108 OG No. 18, 2001 (April 30, 2012)

EN BANC

[G.R. No. 191618, June 07, 2011]

ATTY. ROMULO B. MACALINTAL, PETITIONER, VS. PRESIDENTIAL ELECTORAL TRIBUNAL, RESPONDENT.

R E S O L U T I O N

Before us is a Motion for Reconsideration filed by petitioner Atty. Romulo B. Macalintal of our Decision[1] in G.R. No. 191618 dated November 23, 2010, dismissing his petition and declaring the establishment of respondent Presidential Electoral Tribunal (PET) as constitutional.

Petitioner reiterates his arguments on the alleged unconstitutional creation of the PET:

> 1.He has standing to file the petition as a taxpayer and a concerned citizen.
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> 2. He is not estopped from assailing the constitution of the PET simply by virtue of his appearance as counsel of former president Gloria Macapagal-Arroyo before respondent tribunal.
>
> 3. Section 4, Article VII of the Constitution does not provide for the creation of the PET.
>
> 4. The PET violates Section 12, Article VIII of the Constitution.

To bolster his arguments that the PET is an illegal and unauthorized progeny of Section 4, Article VII of the Constitution, petitioner invokes our ruling on the constitutionality of the Philippine Truth Commission (PTC).[2] Petitioner cites the concurring opinion of Justice Teresita J. Leonardo-de Castro that the PTC is a public office which cannot be created by the President, the power to do so being lodged exclusively with Congress. Thus, petitioner submits that if the President, as head of the Executive Department, cannot create the PTC, the Supreme Court, likewise, cannot create the PET in the absence of an act of legislature.

On the other hand, in its Comment to the Motion for Reconsideration, the Office of the Solicitor General maintains that:

> 1.Petitioner is without standing to file the petition.
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> 2.Petitioner is estopped from assailing the jurisdiction of the PET.
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> 3.The constitution of the PET is "on firm footing on the basis of the grant of authority to the [Supreme] Court to be the sole judge of all election contests for the President or Vice-President under paragraph 7, Section 4, Article VII of the 1987 Constitution."

Except for the invocation of our decision in Louis *"Barok" C. Biraogo v. The Philippine Truth Commission of 2010,*[3] petitioner does not allege new arguments to

warrant reconsideration of our Decision.

We cannot agree with his insistence that the creation of the PET is unconstitutional. We reiterate that the abstraction of the Supreme Court acting as a *Presidential Electoral Tribunal* from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable. The provision reads:

> Sec. 4. x x x.
>
> The Supreme Court, sitting *en banc,* shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

We mapped out the discussions of the Constitutional Commission on the foregoing provision and concluded therefrom that:

> The *mirabile dictu* of the grant of jurisdiction to this Court, albeit found in the Article on the executive branch of government, and the constitution of the PET, is evident in the discussions of the Constitutional Commission. On the exercise of this Court's judicial power as sole judge of presidential and vice-presidential election contests, and to promulgate its rules for this purpose, we find the proceedings in the Constitutional Commission most instructive:
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> > MR. DAVIDE. On line 25, after the words "Vice-President," I propose to add AND MAY PROMULGATE ITS RULES FOR THE PURPOSE. This refers to the Supreme Court sitting *en banc.* **This is also to confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.**
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> > MR. REGALADO. **My personal position is that the rule-making power of the Supreme Court with respect to its internal procedure is already implicit under the Article on the Judiciary; considering, however, that according to the Commissioner, the purpose of this is to indicate the sole power of the Supreme Court without intervention by the legislature in the promulgation of its rules on this particular point, I think I will personally recommend its acceptance to the Committee.**
> >
> > x x x x
> >
> > MR. NOLLEDO x x x.
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> > With respect to Sections 10 and 11 on page 8, I understand that the Committee has also created an Electoral Tribunal in the Senate and a Commission on Appointments which may cover membership from both Houses. But my question is: It seems to me that the committee report does not indicate which body should promulgate the rules that shall govern the

Electoral Tribunal and the Commission on Appointments. Who shall then promulgate the rules of these bodies?

MR. DAVIDE. **The Electoral Tribunal itself will establish and promulgate its rules because it is a body distinct and independent already from the House, and so with the Commission on Appointments also. It will have the authority to promulgate its own rules.**

On another point of discussion relative to the grant of judicial power, but equally cogent, we listen to former Chief Justice Roberto Concepcion:

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. **I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.**

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. **There are legal rights which are enforceable under the law, and these are essentially justiciable questions.**

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**

Echoing the same sentiment and affirming the grant of judicial power to the Supreme Court, Justice Florenz D. Regalado and Fr. Joaquin Bernas both opined:

MR. VILLACORTA. Thank you very much, Madam President.

I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting *en banc,* shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the

doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO. **No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.**

MR. VILLACORTA. That is right.

MR. REGALADO. **We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.**

MR. VILLACORTA. May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?

FR. BERNAS. **Precisely, this is necessary. Election contests are, by their nature, judicial. Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.**

So, the background of this is really the case of *Roxas v. Lopez.* The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: "No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions."

Before the passage of that republic act, in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. **So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.**

Unmistakable from the foregoing is that the exercise of our power to judge presidential and vice-presidential election contests, as well as the rule-making power adjunct thereto, is plenary; it is not as restrictive as petitioner would interpret it. In fact, former Chief Justice Hilario G. Davide, Jr., who proposed the insertion of the phrase, intended the

> Supreme Court to exercise exclusive authority to promulgate its rules of procedure for that purpose. To this, Justice Regalado forthwith assented and then emphasized that the sole power ought to be without intervention by the legislative department. Evidently, even the legislature cannot limit the judicial power to resolve presidential and vice-presidential election contests and our rule-making power connected thereto.
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> To foreclose all arguments of petitioner, we reiterate that the establishment of the PET simply constitutionalized what was statutory before the 1987 Constitution. The experiential context of the PET in our country cannot be denied.[4]

Stubbornly, despite the explicit reference of the Members of the Constitutional Commission to a *Presidential Electoral Tribunal,* with Fr. Joaquin Bernas categorically declaring that in crafting the last paragraph of Section 4, Article VII of the Constitution, they "constitutionalize[d] what was statutory," petitioner continues to insist that the last paragraph of Section 4, Article VII of the Constitution does not provide for the creation of the PET. Petitioner is adamant that "the fact that [the provision] does not expressly prohibit [the] creation [of the PET] is not an authority for the Supreme Court to create the same."

Petitioner is going to town under the misplaced assumption that the text of the provision itself was the only basis for this Court to sustain the PET's constitutionality.

We reiterate that the PET is authorized by the last paragraph of Section 4, Article VII of the Constitution and as supported by the discussions of the Members of the Constitutional Commission, which drafted the present Constitution.

The explicit reference by the framers of our Constitution to constitutionalizing what was merely statutory before is not diluted by the absence of a phrase, line or word, mandating the Supreme Court to create a *Presidential Electoral Tribunal.*

Suffice it to state that the Constitution, verbose as it already is, cannot contain the specific wording required by petitioner in order for him to accept the constitutionality of the PET.

> In our Decision, we clarified the structure of the PET:
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> Be that as it may, we hasten to clarify the structure of the PET as a legitimate progeny of Section 4, Article VII of the Constitution, composed of members of the Supreme Court, sitting en banc. The following exchange in the 1986 Constitutional Commission should provide enlightenment:
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> > MR. SUAREZ. Thank you. Let me proceed to line 23, page 2, wherein it is provided, and I quote:
> >
> > The Supreme Court, sitting en banc[,] shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.
> >
> > **Are we not giving enormous work to the Supreme Court especially when it is directed to sit en banc as the sole**