

EN BANC

[G.R. No. 129783, December 22, 1997]

**MARCELINO C. LIBANAN, PETITIONER, VS. HOUSE OF
REPRESENTATIVES ELECTORAL TRIBUNAL AND JOSE T.
RAMIREZ, RESPONDENTS.
D E C I S I O N**

VITUG, J.:

The 28th May 1997 decision of the House of Representatives Electoral Tribunal ("HRET"), which affirmed the proclamation of herein private respondent Jose Tan Ramirez declaring him to be the duly elected Representative of Eastern Samar for having obtained the plurality of votes over petitioner Marcelino Libanan, and the 20th June 1997 resolution of the HRET, which denied with finality petitioner's motion for reconsideration, are sought to be annulled in this special civil action for certiorari.

Petitioner Marcelino Libanan and private respondent Jose Ramirez were among the candidates for the lone congressional seat of Eastern Samar in the May 1995 elections. After the canvass of the returns was made on 13 May 1995, the Provincial Board of Canvassers of Eastern Samar proclaimed respondent Ramirez to have been duly elected Representative of the District with a total of forty-one thousand five hundred twenty-three (41,523) votes, compared to petitioner's forty thousand eight hundred sixty-nine (40,869) votes, or a margin of six hundred fifty-four (654) votes over those of petitioner.

Petitioner Libanan seasonably filed an election protest before the HRET claiming, among other things, that the 08th May 1995 elections in Eastern Samar were marred by massive electoral irregularities perpetrated or instigated by respondent Ramirez, as well as his leaders and followers, in the twenty-three (23) municipalities of the lone district of Eastern Samar with the aid, in various instances, of peace officers supposedly charged with maintaining an orderly and honest election. Petitioner contested seventy-nine (79) precincts in five (5) municipalities. He also maintained that the election returns and/or ballots in certain precincts were tampered with, substituted, or systematically marked in favor of respondent Ramirez. Libanan prayed that, after due proceedings, the HRET should issue an order to annul the election and proclamation of Ramirez and to thereafter so proclaim petitioner as the duly elected Representative of the Lone District of Eastern Samar.

In his answer and counter-protest, with a petition for preliminary hearing on the special and affirmative defenses, respondent Ramirez denied the charges. He counter-protested the results of the elections in certain precincts where, he claimed, Libanan engaged in massive vote buying, lansadera, terrorism and tearing of the list of voters to disenfranchise voters therein listed. Accordingly, he prayed, inter alia, for the dismissal of the protest and the confirmation of his election as the duly

elected representative of the Lone District of Eastern Samar.

After some peripheral issues were settled by the HRET, the revision of ballots in the protested precincts commenced on 20 February 1996. The HRET noted that Libanan contested a total of seventy-nine (79) precincts. It was noted during the revision, however, that six (6) of the contested precincts, namely, Precincts Nos. 14, 15, 16, 18, 19 and 20 of Arteche, were found to have been merged during the 08 May 1995 elections into three (3) precincts, i.e., Precincts Nos. 14 and 19, Precincts Nos. 15 and 16 and Precincts Nos. 18 and 20. Thus, only seventy-six (76) ballot boxes were actually opened for revision, one of which, Precinct No. 4-1 of Guiuan, did not contain any ballot.

On 22 February 1996, while the revision of the counter-protested precincts was being held, Ramirez filed an "Urgent Motion to Withdraw/Abandon Counter-Protest in Specific Municipalities/Precincts" praying that he be granted leave to withdraw and abandon partially his counter-protest in certain precincts. ^[1] Libanan filed an opposition thereto but the motion was eventually granted by the Chairman of the HRET and subsequently confirmed in a resolution by the tribunal.

On 21 March 1996, the HRET designated a Hearing Commissioner and a Deputy Hearing Commissioner for the reception of evidence. Following that reception, the respective memoranda of Libanan and Ramirez were filed.

The evidence and the issues submitted by the parties for consideration by the HRET related mainly to the proper appreciation of the ballots objected to, or claimed by, the parties during the revision. No evidence was presented in support of the other allegations of the protest (like the alleged tampering of election returns) and of the counter-protest (such as the alleged tearing of some of the pages of the computerized list of voters to disenfranchise legitimate voters and the use of goons to terrorize and compel voters to vote for Libanan), nor were these issues discussed in the memoranda of the parties. The HRET thus concentrated, such as can be rightly expected, its attention to the basic appreciation of ballots. ^[2]

The particular matter focused in this petition deals with what petitioner claims to be spurious ballots; on this score, the HRET has explained:

"No spurious ballot was found in this case. For a ballot to be rejected for being spurious, the ballot must not have any of the following authenticating marks: a) the COMELEC watermark; b) the signatures or initial of the BEI Chairman at the back of the ballot; and c) red and blue fibers. In the present case, all the ballots examined by the Tribunal had COMELEC watermarks.

"The Tribunal did not adopt protestant's submission in his Memorandum that the absence of thumbmark or BEI Chairman's signature at the back of the ballot rendered the ballot spurious. The applicable law on this issue is Sec. 24, R.A. 7166. It reads:

"In every case before delivering an official ballot to the voter, the Chairman of the Board of Election Inspectors shall, in the presence of the voter, affix his signature at the back thereof. Failure to so authenticate shall be noted in the minutes of the

board of election inspectors and shall constitute an election offense punishable under Section 263 and 264 of the Omnibus Election Code.'

"As may be gleaned above, unlike the provision of Section 210 of the Omnibus Election Code where the BEI Chairman was required to affix his right thumbmark at the back of the ballot immediately after it was counted, the present law no longer requires the same.

"Anent the BEI Chairman's signature, while Section 24 of R.A. 7166 provides that failure to authenticate the ballot shall constitute an election offense, there is nothing in the said law which provides that ballots not so authenticated shall be considered invalid. In fact, the members of the Committee on Suffrage and Electoral Reforms agreed during their deliberation on the subject that the absence of the BEI Chairman's signature at the back of the ballot will not per se make a ballot spurious.

"Moreover, while Rep. Palacol, then Chairman of the Committee on Suffrage and Electoral Reforms, mentioned during his sponsorship speech that one of the salient features of the bill filed was 'to require the chairman of the Board of Election Inspectors to authenticate a ballot given to a voter by affixing his signature on (sic) the back thereof and to consider any ballot as spurious,' R.A. 7166, as approved, does not contain any provision to that effect. Clearly, therefore, the Congress as a whole (House of Representatives and Senate) failed to adopt the proposal of Rep. Palacol that ballots without the BEI Chairman's signature at the back will be declared spurious. What is clearly provided under the said law is the sanction imposable upon an erring Chairman of the BEI, and not the disenfranchisement of the voter." [3]

In its assailed decision, the HRET ruled in favor of respondent Ramirez; it concluded:

"WHEREFORE, in light of the foregoing, the Tribunal Resolved to DISMISS the instant election protest, including the parties' mutual claims for damages and attorney's fee; AFFIRM the proclamation of Protestee Jose Tan Ramirez; and DECLARE him to be the duly elected Representative of the Lone District of Eastern Samar, for having obtained a plurality of 143 votes over second placer Protestant Marcelino Libanan." [4]

Petitioner Libanan moved for a reconsideration of the decision of the HRET arguing, among other grounds, [5] that the absence of the BEI Chairman's signature at the back of the ballots could not but indicate that the ballots were not those issued to the voters during the elections. He averred that the law would require the Chairman of the BEI to authenticate or sign the ballot before issuing it to the voter. Acting on petitioner's motion for reconsideration, the HRET credited petitioner Libanan with thirty (30) votes because of the error in the computation of the base figure and rejected twelve (12) ballots for respondent Ramirez. Respondent Ramirez, nevertheless, remained to be the winner with a lead of ninety-nine (99) votes in his

favor. As regards the absence of BEI Chairman's signature at the back of the ballots, the HRET stressed:

"Fraud is not presumed. It must be sufficiently established. Moreover, Section 211 of the Omnibus Election Code provides in part that 'in the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection.' In the instant case, there is no evidence to support protestant's allegation that the ballots he enumerated in his Motion for Reconsideration are substitute ballots. The absence of the BEI Chairman's signature at the back of the ballot cannot be an indication of ballot switching or substitution. At best, such absence of BEI Chairman's signature is a prima facie evidence that the BEI Chairmen concerned were derelict in their duty of authenticating the ballots. Such omission, as stated in the Decision, is not fatal to the validity of the ballots." [6]

Thus, the present recourse.

A perusal of the grounds raised by petitioner to annul the HRET decision and resolution boils down to the issue of whether or not the HRET committed grave abuse of discretion in ruling that the absence of the signature of the Chairman of the BEI in the ballots did not render the ballots spurious.

Petitioner Libanan contends that the three hundred eleven (311) ballots (265 of which have been for private respondent Ramirez) without the signature of the Chairman of the BEI, but which had the COMELEC water-marks and/or colored fibers, should be invalidated. It is the position of petitioner that the purpose of the law in requiring the BEI Chairman to affix his signature at the back of the ballot when he issues it to the voter is "to authenticate" the ballot and, absent that signature, the ballot must be considered spurious.

Prefatorily, the Court touches base on its jurisdiction to review and pass upon decisions or resolutions of the electoral tribunals.

The Constitution mandates that the House of Representatives Electoral Tribunal and the Senate Electoral Tribunal shall each, respectively, be the sole judge of all contests relating to the election, returns and qualifications of their respective members. [7] In *Laza tin vs. HRET*, [8] the Court has observed that -

"The use of the word 'sole' emphasizes the exclusive character of the jurisdiction conferred. The exercise of the power by the Electoral Commission under the 1935 Constitution has been described as 'intended to be as complete and unimpaired as if it had remained originally in the legislature.' Earlier this grant of power to the legislature was characterized by Justice Malcolm as 'full, clear and complete.' 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. The same may be said with regard to the jurisdiction of the Electoral Tribunals under the 1987 Constitution." [9]

The Court has stressed that ". . . so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the 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 x x x 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."

The Court did recognize, of course, its power of judicial review in exceptional cases. In *Robles vs. HRET*, [10] the Court has explained that while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only "in the exercise of this Court's so-called extraordinary jurisdiction, . . . upon a determination that the Tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or 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."

In the old, but still relevant, case of *Morrero vs. Bocar*, [11] the Court has 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, to paraphrase it in *Co vs. HRET*, [12] venture into the perilous area of correcting 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 itself calls for remedial action.

In the instant controversy, it would appear that the HRET "reviewed and passed upon the validity of all the ballots in the protested and counter-protested precincts, including those not contested and claimed by the parties." [13] The Tribunal, added, that "(t)his course of action was adopted not only to give effect to the intent of each and every voter, but also to rectify any mistake in appreciation, deliberate or otherwise, committed at the precinct level and overlooked during the revision stage of this case." [14] In holding that the absence of the signature of the Chairman of the BEI at the back of the ballot does not invalidate it, the HRET has ratiocinated in this wise:

"No spurious ballot was found in this case. For a ballot to be rejected for being spurious, the ballot must not have any of the following authenticating marks: a) the COMELEC watermark; b) the signatures or initial of the BEI Chairman at the back of the ballot; and c) red and blue fibers. In the present case, all the ballots examined by the Tribunal had COMELEC watermarks.

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