

## EN BANC

[ G.R. No. 158466, June 15, 2004 ]

**PABLO V. OCAMPO, PETITIONER, VS. HOUSE OF  
REPRESENTATIVES ELECTORAL TRIBUNAL AND MARIO B.  
CRESPO A.K.A. MARK JIMENEZ, RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration of election in favor of the person who obtained a plurality of votes and does not entitle a candidate receiving the next highest number of votes to be declared elected.<sup>[1]</sup>

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, filed by petitioner Pablo V. Ocampo. He alleged that the House of Representatives Electoral Tribunal (HRET), herein public respondent, committed grave abuse of discretion in issuing in HRET Case No. 01-024, *Pablo Ocampo vs. Mario "Mark Jimenez" Crespo*, the **(a)** Resolution<sup>[2]</sup> dated March 27, 2003 holding that "protestant" (herein petitioner) cannot be proclaimed the duly elected Representative of the 6th District of Manila since being a second placer, he "cannot be proclaimed the first among the remaining qualified candidates"; and **(b)** Resolution<sup>[3]</sup> dated June 2, 2003 denying his motion for reconsideration.

The facts are uncontroverted:

On May 23, 2001, the Manila City Board of Canvassers proclaimed private respondent Mario B. Crespo, a.k.a. Mark Jimenez, the duly elected Congressman of the 6th District of Manila pursuant to the May 14, 2001 elections. He was credited with 32,097 votes or a margin of 768 votes over petitioner who obtained 31,329 votes.

On May 31, 2001, petitioner filed with the HRET an **electoral protest**<sup>[4]</sup> against private respondent, impugning the election in 807 precincts in the 6th District of Manila on the following grounds: **(1)** misreading of votes garnered by petitioner; **(2)** falsification of election returns; **(3)** substitution of election returns; **(4)** use of marked, spurious, fake and stray ballots; and **(5)** presence of ballots written by one person or two persons. The case was docketed as **HRET Case No. 01-024**. Petitioner prayed that a revision and appreciation of the ballots in the 807 contested precincts be conducted; and that, thereafter, he be proclaimed the duly elected Congressman of the 6th District of Manila.

On June 18, 2001, private respondent filed his answer with counter-protest<sup>[5]</sup> vehemently denying that he engaged in massive vote buying. He also opposed

petitioner's allegation that there is a need for the revision and appreciation of ballots.

After the preliminary conference between the parties on July 12, 2001, the HRET issued a Resolution<sup>[6]</sup> limiting the issues to: **first**, whether massive vote-buying was committed by private respondent; and second, whether petitioner can be proclaimed the duly elected Representative of the 6th District of Manila.

Meanwhile, on March 6, 2003, the HRET, in **HRET Cases Nos. 01-020, *Bienvenido Abante & Prudencio Jalandoni vs. Mario Crespo*, and 01-023, *Rosenda Ann M. Ocampo vs. Mario Crespo***, issued Resolutions declaring that private respondent is **"ineligible for the Office of Representative of Sixth District of Manila for lack of residence in the district" and ordering "him to vacate his office."**<sup>[7]</sup> Private respondent filed a motion for reconsideration but was denied.<sup>[8]</sup>

On March 12, 2003, petitioner filed a motion to implement Section 6 of Republic Act No. 6646,<sup>[9]</sup> which reads:

**"Section 6. Effects of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted.** If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof, order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong."

Petitioner averred that since private respondent was declared disqualified in **HRET Cases Nos. 01-020 and 01-023**, the votes cast for him should not be counted. And having garnered the second highest number of votes, he (petitioner) should be declared the winner in the May 14, 2001 elections and proclaimed the duly elected Congressman of the 6th District of Manila.

On March 26, 2003, private respondent filed an opposition to petitioner's motion to implement the afore-quoted provision.

On March 27, 2003, the HRET issued a Resolution holding that private respondent was guilty of vote-buying and disqualifying him as Congressman of the 6th District of Manila. Anent the second issue of whether petitioner can be proclaimed the duly elected Congressman, the HRET held:

**"x x x Jurisprudence has long established the doctrine that a second placer cannot be proclaimed the first among the remaining qualified candidates. The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily give the candidate who obtained the second highest number of votes the right to be declared the winner of the elective office. x x x**

It is of no moment that there is only a margin of 768 votes between protestant and protestee. Whether the margin is ten or ten thousand, it still remains that protestant did not receive the mandate of the majority during the elections. Thus, to proclaim him as the duly elected representative in the stead of protestee would be anathema to the most basic precepts of republicanism and democracy as enshrined within our Constitution. In effect, we would be advocating a massive disenfranchisement of the majority of the voters of the sixth district of Manila.

Congressional elections are different from local government elections. In local government elections, when the winning candidate for governor or mayor is subsequently disqualified, the vice-governor or the vice-mayor, as the case may be, succeeds to the position by virtue of the Local Government Code. It is different in elections for representative. When a voter chooses his congressional candidate, he chooses only one. If his choice is concurred in by the majority of voters, that candidate is declared the winner. Voters are not afforded the opportunity of electing a 'substitute congressman' in the eventuality that their first choice dies, resigns, is disqualified, or in any other way leaves the post vacant. There can only be one representative for that particular legislative district. There are no runners-up or second placers. Thus, when the person vested with the mandate of the majority is disqualified from holding the post he was elected to, the only recourse to ascertain the new choice of the electorate is to hold another election. x x x

This does not mean that the Sixth Legislative District of Manila will be without adequate representation in Congress. Article VI, Section 9 of the Constitution, and Republic Act No. 6645 allows Congress to call a special election to fill up this vacancy. There are at least 13 months until the next congressional elections, which is more than sufficient time within which to hold a special election to enable the electorate of the Sixth District of Manila to elect their representative.

For this reason, the Tribunal holds that **protestant cannot be proclaimed as the duly elected representative of the Sixth legislative District of Manila.**

**In view of the conclusion herein reached, it is unnecessary to rule on the recount and revision of ballots in the protested and counter-protested precincts.**

**WHEREFORE,** the Tribunal Resolved to:

x x x

x x x

**2) DENY** protestant's (petitioner) Motion to Implement Section 6, Republic Act No. 6646 by declaring the votes cast for Mario Crespo as stray votes."

Petitioner filed a partial motion for reconsideration but was denied. Hence, the present petition for certiorari.