that he already had his domicile fixed in the Philippines and pursuant to the Civil Code of Spain, he had become a Spanish subject.

If Ong Te became a Spanish subject by virtue of having established his domicile in a town under the Monarchy of Spain, necessarily, Ong Te was also an inhabitant of the Philippines for an inhabitant has been defined as one who has actual fixed residence in a place; one who has a domicile in a place. (Bouvier's Law Dictionary, Vol. II) A priori, there can be no other logical conclusion but to educe that Ong Te qualified as a Filipino citizen under the provisions of section 4 of the Philippine Bill of 1902.

The HRET itself found this fact of absolute verity in concluding that the private respondent was a natural-born Filipino.

The petitioners' sole ground in disputing this fact is that the documents presented to prove it were not in compliance with the best evidence rule. The petitioners allege that the private respondent failed to present the original of the documentary evidence, testimonial evidence and of the transcript of the proceedings of the body upon which the aforesaid resolution of the 1971 Constitutional Convention was predicated.

On the contrary, the documents presented by the private respondent fall under the exceptions to the best evidence rule.

It was established in the proceedings before the HRET that the originals of the Committee Report No. 12, the minutes of the plenary session of 1971 Constitutional Convention held on November 28, 1972 cannot be found.

This was affirmed by Atty. Ricafrente, Assistant Secretary of the 1971 Constitutional Convention; by Atty. Nollado, Delegate to the 1971 Constitutional Convention; and by Atty. Antonio Santos, Chief Librarian of the U. P. Law Center, in their respective testimonies given before the HRET to the effect that there is no governmental agency which is the official custodian of the records of the 1971 Constitutional Convention. (TSN, December 12, 1988, pp. 30-31; TSN, January 17, 1989, pp. 34-35; TSN, February 1, 1989, p. 44; TSN, February 6, 1989, pp. 28-29)

The execution of the originals was established by Atty. Ricafrente, who as the Assistant Secretary of the 1971 Constitutional Convention was the proper party to testify to such execution. (TSN, December 12, 1989, pp. 11-24)

The inability to produce the originals before the HRET was also testified to as aforesaid by Atty. Ricafrente, Atty. Nollado, and Atty. Santos. In proving the inability to produce, the law does not require the degree of proof to be of sufficient certainty; it is enough that it be shown that after a bona fide diligent search, the same cannot be

found. (see *Government of P. I. v. Martinez*, 44 Phil. 817 [1918])

Since the execution of the document and the inability to produce were adequately established, the contents of the questioned documents can be proven by a copy thereof or by the recollection of witnesses.

Moreover, to erase all doubts as to the authenticity of the documentary evidence cited in the Committee Report, the former member of the 1971 Constitutional Convention, Atty. Nollado, when he was presented as a witness in the hearing of the protest against the private respondent, categorically stated that he saw the disputed documents presented during the hearing of the election protest against the brother of the private respondent. (TSN, February 1, 1989, pp. 8--9)

In his concurring opinion, Mr. Justice Sarmiento, a vice-president of the Constitutional Convention, states that he was presiding officer of the plenary session which deliberated on the report on the election protest against Delegate Emil Ong. He cites a long list of names of delegates present. Among them are Mr. Chief Justice Fernan, and Mr. Justice Davide, Jr. The petitioners could have presented any one of the long list of delegates to refute Mr. Ong's having been declared a natural-born citizen. They did not do so. Nor did they demur to the contents of the documents presented by the private respondent. They merely relied on the procedural objections respecting the admissibility of the evidence presented.

The Constitutional Convention was the sole judge of the qualifications of Emil Ong to be a member of that body. The HRET, by explicit mandate of the Constitution, is the sole judge of the qualifications of Jose Ong, Jr. to be a member of Congress. Both bodies deliberated at length on the controversies over which they were sole judges. Decisions were arrived at only after a full presentation of all relevant factors which the parties wished to present. Even assuming that we disagree with their conclusions, we cannot declare their acts as committed with grave abuse of discretion. We have to keep clear the line between error and grave abuse.

ON THE ISSUE OF RESIDENCE

The petitioners question the residence qualification of respondent Ong.

The petitioners lose sight of the meaning of "residence" under the Constitution. The term "residence" has been understood as synonymous with domicile not only under the previous Constitutions but also under the 1987 Constitution.

The deliberations of the Constitutional Commission reveal that the meaning of residence vis-a-vis the qualifications of a candidate for Congress continues to remain the same as that of domicile, to wit:

"Mr. Nollado: With respect to Section 5, I remember that in the 1971 Constitutional Convention, there was an attempt to require residence in the place not less than one year immediately preceding the day of the elections. So my question is: What is the Committee's concept of residence of a candidate for the legislature? Is it actual residence or is it the concept of domicile or constructive residence?

Mr. Davide: Madame President, insofar as the regular members of the National Assembly are concerned, the proposed section merely provides, among others, 'and a resident thereof', that is, in the district, for a period of not less than one year preceding the day of the election. This was in effect lifted from the 1973 Constitution, the interpretation given to it was domicile." (Records of the 1987 Constitutional Convention, Vol. II, July 22, 1986, p. 87)

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"Mrs. Rosario Braid: The next question is on Section 7, page 2. I think Commissioner Nollado has raised the same point that 'resident' has been interpreted at times as a matter of intention rather than actual residence.

Mr. De los Reyes: Domicile.

Ms. Rosario Braid: Yes. So, would the gentlemen consider at the proper time to go back to actual residence rather than mere intention to reside?

Mr. Delos Reyes: But we might encounter some difficulty especially considering that a provision in the Constitution in the Article on Suffrage says that Filipinos living abroad may vote as enacted by law. So, we have to stick to the original concept that it should be by domicile and not physical and actual residence." (Records of the 1987 Constitutional Commission, Vol II, July 22, 1986, p. 110)

The framers of the Constitution adhered to the earlier definition given to the word "residence" which regarded it as having the same meaning as domicile.

The term "domicile" denotes a fixed permanent residence to which when absent for business or pleasure, one intends to return. (Ong Huan Tin v. Republic, 19 SCRA 966 [1967]) The absence of a person from said permanent residence, no matter how long, notwithstanding, it continues to be the domicile of that person. In other words, domicile is characterized by *animus revertendi*. (Ujano v. Republic, 17 SCRA 147 [1966])

The domicile of origin of the private respondent, which was the domicile of his parents, is fixed at Laoang, Samar. Contrary to the petitioners' imputation, Jose Ong, Jr. never abandoned said domicile; it remained fixed therein even up to the present.

The private respondent, in the proceedings before the HRET, sufficiently established that after the fire that gutted their house in 1961, another one was constructed.

Likewise, after the second fire which again destroyed their house in 1975, a sixteen-door apartment was built by their family, two doors of which were reserved as their family residence. (TSN, Jose Ong, Jr., November 18, 1988, p. 8)

The petitioners' allegation that since the private respondent owns no property in Laoang, Samar, he cannot, therefore, be a resident of said place is misplaced.

The properties owned by the Ong family are in the name of the private respondent's parents. Upon the demise of his parents, necessarily, the private respondent, pursuant to the laws of succession, became the co-owner thereof (as a co-heir), notwithstanding the fact that these were still in the names of his parents.

Even assuming that the private respondent does not own any property in Samar, the Supreme Court in the case of *De los Reyes v. Solidum* (61 Phil. 893 [1935]) held that it is not required that a person should have a house in order to establish his residence and domicile. It is enough that he should live in the municipality or in a rented house or in that of a friend or relative. (Emphasis supplied)

To require the private respondent to own property in order to be eligible to run for Congress would be tantamount to a property qualification. The Constitution only requires that the candidate meet the age, citizenship, voting and residence requirements. Nowhere is it required by the Constitution that the candidate should also own property in order to be qualified to run. (see *Maquera v. Borra*, 122 Phil. 412 [1965])

It has also been settled that absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence. (*Faypon v. Quirino*, 96 Phil. 294 [1954])

As previously stated, the private respondent stayed in Manila for the purpose of finishing his studies and later to practice his profession. There was no intention to abandon the residence in Laoang, Samar. On the contrary, the

periodical journeys made to his home province reveal that he always had the animus revertendi.

The Philippines is made up not only of a single race; it has, rather, undergone an interracial evolution. Throughout our history, there has been a continuing influx of Malays, Chinese, Americans, Japanese, Spaniards and other nationalities. This racial diversity gives strength to our country.

Many great Filipinos have not been whole-blooded nationals, if there is such a person, for there is none. To mention a few, the great Jose Rizal was part Chinese, the late Chief Justice Claudio Teehankee was part Chinese, and of course our own President, Corazon Aquino is also part Chinese. Verily, some Filipinos of whom we are proud were ethnically more Chinese than the private respondent.

Our citizens no doubt constitute the country's greatest wealth. Citizenship is a special privilege which one must forever cherish.

However, in order to truly revere this treasure of citizenship, we do not, on the basis of too harsh an interpretation, have to unreasonably deny it to those who qualify to share in its richness.

Under the overly strict jurisprudence surrounding our antiquated naturalization laws only the very affluent backed by influential patrons, who were willing to suffer the indignities of a lengthy, sometimes humiliating, and often corrupt process of clearances by minor bureaucrats and whose lawyers knew how to overcome so many technical traps of the judicial process were able to acquire citizenship. It is time for the naturalization law to be revised to enable a more positive, affirmative, and meaningful examination of an applicant's suitability to be a Filipino. A more humane, more indubitable and less technical approach to citizenship problems is essential.

WHEREFORE, the petitions are hereby DISMISSED. The questioned decision of the House of Representatives Electoral Tribunal is AFFIRMED. Respondent Jose Ong, Jr. is declared a natural-born citizen of the Philippines and a resident of Laoang, Northern Samar.

SO ORDERED.

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

Fernan, C.J., no part, former member of HRET.

Narvasa, Paras, and Regalado, JJ., joins J. Padilla in his dissenting opinion.

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

Cruz, J., no part, member of the HRET.

Feliciano and Gancayco, JJ., no part.

Padilla, J., see dissenting opinion.

Sarmiento, J., see concurring opinion.

Co vs HRET : 92191-92 : July 30, 1991 : J. Padilla : En Banc : Dissenting Opinion Normal Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshadow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

PADILLA, J.:

I dissent.

These separate petitions for certiorari and mandamus seek to annul the decision* of respondent House of Representatives Electoral Tribunal (hereinafter referred to as the tribunal) dated 6 November 1989 which declared private respondent Jose L. Ong, a natural-born citizen of the Philippines and a legal resident of Laoang, Northern Samar, and the resolution of the tribunal dated 22 February 1990 denying petitioners' motions for reconsideration.

In G.R. Nos. 92191-92, petitioner Co also prays that the Court declare private respondent Ong not qualified to be a Member of the House of Representatives and to declare him (petitioner Co) who allegedly obtained the highest number of votes among the qualified candidates, the duly elected representative of the second legislative district of Northern Samar.

In G.R. Nos. 92202-03, petitioner Balanquit prays that the Court declare private respondent Ong and Co (petitioner in G.R. Nos. 92191-92) not qualified for membership in the House of Representatives and to proclaim him (Balanquit) as the duly elected representative of said district.

Petitioners Antonio Y. Co, Sixto T. Balanquit, Jr. and private respondent Jose Ong Chuan, Jr. were among the candidates for the position of Representative or Congressman for the second district of Northern Samar during the 11 May 1987 congressional elections. Private respondent was proclaimed duly-elected on 18 May 1987 with a plurality of some sixteen thousand (16,000) votes over petitioner Co who obtained the next highest number of votes.

Petitioners Co and Balanquit then filed separate election protests against private respondent with the tribunal, docketed as HRET Cases Nos. 13 and 15 respectively. Both protests raised almost the same issues and were thus considered and decided jointly by the tribunal.

The issues raised before the tribunal were the following:

1. Whether or not protestee (meaning, Ong) is a natural-born citizen of the Philippines in contemplation of Section 6, Article VI of the 1987 Constitution in relation to Sections 2 and 1(3), Article IV thereof; and
2. Whether or not protestee was a resident of Laoang, Northern Samar, in contemplation of Section 6, Article VI of the same Constitution, for a period of not less than one year immediately preceding the congressional elections of May 1987.

The respondent tribunal in its decision dated 6 November 1989 held that respondent Jose L. Ong is a natural-born citizen of the Philippines and was a legal resident of Laoang, Northern Samar for the required period prior to the May 1987 congressional elections. He was, therefore, declared qualified to continue in office as Member of the House of Representatives, Congress of the Philippines, representing the second legislative district of Northern Samar.

The factual antecedents taken from the consolidated proceedings in the tribunal are the following:

- “1. The Protestee (Ong) was born on June 19, 1948 to the legal spouses Ong Chuan also known as Jose Ong Chuan and Agrifina E. Lao. His place of birth is Laoang which is now one of the municipalities comprising the province of Northern Samar (Republic Act No. 6132 approved on August 24, 1970 and the Ordinance appended to the 1987 Constitution).
- “2. On the other hand, Jose Ong Chuan was born in China and arrived in Manila on December 16, 1915. (Exhibit zz) Subsequently thereafter, he took up residence in Laoang, Samar.

"3. On February 4, 1932, he married Agrifina E. Lao. Their wedding was celebrated according to the rites and practices of the Roman Catholic Church in the Municipality of Laoang (Exh. E).

"4. At the time of her marriage to Jose Ong Chuan, Agrifina E. Lao was a natural-born Filipino citizen, both her parents at the time of her birth being Filipino citizens. (Exhibits E & I)

"5. On February 15, 1954, Jose Ong Chuan, desiring to acquire Philippine citizenship, filed his petition for naturalization with the Court of First Instance of Samar, pursuant to Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law.

"6. On April 28, 1955, the Court of First Instance of Samar rendered a decision approving the application of Jose Ong Chuan for naturalization and declaring said petitioner a Filipino citizen "with all the rights and privileges and duties, liabilities and obligations inherent to Filipino citizens. (Exh. E)

"7. On May 15, 1957, the same Court issued an order:

'(1) declaring the decision of this Court of April 28, 1955 final and executory;

'(2) directing the clerk of court to issue the corresponding Certificate of Naturalization in favor of the applicant Ong Chuan who prefers to take his oath and register his name as Jose Ong Chuan. Petitioner may take his oath as Filipino citizen under his new christian name, Jose Ong Chuan.' (Exh. F)

"8. On the same day, Jose Ong Chuan having taken the corresponding oath of allegiance to the Constitution and the Government of the Philippines as prescribed by Section 12 of Commonwealth Act No. 473, was issued the corresponding Certificate of Naturalization. (Exh. G)

"9. On November 10, 1970, Emil L. Ong, a full-brother of the protestee and a son born on July 25, 1937 at Laoang, Samar to the spouses Jose Ong Chuan and Agrifina E. Lao, was elected dele-gate from Northern Samar to the 1971 Consti-tutional Convention.

"10. By protestee's own testimony, it was established that he had attended grade school in Laoang. Thereafter, he went to Manila where he finished his secondary as well as his college education. While later employed in Manila, protestee however went home to Laoang whenever he had the opportunity to do so which invariably would be as frequent as twice to four times a year.

"11. Protestee also showed that being a native and legal resident of Laoang, he registered as a voter therein and correspondingly voted in said municipality in the 1984 and 1986 elections.

"12. Again in December 1986, during the general re-registration of all voters in the country, Protestee registered as a voter in Precinct No. 4 of Barangay Tumaguining in Laoang. In his voter's affidavit, Protestee indicated that he is a resident of Laoang since birth." (Exh. 7)[1]

Petitioners' motions for reconsideration of the tribunal's decision having been denied, petitioners filed the present petitions.

In their comments, the respondents first raise the issue of the Court's jurisdiction to review the decision of the House Electoral Tribunal, considering the constitutional provision vesting upon said tribunal the power and authority to act as the sole judge of all contests relating to the qualifications of the Members of the House of Represen-tatives.[2]

On the question of this Court's jurisdiction over the present controversy, I believe that, contrary to the respondents' contentions, the Court has the jurisdiction and competence to review the questioned decision of the tribunal and to decide the present controversy.

Article VIII, Section 1 of the 1987 Constitution provides that:

"Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

The Constitution, it is true, constitutes the tribunal as the sole judge of all contests relating to the election, returns, and qualifications of Members of the House of Representatives. But as early as 1938, it was held in *Morrero vs. Bocar*,^[3] construing Section 4, Article VI of the 1935 Constitution which provided that "x x x 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," that:

"The judgment rendered by the (electoral) commission in the exercise of such an acknowledged power is beyond judicial interference, except, in any event, 'upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law.' (*Barry vs. US ex rel. Cunningham*, 279 US 597; 73 Law. ed., 867; *Angara vs. Electoral Commission*, 35 Off. Gaz., 23.)"

And then under the afore-quoted provisions of Article VIII, Section 1 of the 1987 Constitution, this Court is duty-bound to determine whether or not, in an actual controversy, there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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.

Besides, the citizenship and residence qualifications of private respondent for the office of Member of the House of Representatives, are here controverted by petitioners who, at the same time, claim that they are entitled to the office illegally held by private respondent. From this additional direction, where one asserts an earnestly perceived right that in turn is vigorously resisted by another, there is clearly a justiciable controversy proper for this Court to consider and decide.

Nor can it be said that the Court, in reviewing the decision of the tribunal, asserts supremacy over it in contravention of the time-honored principle of constitutional separation of powers. The Court in this instance simply performs a function entrusted and assigned to it by the Constitution of interpreting, in a justiciable controversy, the pertinent provisions of the Constitution with finality.

"It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government, almost always in situations where some agency of the State has engaged in action that stems ultimately from some legitimate area of governmental power (the Supreme Court in *Modern Role*, C.B. Seviser, 1958, p. 36)."[4]

Moreover, it is decidedly a matter of great public interest and concern to determine whether or not private respondent is qualified to hold so important and high a public office which is specifically reserved by the

Constitution only to natural-born Filipino citizens.

After a careful consideration of the issues and the evidence, it is my considered opinion that the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its questioned decision and resolution, for reasons to be presently stated.

The Constitution[5] requires that a Member of the House of Representatives must be a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five (25) years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one (1) year immediately preceding the day of the election.

Article IV, Section 2 of the 1987 Constitution defines natural-born (Filipino) citizens as:

"Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizen."

Article IV, Section 1, paragraph (3) of the 1987 Constitution provides that:

"Section 1. The following are citizens of the Philippines:

x x x

"(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority."

The Court in this case is faced with the duty of interpreting the above-quoted constitutional provisions. The first sentence of Section 2 of Article IV states the basic definition of a natural-born Filipino citizen. Does private respondent fall within said definition?

To the respondent tribunal,

"Protestee may even be declared a natural-born citizen of the Philippines under the first sentence of Sec. 2 of Article IV of the 1987 Constitution because he did not have 'to perform any act to acquire or perfect his Philippine citizenship.' It bears to repeat that on 15 May 1957, while still a minor of 9 years he already became a Filipino citizen by declaration of law. Since his mother was a natural-born citizen at the time of her marriage, protestee had an inchoate right to Philippine citizenship at the moment of his birth and, consequently the declaration by virtue of Sec. 15 of CA 473 that he was a Filipino citizen retroacted to the moment of his birth without his having to perform any act to acquire or perfect such Philippine citizenship."[6]

I regret that I am neither convinced nor persuaded by such kaleidoscopic ratiocination. The records show that private respondent was born on 19 June 1948 to the spouses Jose Ong Chuan, a Chinese citizen, and Agrifina E. Lao, a natural-born Filipino citizen, in Laoang, Northern Samar. In other words, at birth, private respondent was a Chinese citizen (not a natural-born Filipino citizen) because his father was then a Chinese citizen (not a naturalized Filipino citizen). Under the 1935 Constitution which was enforced at the time of private respondent's birth on 19 June 1948, only those whose fathers were citizens of the Philippines were considered Filipino citizens. Those whose mothers were citizens of the Philippines had to elect Philippine citizenship upon reaching the age of majority, in order to be considered Filipino citizens.[7]

Following the basic definition in the 1987 Constitution of a natural-born citizen, in relation to the 1935 Constitution, private respondent is not a natural-born Filipino citizen, having been born a Chinese citizen by virtue of the Chinese citizenship of his father at the time of his birth, although from birth, private respondent had the right to elect Philippine citizenship, the citizenship of his mother, but only upon his reaching the age of

majority.

While under Section 15 of the Revised Naturalization Law (C.A. 473) minor children of a naturalized citizen (father), who were born in the Philippines prior to the naturalization of the parent automatically become Filipino citizens,[8] this does not alter the fact that private respondent was not born to a Filipino father, and the operation of Section 15 of CA 473 did not confer upon him the status of a natural-born citizen merely because he did not have to perform any act to acquire or perfect his status as a Filipino citizen.

But even assuming arguendo that private respondent could be considered a natural-born citizen by virtue of the operation of CA 473, petitioners however contend that the naturalization of private respondent's father was invalid and void from the beginning, and, therefore, private respondent is not even a Filipino citizen.

Respondent tribunal in its questioned decision ruled that only a direct proceeding for nullity of naturalization as a Filipino citizen is permissible, and, therefore, a collateral attack on Ong Chuan's naturalization is barred in an electoral contest which does not even involve him (Ong Chuan).

Private respondent, for his part, avers in his Comment that the challenge against Ong Chuan's naturalization must emanate from the Government and must be made in a proper/appropriate and direct proceeding for de-naturalization directed against the proper party, who in such case is Ong Chuan, and also during his lifetime.

A judgment in a naturalization proceeding is not, however, afforded the character of impregnability under the principle of *res judicata*. [9] Section 18 of CA 473 provides that a certificate of naturalization may be cancelled upon motion made in the proper proceeding by the Solicitor General or his representative, or by the proper provincial fiscal.

In *Republic vs. Go Bon Lee*, [10] this Court held that:

"An alien friend is offered under certain conditions the privilege of citizenship. He may accept the offer and become a citizen upon compliance with the prescribed conditions, but not otherwise. His claim is of favor, not of right. He can only become a citizen upon and after a strict compliance with the acts of Congress. An applicant for this high privilege is bound, therefore, to conform to the terms upon which alone the right he seeks can be conferred. It is his province, and he is bound, to see that the jurisdictional facts upon which the grant is predicated actually exist, and if they do not he takes nothing by this paper grant.

x x x

"Congress having limited this privilege to a specified class of persons, no other person is entitled to such privilege, nor to a certificate purporting to grant it, and any such certificate issued to a person not so entitled to receive it must be treated as a mere nullity, which confers no legal rights as against the government, from which it has been obtained without warrant of law."

"Naturalization is not a right, but a privilege of the most discriminating as well as delicate and exacting nature, affecting public interest of the highest order, and which may be enjoyed only under the precise conditions prescribed by law therefor." [11]

Considering the legal implications of the allegation made by the petitioners that the naturalization of private respondent's father Ong Chuan, is a nullity, the Court should make a ruling on the validity of said naturalization proceedings. This course of action becomes all the more inevitable and justified in the present case where, to repeat for stress, it is claimed that a foreigner is holding a public office. [12]

It cannot be overlooked, in this connection, that the citizenship of private respondent is derived from his father. If his father's Filipino citizenship is void from the beginning, then there is nothing from which private respondent

can derive his own claimed Filipino citizenship. For a spring cannot rise higher than its source. And to allow private respondent to avail of the privileges of Filipino citizenship by virtue of a void naturalization of his father, would constitute or at least sanction a continuing offense against the Constitution.

The records show that private respondent's father, Jose Ong Chuan, took the oath of allegiance to the Constitution and the Philippine Government, as prescribed by Section 12 of CA 473 on the same day (15 May 1957) that the CFI issued its order directing the clerk of court to issue the corresponding Certificate of Naturalization and for the applicant to take the oath of allegiance.

However, it is settled that an order granting a petition to take the requisite oath of allegiance of one who has previously obtained a decision favorable to his application for naturalization, is appealable. It is, therefore, improper and illegal to authorize the taking of said oath upon the issuance of said order and before the expiration of the reglementary period to perfect any appeal from said order.[13]

In *Cua Sun Ke vs. Republic*,[14] this Court held that:

"Administration of the oath of allegiance on the same day as issuance of order granting citizenship is irregular and makes the proceedings so taken null and void. (*Republic vs. Guy*, 115 SCRA 244 [1982]; citing the case of *Ong So vs. Republic of the Philippines*, 121 Phil. 1381)."

It would appear from the foregoing discussion that the naturalization of Jose Ong Chuan (private respondent's father) was null and void. It follows that the private respondent did not acquire any legal rights from the void naturalization of his father and thus he cannot himself be considered a Filipino citizen, more so, a natural-born Filipino citizen.

But assuming that the CFI order of 15 May 1957 directing the clerk of court to issue the certificate of naturalization to Ong Chuan and for the latter to take the oath of allegiance was final and not appealable, the resulting naturalization of Ong Chuan effected, as previously stated, an automatic naturalization of private respondent, then a minor, as a Filipino citizen on 15 May 1957, but not his acquisition or perfection of the status of a natural-born Filipino citizen.

Let us now look into the question of whether or not private respondent acquired the status of a natural-born Filipino citizen by reason of the undisputed fact that his mother was a natural-born Filipino citizen. This in turn leads us to an examination of the second sentence in Article IV, Section 2 of the 1987 Constitution. It expands, in a manner of speaking, in relation to Section 1, paragraph (3) of the same Article IV, the status of a natural-born Filipino citizen to those who elect Philippine citizenship upon reaching the age of majority. The right or privilege of election is available, however, only to those born to Filipino mothers under the 1935 Constitution, and before the 1973 Constitution took effect on 17 January 1973.

The petitioners contend that the respondent tribunal acted in excess of its jurisdiction or gravely abused its discretion as to exceed its jurisdiction in "distorting" the conferment by the 1987 Constitution of the status of "natural-born" Filipino citizen on those who elect Philippine citizenship - all in its strained effort, according to petitioners, to support private respondent's qualification to be a Member of the House of Representatives.[15]

Petitioners argue that the clear, unambiguous wording of section 1(3) of Article IV of the 1987 Constitution contemplates that only the legitimate children of Filipino mothers with alien fathers, born before 17 January 1973 and who would reach the age of majority (and thus elect Philippine citizenship) after the effectivity of the 1987 Constitution are entitled to the status of natural-born Filipino citizen.[16]

The respondent tribunal in resolving the issue of the constitutional provisions' interpretation, found reason to refer to the interpellations made during the 1986 Constitutional Commission. It said:

"That the benevolent provisions of Sections 2 and 1(3) of Article IV of the 1987 Constitution was (sic) intended by its (sic) framers to be endowed, without distinction, to all Filipinos by election pursuant to the 1935 Constitution is more than persuasively established by the extensive interpellations and debate on the issue as borne by the official records of the 1986 Constitutional Commission." [17]

Although I find the distinction as to when election of Philippine citizenship was made irrelevant to the case at bar, since private respondent, contrary to the conclusion of the respondent tribunal, did not elect Philippine citizenship, as provided by law, I still consider it necessary to settle the controversy regarding the meaning of the constitutional provisions in question.

I agree with respondent tribunal that the debates, interpellations and opinions expressed in the 1986 Constitutional Commission may be resorted to in ascertaining the meaning of somewhat elusive and even nebulous constitutional provisions. Thus -

"The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the constitution were guided mainly by the explanation offered by the framers." [18]

The deliberations of the 1986 Constitutional Commission relevant to Section 2, Article IV in relation to Section 1(3) of the same Article, appear to negate the contention of petitioners that only those born to Filipino mothers before 17 January 1973 and who would elect Philippine citizenship after the effectivity of the 1987 Constitution, are to be considered natural-born Filipino citizens.

During the free-wheeling discussions on citizenship, Commissioner Treñas specifically asked Commissioner Bernas regarding the provisions in question, thus:

"MR. TRENAS. The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights has more or less decided to extend the interpretation of who is a natural-born Filipino citizen as provided in Section 4 of the 1973 Constitution, by adding that persons who have elected Philippine citizenship under the 1935 Constitution shall be considered natural-born. Am I right, Mr. Presiding Officer?

"FR. BERNAS: Yes.

"MR. TRENAS: And does the Commissioner think that this addition to Section 4 of the 1973 Constitution would be contrary to the spirit of that section?

"FR. BERNAS. Yes, we are quite aware that it is contrary to the letter really. But whether it is contrary to the spirit is something that has been debated before and is being debated even now. We will recall that during the 1971 Constitutional Convention, the status of natural-born citizenship of one of the delegates, Mr. Ang, was challenged precisely because he was a citizen by election. Finally, the 1971 Constitutional Convention considered him a natural-born citizen, one of the requirements to be a Member of the 1971 Constitutional Convention. The reason behind that decision was that a person under his circumstances already had the inchoate right to be a citizen by the fact that the mother was a Filipino. And as a matter of fact, the 1971 Constitutional Convention formalized that recognition by adopting paragraph 2 of Section 1 of the 1971 Constitution. So, the entire purpose of this proviso is simply to perhaps remedy whatever injustice there may be so that these people born before January 17, 1973 who are not naturalized and people who are not natural born but who are in the same situation as we are considered natural-born citizens. So, the intention of the Committee in proposing this is to equalize their status." [19]

When asked to clarify the provision on natural-born citizens, Commissioner Bernas replied to Commissioner Azcuna thus:

"MR. AZCUNA. With respect to the proviso in Section 4, would this refer only to those who elect Philippine citizenship after the effectivity of the 1973 Constitution or would it also cover those who elected it under the 1935 Constitution?

"FR. BERNAS. It would apply to anybody who elected Philippine citizenship by virtue of the provision of the 1935 Constitution, whether the election was done before or after 17 January 1973."[20]

And during the period of amendments, Commissioner Rodrigo explained the purpose of what now appear as Section 2 and Section 1, paragraph (3) of Article IV of the 1987 Constitution, thus:

"MR. RODRIGO. The purpose of that proviso is to remedy an inequitable situation. Between 1935 and 1973, when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers would have to elect Philippine citizenship upon reaching the age of majority; and, if they do elect, they become Filipino citizens, yet, but not natural-born Filipino citizens.

The 1973 Constitution equalized the status of those born of Filipino mothers and those born of Filipino fathers. So that from January 17, 1973 when the 1973 Constitution took effect, those born of Filipino mothers but of alien fathers are natural-born Filipino citizens. Also, those who are born of Filipino fathers and alien mothers are natural-born Filipino citizens.

If the 1973 Constitution equalized the status of a child born of a Filipino mother and that born of a Filipino father, why do we not give a chance to a child born before January 17, 1973, if and when he elects Philippine citizenship, to be in the same status as one born of a Filipino father - namely, natural-born citizen.

Another thing I stated is equalizing the status of a father and a mother vis-a-vis the child. I would like to state also that we should equalize the status of a child born of a Filipino mother the day before January 17, 1973 and a child born also of a Filipino mother on January 17 or 24 hours later. A child born of a Filipino mother but an alien father one day before January 17, 1973 is a Filipino citizen, if he elects Philippine citizenship, but he is not a natural-born Filipino citizen. However, the other child who luckily was born 24 hours later - maybe because of parto laborioso - is a natural-born Filipino citizen."[21]

It would appear then that the intent of the framers of the 1987 Constitution in defining a natural-born Filipino citizen was to equalize the position of Filipino fathers and Filipino mothers as to their children becoming natural-born Filipino citizens. In other words, after 17 January 1973, effectivity date of the 1973 Constitution, all those born of Filipino fathers (with alien spouse) or Filipino mothers (with alien spouse) are natural-born Filipino citizens. But those born to Filipino mothers prior to 17 January 1973 must still elect Philippine citizenship upon their reaching the age of majority, in order to be deemed natural-born Filipino citizens. The election, which is related to the attainment of the age of majority, may be made before or after 17 January 1973. This interpretation appears to be in consonance with the fundamental purpose of the Constitution which is to protect and enhance the people's individual interests,[22] and to foster equality among them.

Since private respondent was born on 19 June 1948 (or before 17 January 1973) to a Filipino mother (with an alien spouse) and should have elected Philippine citizenship on 19 June 1969 (when he attained the age of majority), or soon thereafter, in order to have the status of a natural-born Filipino citizen under the 1987 Constitution, the vital question is: did private respondent really elect Philippine citizenship? As earlier stated, I believe that private respondent did not elect Philippine citizenship, contrary to the ruling of the respondent tribunal.

The respondent tribunal, on this issue, ruled as follows:

"Where a person born to a Filipino mother and an alien father had exercised the right of suffrage when he

came of age, the same constitutes a positive act of election of Philippine citizen-ship. (Florencio vs. Mallare) [sic] The acts of the petitioner in registering as a voter, participating in elections and campaigning for certain candidates were held by the Supreme Court as sufficient to show his preference for Philippine citizenship. Accordingly, even without complying with the formal requisites for election, the petitioner's Filipino citizenship was judicially upheld."[23]

I find the above ruling of the respondent tribunal to be patently erroneous and clearly untenable, as to amount to grave abuse of discretion. For it is settled doctrine in this jurisdiction that election of Philippine citizenship must be made in accordance with Commonwealth Act 625. Sections 1 and 2[24] of the Act mandate that the option to elect Philippine citizenship must be effected expressly, not impliedly.

The respondent tribunal cites *In re: Florencio Mallare*[25] which held that Esteban Mallare's exercise of the right of suffrage when he came of age, constituted a positive act of election of Philippine citizenship.

Mallare, cited by respondent tribunal as authority for the doctrine of implied election of Philippine citizenship, is not applicable to the case at bar. The respondent tribunal failed to consider that Esteban Mallare reached the age of majority in 1924, or seventeen (17) years before CA 625 was approved and, more importantly, eleven (11) years before the 1935 Constitution (which granted the right of election) took effect.

To quote Mr. Justice Fernandez in *Mallare*:

"Indeed, it would be unfair to expect the presentation of a formal deed to that effect considering that prior to the enactment of Commonwealth Act 625 on June 7, 1941, no particular proceeding was required to exercise the option to elect Philippine citizenship, granted to the proper party by Section 1, subsection 4, Article IV of the 1935 Philippine Constitution."[26]

Moreover, Esteban Mallare was held to be a Filipino citizen because he was an illegitimate (natural) child of a Filipino mother and thus followed her citizenship. I therefore agree with the petitioners' submission that, in citing the *Mallare* case, the respondent tribunal had engaged in an obiter dictum.

The respondent tribunal also erred in ruling that by operation of CA 473, the Revised Naturalization Law, providing for private respondent's acquisition of Filipino citizenship by reason of the naturalization of his father, the law itself had already elected Philippine citizenship for him. For, assuming arguendo that the naturalization of private respondent's father was valid, and that there was no further need for private respondent to elect Philippine citizenship (as he had automatically become a Filipino citizen) yet, this did not mean that the operation of the Revised Naturalization Law amounted to an election by him of Philippine citizenship as contemplated by the Constitution. Besides, election of Philippine citizenship derived from one's Filipino mother, is made upon reaching the age of majority, not during one's minority.

There is no doubt in my mind, therefore, that private respondent did not elect Philippine citizenship upon reaching the age of majority in 1969 or within a reasonable time thereafter as required by CA 625. Consequently, he cannot be deemed a natural-born Filipino citizen under Sections 2 and 1(3), Article IV of the 1987 Constitution.

Based on all the foregoing considerations and premises, I am constrained to state that private respondent is not a natural-born citizen of the Philippines in contemplation of Section 6, Article VI of the 1987 Constitution in relation to Sections 2 and 1(3), Article IV thereof, and hence is disqualified or ineligible to be a Member of the House of Representatives.

At this point, I find it no longer necessary to rule on the issue of required residence, inasmuch as the Constitution requires that a Member of the House of Representatives must be both a natural-born Filipino citizen and a resident for at least one (1) year in the district in which he shall be elected.

The next question that comes up is whether or not either of the petitioners can replace private respondent as the Representative of the second legislative district of Northern Samar in the House of Representatives.

I agree with respondent tribunal that neither of the petitioners may take the place of private respondent in the House of Representatives representing the second district of Northern Samar. The ruling of this Court in *Ramon L. Labo, Jr. vs. The Commission on Elections (COMELEC) EN BANC and Luis L. Lardizabal*,^[27] is controlling. There we held that Luis L. Lardizabal, who filed the quo warranto petition, could not replace Ramon L. Labo, Jr. as mayor of Baguio City for the simple reason that as he obtained only the second highest number of votes in the election, he was obviously not the choice of the people of Baguio City for mayor of that City.

A petition alleging that the candidate-elect is not qualified for the office is, in effect, a quo warranto proceeding even if it is labelled an election protest.^[28] It is a proceeding to unseat the ineligible person from office but not necessarily to install the protestant in his place.^[29]

The general rule is that the fact that a plurality or a majority of the votes are cast for an ineligible candidate in an election does not entitle the candidate receiving the next highest number of votes to be declared elected. In such a case, the electors have failed to make a choice and the election is a nullity.^[30]

"Sound policy dictates that public elective offices are filled by those who have the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676).

"As early as 1912, this Court has already declared that the candidate who lost in an election cannot be proclaimed the winner in the event that the candidate who won is found ineligible for the office to which he was elected. This was the ruling in *Topacio v. Paredes* (23 Phil. 238) -

'Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. xxx If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. x x x."^[31]

The recognition of Emil L. Ong by the 1971 Constitutional Convention as a natural-born Filipino citizen, in relation to the present case.

Private respondent, as previously stated, is a full brother of Emil L. Ong, both of them having the same father and mother.

Private respondent, relying on a resolution of the 1971 Constitutional Convention^[32] to the effect that Emil L. Ong was a natural-born Filipino citizen, alleged before the House Electoral Tribunal that, by analogy, he is himself a natural-born Filipino citizen. This submission, while initially impressive, is, as will now be shown, flawed and not supported by the evidence. Not even the majority decision of the electoral tribunal adopted the same as the basis of its decision in favor of private respondent. The tribunal, in reference to this submission, said:

"Be that as it may and in the light of the Tribunal's disposition of protestee's citizenship based on an entirely different set of circumstances, apart from the indisputable fact that the matters attempted to be brought in issue in connection therewith are too far removed in point of time and relevance from the decisive events relied upon by the Tribunal, we view these two issues as being already inconsequential."^[33]

The electoral tribunal (majority) instead chose to predicate its decision on the alleged citizenship by naturalization of private respondent's father (Ong Chuan) and on the alleged election of Philippine citizenship by private respondent.

Emil L. Ong, was elected delegate to the 1971 Constitutional Convention. Electoral protests, numbers EP-07 and EP-08, were filed by Leonardo D. Galing and Gualberto D. Luto against Emil L. Ong, contesting his citizenship qualification. The Committee on Election Protests and Credentials of the 1971 Constitutional Convention heard the protests and submitted to the Convention a report dated 4 September 1972, the dispositive portion of which stated:

"It appearing that protestee's grandfather was himself a Filipino citizen under the provisions of the Philippine Bill of 1902 and the Treaty of Paris of December 10, 1898, thus conferring upon protestee's own father, Ong Chuan, Philippine citizenship at birth, the conclusion is inescapable that protestee himself is a natural-born citizen, and is therefore qualified to hold the office of delegate to the Constitutional Convention." [34]

On 28 November 1972, during a plenary session of the 1971 Constitutional Convention, the election protests filed against Emil L. Ong were dismissed, following the report of the Committee on Election Protests and Credentials. [35]

It is evident, up to this point, that the action of the 1971 Constitutional Convention in the case of Emil L. Ong is, to say the least, inconclusive to the case at bar, because -

- a) the 1971 Constitutional Convention decision in the Emil L. Ong case involved the 1935 Constitution; the present case, on the other hand involves the 1987 Constitution;
- b) the 1935 Constitution contained no specific definition of a "natural-born citizen" of the Philippines; the 1987 Constitution contains a precise and specific definition of a "natural-born citizen" of the Philippines in Sec. 2, Art. IV thereof and private respondent does not qualify under such definition in the 1987 Constitution;
- c) the decision of the 1971 Constitutional Convention in the case of Emil L. Ong was a decision of a political body, not a court of law. And, even if we have to take such a decision as a decision of a quasi-judicial body (i.e., a political body exercising quasi-judicial functions), said decision in the Emil L. Ong case can not have the category or character of *res judicata* in the present judicial controversy, because between the two (2) cases, there is no identity of parties (one involves Emil L. Ong, while the other involves private respondent) and, more importantly, there is no identity of causes of action because the first involves the 1935 Constitution while the second involves the 1987 Constitution.

But even laying aside the foregoing reasons based on procedural rules and logic, the evidence submitted before the electoral tribunal and, therefore, also before this Court, does not support the allegations made by Emil L. Ong before the 1971 Constitutional Convention and, inferentially adopted by private respondent in the present controversy. This leads us to an interesting inquiry and finding.

The 1971 Constitutional Convention in holding that Emil L. Ong was a "natural-born citizen" of the Philippines under the 1935 Constitution laid stress on the "fact" - and this appears crucial and central to its decision - that Emil L. Ong's grandfather, Ong Te, became a Filipino citizen under the Philippine Bill of 1902 and, therefore, his descendants like Emil L. Ong (and therefore, also private respondent) became natural-born Filipinos. The 1971 Constitutional Convention said:

"Ong Te, Emil Ong's grandfather, was a Spanish subject residing in the Philippines on April 11, 1899 and was therefore one of the many who became ipso facto citizens of the Philippines under the provisions of the Philippine Bill of 1902. Said law expressly declared that all inhabitants of the Philippine Islands who

continued to reside therein and who were Spanish subjects on April 11, 1899 as well as their children born subsequent thereto, 'shall be deemed and held to be citizens of the Philippine Islands.' (Section 4, Philippine Bill of 1902)."[36]

The "test" then, following the premises of the 1971 Constitutional Convention, is whether or not Ong Te, private respondent's and Emil L. Ong's grandfather was "an inhabitant of the Philippines who continued to reside therein and was a Spanish subject on April 11, 1899." If he met these requirements of the Philippine Bill of 1902, then, Ong Te was a Filipino citizen; otherwise, he was not a Filipino citizen.

Petitioners (protestants) submitted and offered in evidence before the House Electoral Tribunal exhibits W, X, Y, Z, AA, BB, CC, DD and EE which are copies of entries in the "Registro de Chinos" from years 1896 to 1897 which show that Ong Te was not listed as an inhabitant of Samar where he is claimed to have been a resident. Petitioners (protestants) also submitted and offered in evidence before the House Electoral Tribunal exhibit V, a certification of the Chief of the Archives Division, Records and Management and Archives Office, stating that the name of Ong Te does not appear in the "Registro Central de Chinos" for the province of Samar for 1895. These exhibits prove or at least, as petitioners validly argue, tend to prove that Ong Te was NOT a resident of Samar close to 11 April 1899 and, therefore, could not continue residing in Samar, Philippines after 11 April 1899, contrary to private respondent's pretense. In the face of these proofs or evidence, private respondent FAILED TO PRESENT ANY REBUTTAL OR COUNTERVAILING EVIDENCE, except the decision of the 1971 Constitutional Convention in the case of Emil L. Ong, previously discussed.

It is not surprising then that, as previously noted, the majority decision of the House Electoral Tribunal skirted any reliance on the alleged ipso facto Filipino citizenship of Ong Te under the Philippine Bill of 1902. It is equally not surprising that Ong Chuan, the son of Ong Te and father of private respondent, did not even attempt to claim Filipino citizenship by reason of Ong Te's alleged Filipino citizenship under the Philippine Bill of 1902 but instead applied for Philippine citizenship through naturalization.

Nor can it be contended by the private respondent that the House Electoral Tribunal should no longer have reviewed the factual question or issue of Ong Te's citizenship in the light of the resolution of the 1971 Constitutional Convention finding him (Ong Te) to have become a Filipino citizen under the Philippine Bill of 1902. The tribunal had to look into the question because the finding that Ong Te had become a Filipino citizen under the Philippine Bill of 1902 was the central core of said 1971 resolution but as held in *Lee vs. Commissioners of Immigration*: [37]

"x x x. Everytime the citizenship of a person is material or indispensable in a judicial or administrative case, whatever the corresponding court or administrative authority decides therein as to such citizenship is generally not considered as res adjudicate, hence it has to be threshed out again and again as the occasion may demand."

Which finally brings us to the resolution of this Court in *Emil L. Ong vs. COMELEC, et al.*, G.R. No. 67201, 8 May 1984. In connection with said resolution, it is contended by private respondent that the resolution of the 1971 Constitutional Convention in the *Emil L. Ong* case was elevated to this Court on a question involving Emil L. Ong's disqualification to run for membership in the Batasang Pambansa and that, according to private respondent, this Court allowed the use of the Committee Report to the 1971 Constitutional Convention.

To fully appreciate the implications of such contention, it would help to look into the circumstances of the case brought before this Court in relation to the Court's action or disposition. Emil L. Ong and Edilberto Del Valle were both candidates for the Batasang Pambansa in the 14 May 1984 election. Valle filed a petition for disqualification with the Commission on Election on 29 March 1984 docketed as SPC No. 84-69 contending that Ong is not a natural-born citizen. Ong filed a motion to dismiss the petition on the ground that the judgment of the

1971 Constitutional Convention on his status as a natural-born citizen of the Philippines bars the petitioner from raising the identical issue before the COMELEC. (G.R. No. 67201, Rollo, p. 94) The motion was denied by the COMELEC, thus, prompting Emil L. Ong to file with this Court a petition for certiorari, prohibition and mandamus with preliminary injunction against the COMELEC, docketed as G.R. No. 67201.

In a resolution dated 8 May 1984, this Court resolved to issue a writ of preliminary injunction enjoining respondent COMELEC from holding any further hearing on the disqualification case entitled "Edilberto Del Valle vs. Emil Ong (SPC No. 84-69) except to dismiss the same. (G.R. Nos. 92202-03, Rollo, p. 335)

This Court, in explaining its action, held that:

"Acting on the prayer of the petitioner for the issuance of a Writ of Preliminary Injunction, and considering that at the hearing this morning, it was brought out that the 1971 Constitutional Convention, at its session of November 28, 1972, after considering the Report of its Committee on Election Protests and Credentials, found that the protest questioning the citizenship of the protestee (the petitioner herein) was groundless and dismissed Election Protests Nos. EP 07 and EP 08 filed against said petitioner (p. 237, Rollo), the authenticity of the Minutes of said session as well as of the said Committee's Report having been duly admitted in evidence without objection and bears out, for now, without need for a full hear-ing, that petitioner is a natural-born citizen, the Court Resolved to ISSUE, effective immediately, a Writ of Preliminary Injunction enjoining respondent COMELEC from holding any further hearing on the disqualification case entitled Edilberto Del Valle vs. Emil Ong (SPC No. 84-69) scheduled at 3:00 o'clock this afternoon, or any other day, except to dismiss the same. This is without prejudice to any appropriate action that private respondent may wish to take after the elections." (underscoring supplied)

It is thus clear that the resolution of this Court in G.R. No. 67201 was rendered without the benefit of a hearing on the merits either by the Court or by the COMELEC and merely on the basis of a Committee's Report to the 1971 Constitutional Convention, and that this Court (and this is quite significant) did not foreclose any appropriate action that Del Valle (therein petitioner) may wish to take after the elections.

It is thus abundantly clear also that to this Court, the resolution of the 1971 Constitutional Convention recognizing Emil L. Ong as a natural-born citizen under the 1935 Constitution did not foreclose a future or further proceeding in regard to the same question and that, consequently, there is no vested right of Emil L. Ong to such recognition. How much more when the Constitution involved is not the 1935 Constitution but the 1987 Constitution whose provisions were never considered in all such proceedings because the 1987 Constitution was still in-existent.

A final word. It is regrettable that one (as private respondent) who unquestionably obtained the highest number of votes for the elective position of Representative (Cong-ressman) to the House of Representatives for the second district of Northern Samar, would have had to cease in office by virtue of this Court's decision, if the full membership of the Court had participated in this case, with the result that the legislative district would cease to have, in the interim, a representative in the House of Representatives. But the fundamental consideration in cases of this nature is the Constitution and only the Constitution. It has to be assumed, therefore, that when the electorate in the second legislative district of Northern Samar cast the majority of their votes for private respondent, they assumed and believed that he was fully eligible and qualified for the office because he is a natural-born Filipino citizen. That erroneous assumption and belief can not prevail over, but must yield to the majesty of the Constitution.

This is a sad day for the Constitution. As I see it, the Constitution mandates that members of the House of Representatives should be "natural-born citizens of the Philippines". The voting majority of the present Court says, "Filipino citizens will do." This is bad enough. What is worse is, the same voting majority, in effect, says,

"even aliens will do as well."

WHEREFORE, my vote is clear: to declare private respondent Jose L. Ong Chuan, Jr., as he clearly is, NOT a natural-born citizen of the Philippines and therefore NOT QUALIFIED to be a Member of the House of Representatives, Congress of the Philippines.

* With the concurrence of Congressmen Mario L. Tagarao, David A. Ponce De Leon, Simeon E. Garcia, Juanito G. Camasura, Jr. and Jose E. Calingasan; Justices Ameurfina A. Melencio-Herrera, Isagani A. Cruz, Florentino P. Feliciano and Congressman Antonio H. Cerilles dissented.

[1] G.R. Nos. 92191-92, Rollo, pp. 21-23

[2] Section 17, Article VI, 1987 Constitution

[3] No. 45352, October 31, 1938, 66 Phil. 429

[4] Chartered Bank Employees Association vs. Ople, G.R. No. 44717, August 28, 1985, 138 SCRA 273

[5] Article VI, Section 6

[6] G.R. No. 92191-92, Rollo, pp. 41-42

[7] Article III, Section 1 (3) and (4), 1935 Constitution provide:

Section 1. The following are citizens of the Philip-pines.

x x x

(3) Those whose fathers are citizens of the Philip-pines.

(4) Those whose mothers are citizens of the Philip-pines and upon reaching the age of majority, elect Philippine citizenship.

[8] Burca vs. Republic, G.R. No. L-24252, January 30, 1967, 19 SCRA 186

[9] Sia Reyes vs. Deportation Board, No. L-31763, May 30, 1983, 122 SCRA 478

[10] G.R. No. L-11499, April 29, 1961, 1 SCRA 1167 citing U.S. vs. Sponrer, 175 Fed. 440

[11] Cuaski Tan Si vs. Republic, G.R. No. L-18006, October 31, 1962, 6 SCRA 545

[12] Labo vs. COMELEC, G.R. No. 86564, August 1, 1989, 176 SCRA 1

[13] Tan vs. Republic, G.R. No. L-28706, January 30, 1971, 37 SCRA 353

[14] G.R. No. L-29674, April 8, 1988, 159 SCRA 477

[15] G.R. No. 92191-92, Rollo, p. 7

[16] G.R. No. 92202-03, Rollo, p. 23

[17] G.R. No. 92191-92, Rollo, p. 30

[18] Nitafan vs. Commissioner of Internal Revenue, G.R. No. L-78780, July 23, 1987, 152 SCRA 284

[19] Record of the Constitutional Commission, Vol. I, p. 189

[20] Record of the Constitutional Commission, Vol. I, p. 228

[21] Record of the Constitutional Commission, Vol. I, p. 356

[22] *Acar vs. Rosal*, G.R. No. L-21707, March 18, 1967, 19 SCRA 625

[23] G.R. No. 92191-92, Rollo, p. 40

[24] Sections 1 and 2, C.A. 625 state:

"SECTION 1. The option to elect Philippine citizenship in accordance with subsection (4), section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

"SECTION 2. If the party concerned is absent from the Philippines, he may make the statement herein authorized before any officer of the Government of the United States authorized to administer oaths, and he shall forward such statement together with his oath of allegiance, to the Civil Registry of Manila."

[25] Administrative Case No. 533, September 12, 1974, 59 SCRA 45

[26] *In Re: Florencio Mallare*, supra, p. 52

[27] G.R. No. 86564, August 1, 1989, 176 SCRA 1

[28] *Luison vs. Garcia*, No. L-10981, April 25, 1958, 103 Phil. 453

[29] *Topacio vs. Paredes*, No. 8069, October 7, 1912, 23 Phil. 238

[30] *Llamoso vs. Ferrer, et al.* No. L-2470, August 30, 1949, 84 Phil. 490

[31] *Geronimo vs. Ramos*, G.R. No. 60504, May 14, 1985, 136 SCRA 435

[32] Two (2) of the members of said 1971 Constitutional Convention are now distinguished members of the Court, namely, Sarmiento and Davide, JJ. and they are part of the voting majority in this case.

[33] G.R. Nos. 92191-92, Rollo, pp. 42-43

[34] G.R. Nos. 92202-03, Rollo, p. 196

[35] G.R. Nos. 92202-03, Rollo, p. 211

[36] G.R. Nos. 92202-03, Rollo, p. 193

[37] G.R. No. L-23446, 20 December 1971, 42 SCRA 561

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CONCURRING OPINION

SARMIENTO, J.:

I concur with the majority.

(1)

I wish to point out first that the question of citizenship is a question of fact, and as a rule, the Supreme Court leaves facts to the tribunal that determined them. I am quite agreed that the Electoral Tribunal of the House of Representatives, as the "sole judge" of all contests relating to the membership in the House, as follows:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.[1]

is the best judge of facts and this Court can not substitute its judgment because it thinks it knows better.

In the case of *Aratuc v. Commission on Elections*,[2] it was held that this Court can not review the errors of the Commission on Elections (then the "sole judge" of all election contests) -- in the sense of reviewing facts and unearthing mistakes--and that this Court's jurisdiction is to see simply whether or not it is guilty of a grave abuse of discretion. It is true that the new Constitution has conferred expanded powers on the Court,[3] but as the Charter states, our authority is "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [4] It is not to review facts.

"Grave abuse of discretion" has been defined as whimsical exercise of power amounting to excess of jurisdiction, or otherwise, to denial of due process of law.[5]

I find none of that here.

As the majority indicates, Jose Ong's citizenship is a matter of opinion with which men may differ, but certainly, it is quite another thing to say that the respondent Tribunal has gravely abused its discretion because the majority has begged to differ. It does not form part of the duty of the Court to remedy all imagined wrongs committed by the Government.

The respondent Tribunal has spoken. According to the Tribunal, Jose Ong is a Filipino citizen and consequently, is possessed of the qualifications to be a member of the House. As the sole judge, precisely, of this question, the Court can not be more popish than the pope.

(2)

I can not say, in the second place, that the Decision in question stands exactly on indefensible grounds. It is to be noted that Jose Ong had relied on the Report dated September 4, 1972 of the 1971 Constitutional Convention Committee on Election Protests and Credentials, in which the Committee[6] upheld the citizenship, and sustained the qualification to sit as Delegate, of Emil Ong, Jose Ong's full blood brother. According to the Report, Ong Te, the Ong's grandfather, was already a Filipino citizen having complied with the requirements on Filipinization by existing laws for which his successors need not have elected Filipino citizenship. I quote:

XXX XXX XXX

There is merit in protestee's claim. There can hardly be any doubt that Ong Te, protestee's grandfather, was a Spanish subject residing in the Philippines on April 11, 1899, and was therefore one of the many who became ipso facto citizens of the Philippines under the provisions of the Philippine Bill of 1902. Said law expressly declared that all inhabitants of the Philippine Islands who continued to reside therein and who were Spanish subjects on April 11, 1899, as well as their children born subsequent thereto, "shall be deemed and held to be citizens of the Philippine Islands" (Sec. 4, Philippine Bill of 1902). Excepted from the operation of this rule were Spanish subjects who shall have elected to preserve their allegiance to the Crown of Spain in accordance with the Treaty of Paris of December 10, 1898. But under the Treaty of Paris, only Spanish subjects who were natives of Peninsular Spain had the privilege of preserving their Spanish nationality.[7]

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As earlier noted, protestee's grandfather established residence in the Philippines in 1895, as shown by the Registro Central de Chinos. He was also issued a certificate of registration. He established a business here, and later acquired real property. Although he went back to China for brief visits, he invariably came back. He even brought his eldest son, Ong Chuan, to live in the Philippines when the latter was only 10 years old. And Ong Chuan was admitted into the country because, as duly noted on his landing certificate, his father, Ong Te, had been duly enrolled under CR 16009-36755 -- i.e., as a permanent resident. Indeed, even when Ong Te went back to China in the 1920's for another visit, he left his son, Ong Chuan, who was then still a minor, in the Philippines -- obviously because he had long considered the Philippines his home. The domicile he established in 1895 is presumed to have continued up to, and beyond, April 11, 1899, for, as already adverted to, a domicile once acquired is not lost until a new one is gained. The only conclusion then can thus be drawn is that Ong Te was duly domiciled in the Philippines as of April 11, 1899, within the meaning of par. 4, Art. 17, of the Civil Code of 1889 -- and was, consequently, a Spanish subject, he qualified as a Filipino citizen under the provisions of Section 4 of the Philippine Bill of 1902.[8]

It is true that Ong Chuan, the Ong brothers' father, subsequently sought naturalization in the belief that he was, all along, a Chinese citizen, but as the Report held:

Protestants, however, make capital of the fact that both Ong Te and his son, Ong Chuan (protestee's father), appear to have been registered as Chinese citizens even long after the turn of the century. Worse, Ong Chuan himself believed he was alien, to the extent of having to seek admission as a Filipino citizen through naturalization proceedings. The point, to our mind, is neither crucial nor substantial. Ong's status as a citizen is a matter of law, rather than of personal belief. It is what the law provides, and not what one thinks his status to be, which determines whether one is a citizen of a particular state or not. Mere mistake or misapprehension as to one's citizenship, it has been held, is not a sufficient cause or reason for forfeiture of Philippine citizenship; it does not even constitute estoppel (*Palanca vs Republic*, 80 Phil. 578, 584). Too, estoppel applies only to questions of fact and not of law (*Tañada v. Cuenco*, L-10520, Feb. 28, 1957).[9]

It is to be noted that the Report was unanimously approved by the Committee, and on November 28, 1972, approved without any objection by the Convention in plenary session.[10]

I am not, of course, to be mistaken as acting as mouthpiece of Emil Ong, but in all candor, I speak from experience, because when the Convention approved the Report in question, I was one of its vice-presidents and the presiding officer.

It is to be noted finally, that the matter was elevated to this Court (on a question involving Emil Ong's qualification to sit as member of the defunct Batasang Pambansa)[11] in which this Court allowed the use of the Committee Report.

Faced with such positive acts of the Government, I submit that the question of the Ongs' citizenship is a settled matter. Let it rest.

It is true that Electoral Protest Nos. EP-07 and EP-08 of the Convention as well as G.R. No. 67201 of this Court, involved Emil Ong and not his brother; I submit, however, that what is sauce for the goose is sauce for the gander.

I also submit that the fundamental question is whether or not we will overturn the unanimous ruling of 267 delegates, indeed, also of this Court.

[1] CONST., art. VI, sec. 17.

[2] Nos. L-49705-09; 49717-21, February 8, 1979, 88 SCRA 251.

[3] CONST., supra, art. VIII, sec. 1.

[4] Supra.

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

[6] Galing v. Ong, Elec. Protest No. EP-07 (Const. Con.), September 4, 1972; Luto v. Ong, Elec. Protest, No. EP-08 (Const. Con.), September 4, 1972; Liwag, Juan, Chmn.

[7] Rept., Comm. on Election Protests and Credentials (Const. Con.), September 4, 1972, 3.

[8] Id., 4-5.

[9] Id., 5-6.

[10] The Delegates present were as follows:

Delegate Abalos E.

Delegate Encarnacion

Delegate Ablan

Delegate Espiritu A.C.

Delegate Abueg

Delegate Estaniel

Delegate Abundo

Delegate Estrella

Delegate Adil

Delegate Exmundo

Delegate Alanis

Delegate Flores A.

Delegate Alano
Delegate Flores T.
Delegate Amante
Delegate Garcia J.
Delegate Anni
Delegate Gaudiel
Delegate Apalisok
Delegate Gonzaga
Delegate Arabejo
Delegate Guevara
Delegate Bacaltos
Delegate Guirnalda
Delegate Badelles
Delegate Guzman
Delegate Baguilat
Delegate Hilado
Delegate Baradi
Delegate Hocson
Delegate Barbero
Delegate Ignacio
Delegate Bautista
Delegate Kintanar J.
Delegate Belo
Delegate Lachica
Delegate Blancia
Delegate Lagamon
Delegate Bongbong
Delegate Laggui
Delegate Borja
Delegate Lazo
Delegate Borra

Delegate Ledesma C.
Delegate Borromeo
Delegate Legaspi
Delegate Buen
Delegate Leviste C.
Delegate Bugnosen
Delegate Lim P.
Delegate Cainglet
Delegate.Lim R.
Delegate Calderon C.
Delegate Macaraya
Delegate Calderon P.
Delegate Macias
Delegate Caliwara
Delegate Madrillesjos
Delegate Camello
Delegate Mamenta
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Delegate Amatong
Delegate Gunigundo
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Delegate Hortinela
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Delegate Imperial
Delegate Reyes C.
Delegate Jamir
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Delegate Johnston
Delegate Reyes P.
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Delegate Kintanar S.
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Delegate Ledesma O.
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[11] Ong v. Commission on Elections, G.R. No. 67201, May 8, 1984.

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