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EN BANC

[G.R. Nos. 68379-81. September 22, 1986]

EVELIO B. JAVIER, *petitioner, vs.* **THE COMMISSION ON ELECTIONS, and ARTURO F. PACIFICADOR,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; DISMISSAL OF ACTION; ISSUES BECAME MOOT AND ACADEMIC; NOT A CASE OF.—** The abolition of the Batasang Pambansa and the disappearance of the office in dispute between the petitioner and the private respondent — both of whom have gone their separate ways — could be a convenient justification for dismissing this case. But there are larger issues involved that must be resolved now, once and for all, not only to dispel the legal ambiguities here raised. The more important purpose is to manifest in the clearest possible terms that this Court will not disregard and in effect condone wrong on the simplistic and tolerant pretext that the case has become moot and academic. The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.

2. **CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; GIVEN FULL AUTHORITY TO HEAR AND DECIDE CASES FROM BEGINNING TO END AND ALL MATTERS RELATED THERETO.—** We believe that in making the Commission on Elections the sole judge of all contests involving the election, returns and qualifications of the members of the Batasang Pambansa and elective provincial and city officials, the Constitution intended to give it full authority to hear and decide these cases from beginning to end and on all matters

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related thereto, including those arising before the proclamation of the winners.

3. **ID.; ID.; "CONTEST"; SHOULD NOT BE GIVEN A RESTRICTIVE MEANING.**— The word "contests" should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claims as title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute. Needless to stress, the term should be given a consistent meaning and understood in the same sense under both Section 2(2) and Section 3 of Article XII-C of the Constitution.

4. **ID.; ID.; PHRASE "ELECTION RETURNS AND QUALIFICATION," DEFINED IN THE SAME SENSE UNDER SEC. 2(2) AND SEC. 3, ART. XII-C, CONSTITUTION.**— The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, we can say that "election" referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his delivery or ineligibility or the inadequacy of his certificate of candidacy.

5. **ID.; ID.; ISSUES ON ELECTION RETURNS AND QUALIFICATIONS; TO BE HEARD AND DECIDED ONLY BY SITTING *EN BANC* INSOFAR AS THEY APPLIED TO MEMBERS OF BATASANG PAMBANSA**— All these came under the exclusive jurisdiction of the Commission on Elections insofar as they applied to the members of the defunct Batasang Pambansa and, under Article XII-C, Section 3, of the 1973 Constitution, could be heard and decided by it only *en banc*.

6. **ID.; ID.; ID.; CASES INVOLVING MEMBERS OF BATASANG PAMBANSA TO BE HEARD AND DECIDED**

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BY SITTING *EN BANC;* PURPOSE.— As correctly observed by the petitioner, the purpose of Section 3 in requiring that cases involving members of the Batasang Pambansa be heard and decided by the Commission *en banc* was to insure the most careful consideration of such cases. Obviously, that objective could not be achieved if the Commission could act en banc only after the proclamation had been made, for it might then be too late already. We are all-too-familiar with the grab-the-proclamation-and-delay-the-protest strategy of many unscrupulous candidates which has resulted in the frustration of the popular will and the virtual defeat of the real winners in the election. The respondent's theory would make this gambit possible for the pre-proclamation proceedings, being summary in nature, could be hastily decided by only three members in division, without the cause and deliberation that would have otherwise been observed by the Commission en banc. After that, the delay. The Commission *en banc* might then no longer be able to rectify in time the proclamation summarily and not very judiciously made by the division. While in the end the protestant might be sustained, he might find himself with only a Phyrric victory because the term of his office would have already expired.

7. **ID.; BILL OF RIGHTS; DUE PROCESS GUARANTY; VIOLATED IN CASE AT BAR.**— Another matter deserving the highest consideration of this Court but accorded cavalier attention by the respondent Commission on Elections is due process of law, that ancient guaranty of justice and fair play which is the hallmark of the free society. Commissioner Opinion ignored it. Asked to inhibit himself on the ground that he was formerly a law partner of the private respondent, he obstinately insisted on participating in the case, denying he was biased.

8. **ID.; ID.; ID.; COLD NEUTRALITY OF AN IMPARTIAL JUDGE; INDISPENSABLE IMPERATIVE OF DUE PROCESS.**— This Court has repeatedly and consistently demanded "the cold neutrality of an impartial judge" as the indispensable imperative of due process. To bolster that requirement we have held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give

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them justice. They must trust the judge, otherwise they will not go to him at all. They must believe in his sense of fairness, otherwise they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.

9. **ID.; ID.; ID.; INTENDED TO INSURE COMPLIANCE WITH RUDIMENTS OF FAIR PLAY.**— Due process is intended to insure that confidence by requiring compliance with what Justice Frankfurter calls the rudiments of fair play. Fair play calls for equal justice. There cannot be equal justice where a suitor approaches a court already committed to the other party and with a judgment already made and waiting only to be formalized after the litigants shall have undergone the charade of a formal hearing. Judicial (and also extra-judicial proceedings are not orchestrated plays in which the parties are supposed to make the motions and reach the denouement according to a prepared script. There is no writer to foreordain the ending. The judge will reach his conclusions only after all the evidence is in and all the arguments are filed, on the basis of the established facts and the pertinent law.

10. **ID.; ID.; ID.; DEMANDS THAT THE JUDGE INHIBIT HIMSELF OUT OF A SENSE OF *DELICADEZA*.**— The relationship of the judge with one of the parties may color the facts and distort the law to the prejudice of a just decision. Where this is probable or even only possible, due possible, due process demands that the judge inhibit himself, if only out of a sense of *delicadeza*. For like Caesar's wife, he must be above suspicion. Commissioner Opinion, being a lawyer, should have recognized his duty and abided by this well-known rule of judicial conduct. For refusing to do so, he divested the Second Division of the necessary vote for the questioned decision, assuming it could act, and rendered the proceedings null and void.

FELICIANO, *J., concurring*:

CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; MUST DECIDE ALL ELECTION CONTESTS INVOLVING MEMBERS OF THE BATASAN PAMBANSA SITTING *EN BANC*.— Although this petition has become moot and academic, the decision, dated 23 July 1984, of the Second Division of the Commission on Elections which had proclaimed Arturo F.

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Pacificador as the duly elected Assemblyman of the province of Antique must be set aside or, more accurately, must be disregarded as bereft of any effect in law. *J.* Feliciano reaches this result on the same single, precisely drawn, ground relied upon by Melencio-Herrera, *J.*, that all election contests involving members of the former Batasan Pambansa must be decided by the Commission on Elections en banc under Sections 2 and 3 of Article XII-C of the 1973 Constitution. These Sections do not distinguish between "pre-proclamation" and "post-proclamation" contests nor between "cases" and "contests."

MELENCIO-HERRERA, *J., concurring*:

CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; HAS JURISDICTION OVER CONTESTS INVOLVING MEMBERS OF THE BATASANG PAMBANSA.— I concur in the result. The questioned Decision of the Second Division of the COMELEC, dated July 23, 1984, proclaiming private respondent, Arturo F. Pacificador, as the duly elected Assemblyman of the province of Antique, should be set aside for the legal reason that all election contests, without distinction as to cases or contests, involving members of the defunct Batasang Pambansa fall under the jurisdiction of the COMELEC en banc pursuant to Sections 2 and 3 of Article XII-C of the 1973 Constitution.

D E C I S I O N

CRUZ, *J.*:

The new Solicitor General has moved to dismiss this petition on the ground that as a result of supervening events it has become moot and academic. It is not as simple as that, Several lives have been lost in connection with this case, including that of the petitioner himself. The private respondent is now in hiding. The purity of suffrage has been defiled and the popular will scorned through a confabulation of those in authority. This Court cannot keep silent in the face of these terrible facts. The motion is denied.

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The petitioner and the private respondent were candidates in Antique for the Batasang Pambansa in the May 1984 elections. The former appeared to enjoy more popular support but the latter had the advantage of being the nominee of the KBL with all its perquisites of power. On May 13, 1984, the eve of the elections, the bitter contest between the two came to a head when several followers of the petitioner were ambushed and killed, allegedly by the latter's men. Seven suspects, including respondent Pacificador, are now facing trial for these murders. The incident naturally heightened tension in the province and sharpened the climate of fear among the electorate. Conceivably, it intimidated voters against supporting the Opposition candidate or into supporting the candidate of the ruling party.

It was in this atmosphere that the voting was held, and the post-election developments were to run true to form. Owing to what he claimed were attempts to railroad the private respondent's proclamation, the petitioner went to the Commission on Elections to question the canvass of the election returns. His complaints were dismissed and the private respondent was proclaimed winner by the Second Division of the said body. The petitioner thereupon came to this Court, arguing that the proclamation was void because made only by a division and not by the Commission on Elections *en banc* as required by the Constitution. Meanwhile, on the strength of his proclamation, the private respondent took his oath as a member of the Batasang Pambansa.

The case was still being considered by this Court when on February 11, 1986, the petitioner was gunned down in cold blood and in broad daylight. The nation, already indignant over the obvious manipulation of the presidential elections in favor of Marcos, was revolted by the killing, which flaunted a scornful disregard for the law by the assailants who apparently believed they were above the law. This ruthless murder was possibly one of the factors that strengthened the cause of the Opposition in the February revolution that toppled the Marcos regime and installed the present government under President Corazon C. Aquino.

The abolition of the Batasang Pambansa and the disappearance of the office in dispute between the petitioner and the private

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respondent — both of whom have gone their separate ways — could be a convenient justification for dismissing this case. But there are larger issues involved that must be resolved now, once and for all, not only to dispel the legal ambiguities here raised. The more important purpose is to manifest in the clearest possible terms that this Court will not disregard and in effect condone wrong on the simplistic and tolerant pretext that the case has become moot and academic.

The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.

It is a notorious fact decried by many people and even by the foreign press that elections during the period of the Marcos dictatorship were in the main a desecration of the right of suffrage. Vote-buying, intimidation and violence, illegal listing of voters, falsified returns, and other elections anomalies misrepresented and vitiated the popular will and led to the induction in office of persons who did not enjoy the confidence of the sovereign electorate. Genuine elections were a rarity. The price at times was human lives. The rule was chicanery and irregularity, and on all levels of the polls, from the barangay to the presidential. This included the rigged plebiscites and referenda that also elicited the decision and provoked the resentments of the people.

Antique in 1984 hewed to the line and equaled if it did not surpass the viciousness of elections in other provinces dominated by the KBL. Terrorism was a special feature, as demonstrated by the killings previously mentioned, which victimized no less than one of the main protagonists and implicated his rival as

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a principal perpetrator. Opposition leaders were in constant peril of their lives even as their supporters were gripped with fear of violence at the hands of the party in power.

What made the situation especially deplorable was the apparently indifferent attitude of the Commission on Elections toward the anomalies being committed. It is a matter of record that the petitioner complained against the terroristic acts of his opponents. All the electoral body did was refer the matter to the Armed Forces without taking a more active step as befitted its constitutional role as the guardian of free, orderly and honest elections. A more assertive stance could have averted the Sibalom election eve massacre and saved the lives of the nine victims of the tragedy.

Public confidence in the Commission on Elections was practically nil because of its transparent bias in favor of the administration. This prejudice left many opposition candidates without recourse except only to this Court.

Alleging serious anomalies in the conduct of the elections and the canvass of the election returns, the petitioner went to the Commission on Elections to prevent the impending proclamation of his rival, the private respondent herein.[1] Specifically, the petitioner charged that the elections were marred by "massive terrorism, intimidation, duress, vote-buying, fraud, tampering and falsification of election returns under duress, threat and intimidation, snatching of ballot boxes perpetrated by the armed men of respondent Pacificador."[2] Particular mention was made of the municipalities of Caluya, Cabate, Tibiao, Barbaza, Laua-an, and also of San Remigio, where the petitioner claimed the election returns were not placed in the ballot boxes but merely wrapped in cement bags or manila paper.

On May 18, 1984, the Second Division of the Commission on Elections directed the provincial board of canvassers of Antique to proceed with the canvass but to suspend the

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[1] *Rollo*, p. 26.

[2] *Rollo*, p. 26.

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proclamation of the winning candidate until further orders.[3] On June 7, 1984, the same Second Division ordered the board to immediately convene and to proclaim the winner without prejudice to the outcome of the case before the Commission.[4] On *certiorari* before this Court, the proclamation made by the board of canvassers was set aside as premature, having been made before the lapse of the 5-day period of appeal, which the petitioner had seasonably made.[5] Finally, on July 23, 1984, the Second Division promulgated the decision now subject of this petition which *inter alia* proclaimed Arturo F. Pacificador the elected assemblyman of the province of Antique.[6]

This decision was signed by Chairman Victoriano Savellano and Commissioners Jaime Opinion and Froilan M. Bacungan. Previously asked to inhibit himself on the ground that he was a former law partner of private respondent Pacificador, Opinion had refused.[7]

The petitioner then came to this Court, asking us to annul the said decision.

The core question in this case is one of jurisdiction, to wit: Was the Second Division of the Commission on Elections authorized to promulgate its decision of July 23, 1984, proclaiming the private respondent the winner in the election?

The applicable provisions are found in Article XII-C, Sections 2 and 3, of the 1973 Constitution.

Section 2 confers on the Commission on Elections the power to:

"(2) Be the sole judge of all contests relating to the election, returns and qualifications of all member of the Batasang Pambansa and elective provincial and city officials."

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[3] *Ibid.*, p. 9; p. 28.

[4] *Id.*, p. 30.

[5] *Id.*, p. 30.

[6] *Id.*, p. 62.

[7] *Id.*, p. 62; pp. 107-111.

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Section 3 provides:

"The Commission on Elections may sit *en banc* or in three divisions. All election cases may be heard and decided by divisions except contests involving members of the Batasang Pambansa, which shall be heard and decided *en banc*. Unless otherwise provided by law, all election cases shall be decided within ninety days from the date of their submission for decision."

While both invoking the above provisions, the petitioner and the respondents have arrived at opposite conclusions. The records are voluminous and some of the pleadings are exhaustive and in part even erudite. And well they might be, for the noble profession of the law — despite all the canards that have been flung against it — exerts all efforts and considers all possible viewpoints in its earnest search of the truth.

The petitioner complains that the proclamation made by the Second Division is invalid because all contests involving the members of the Batasang Pambansa come under the jurisdiction of the Commission on Elections *en banc*. This is as it should be, he says, to insure a more careful decision, considering the importance of the offices involved. The respondents, for their part, argue that only contests need to be heard and decided *en banc* and all other cases can be — in fact, *should* be - filed with and decided only by any of the three divisions.

The former Solicitor General makes much of this argument and lays a plausible distinction between the terms "contests" and "cases" to prove his point.[8] Simply put, his contention is that the pre-proclamation controversy between the petitioner and the private respondent was not yet a contest at that time and therefore could be validly heard by a mere division of the Commission on Elections, consonant with Section 3. The issue was at this stage still administrative and so was resoluble by the Commission under its power to administer all laws relative to the conduct of elections,[9] not its authority as sole judge of the election contest.

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[8] *Id.*, pp. 11-16; pp. 196-208.

[9] Art. XII-C, Sec. 2(1), 1973 Constitution.

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A contest, according to him, should involve a contention between the parties for the same office "in which the contestant seeks not only to oust the intruder but also to have himself inducted into the office."[10] No proclamation had as yet been made when the petition was filed and later decided. Hence, since neither the petitioner nor the private respondent had at that time assumed office, there was no Member of the Batasang Pambansa from Antique whose election, returns or qualifications could be examined by the Commission on Elections *en banc*.

In providing that the Commission on Elections could act in division when deciding election cases, according to this theory, the Constitution was laying down the general rule. The exception was the election contest involving the members of the Batasang Pambansa, which had to be heard and decided *en banc*.[11] The *en banc* requirement would apply only from the time a candidate for the Batasang Pambansa was proclaimed as winner, for it was only then that a contest could be permitted under the law. All matters arising before such time were, necessarily, subject to decision only by division of the Commission as these would come under the general heading of "election cases."

As the Court sees it, the effect of this interpretation would be to divide the jurisdiction of the Commission on Elections into two, *viz.*: (1) over matters arising *before* the proclamation, which should be heard and decided by division in the exercise of its administrative power; and (2) over matters arising *after* the proclamation, which could be heard and decided only *en banc* in the exercise of its judicial power. Stated otherwise, the Commission as a whole could not act as sole judge as long as one of its divisions was hearing a pre-proclamation matter affecting the candidates for the Batasang Pambansa because there was as yet no contest; or to put it still another way, the Commission *en banc* could not do what one of its divisions was competent to do, i.e., decide a pre-proclamation controversy. Moreover, a mere division of the Commission on Elections

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[10] *Vera vs. Avelino*, 77 Phil. 191.

[11] Art. XII-C, Sec. 3, 1973 Constitution.

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could hear and decide, save only those involving the election, returns and qualifications of the members of the Batasang Pambansa, all cases involving elective provincial and city officials from *start to finish*, including pre-proclamation controversies and up to the election protest. In doing so, it would exercise first administrative and then judicial powers. But in the case of the Commission *en banc*, its jurisdiction would begin *only after the proclamation was made and a contest was filed* and not at any time and on any matter before that, and always in the exercise only of judicial power.

This interpretation would give to the part more powers than were enjoyed by the whole, granting to the division while denying to the *banc*. We do not think this was the intention of the Constitution. The framers could not have intended such an irrational rule.

We believe that in making the Commission on Elections the sole judge of all contests involving the election, returns and qualifications of the members of the Batasang Pambansa and elective provincial and city officials, the Constitution intended to give it *full authority* to hear and decide these cases *from beginning to end* and *on all matters related thereto, including those arising before the proclamation of the winners.*

It is worth observing that the special procedure for the settlement of what are now called "pre-proclamation controversies" is a relatively recent innovation in our laws, having been introduced only in 1978, through P.D. No. 1296, otherwise known as the 1978 Election Code. Section 175 thereof provided:

"Sec. 175. Suspension and annulment of proclamation. — The Commission shall be the sole judge of all pre-proclamation controversies and any of its decisions, orders or rulings shall he final and executory. It may, *motu proprio* or upon written petition, and after due notice and hearing order the suspension of the proclamation of a candidate-elect or annul any proclamation, if one has been made, on any of the grounds mentioned in Sections 172, 173 and 174 thereof."

Before that time all proceedings affecting the election, returns and qualifications of public officers came under the complete

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jurisdiction of the competent court or tribunal from beginning to end and in the exercise of judicial power only. It therefore could not have been the intention of the framers in 1935, when the Commonwealth Charter was adopted, and even in 1973, when the past Constitution was imposed, to divide the electoral process into the pre-proclamation stage and the post-proclamation stage and to provide for a separate jurisdiction for each stage, considering the first administrative and the second judicial.

Besides, the term "contest" as it was understood at the time Article XII-C, Section 2(2) was incorporated in the 1973 Constitution did not follow the strict definition of a contention between the parties for the same office. Under the Election Code of 1971, which presumably was taken into consideration when the 1973 Constitution was being drafted, election contests included the *quo warranto* petition that could be filed by any voter on the ground of disloyalty or ineligibility of the contestee although such voter was himself not claiming the office involved.[12]

The word "contests" should not be given a restrictive meaning; on the contrary, it should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term should be understood as referring to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute. Needless to stress, the term should be given a consistent meaning and understood in the same sense under both Section 2(2) and Section 3 of Article XII-C of the Constitution.

The phrase "election, returns and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, we can say that "election" referred to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes;

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[12] Election Code of 1971, Sec. 219.

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"returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his certificate of candidacy.

All these came under the exclusive jurisdiction of the Commission on Elections insofar as they applied to the members of the defunct Batasang Pambansa and, under Article XII-C, Section 3, of the 1973 Constitution, could be heard and decided by it only *en banc*.

We interpret "cases" as the generic term denoting the actions that might be heard and decided by the Commission on Elections, only by division as a general rule except where the case was a "contest" involving members of the Batasang Pambansa, which had to be heard and decided *en banc*.

As correctly observed by the petitioner, the purpose of Section 3 in requiring that cases involving members of the Batasang Pambansa be heard and decided by the Commission *en banc* was to insure the most careful consideration of such cases. Obviously, that objective could not be achieved if the Commission could act *en banc* only after the proclamation had been made, for it might then be too late already. We are all-too-familiar with the grab-the-proclamation-and-delay-the-protest strategy of many unscrupulous candidates which has resulted in the frustration of the popular will and the virtual defeat of the real winners in the election. The respondent's theory would make this gambit possible for the pre-proclamation proceedings, being summary in nature, could be hastily decided by only three members in division, without the care and deliberation that would have otherwise been observed by the Commission *en banc*.

After that, the delay. The Commission *en banc* might then no longer be able to rectify in time the proclamation summarily and not very judiciously made by the division. While in the end the protestant might be sustained, he might find himself

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with only a Phyrric victory because the term of his office would have already expired.

It may be argued that in conferring the initial power to decide the pre-proclamation question upon the division, the Constitution did not intend to prevent the Commission *en banc* from exercising the power directly, on the theory that the greater power embraces the lesser. It could if it wanted to but then it could also allow the division to act for it. That argument would militate against the purpose of the provision, which precisely limited all questions affecting the election contest, as distinguished from election cases in general, to the jurisdiction of the Commission *en banc* as sole judge thereof. "Sole judge" excluded not only all other tribunals but also and even the division of the Commission. A decision made on the contest by less than the Commission *en banc* would not meet the exacting standard of care and deliberation ordained by the Constitution.

Incidentally, in making the Commission the "sole judge" of pre-proclamation controversies in Section 175, *supra*, the law was obviously referring to the body sitting *en banc*. In fact, the pre-proclamation controversies involved in *Aratuc vs. Commission on Elections,*[13] where the said provision was applied, were heard and decided *en banc*.

Another matter deserving the highest consideration of this Court but accorded cavalier attention by the respondent Commission on Elections is due process of law, that ancient guaranty of justice and fair play which is the hallmark of the free society. Commissioner Opinion ignored it. Asked to inhibit himself on the ground that he was formerly a law partner of the private respondent, he obstinately insisted on participating in the case, denying he was biased.[14]

Given the general attitude of the Commission on Elections toward the party in power at the time, and the particular relationship between Commissioner Opinion and MP Pacificador, one could not be at least apprehensive, if not certain, that the

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[13] 88 SCRA 251.

[14] *Rollo*, pp. 109-111.

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decision of the body would be adverse to the petitioner. As in fact it was. Commissioner Opinion's refusal to inhibit himself and his objection to the transfer of the case to another division cannot be justified by any criterion of propriety. His conduct on this matter belied his wounded protestations of innocence and proved the motives of the Second Division when it rendered its decision.

This Court has repeatedly and consistently demanded "the cold neutrality of an impartial judge" as the indispensable imperative of due process.[15] To bolster that requirement, we have held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just.[16] The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise they will not go to him at all. They must believe in his sense of fairness, otherwise they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.

Due process is intended to insure that confidence by requiring compliance with what Justice Frankfurter calls the rudiments of fair play. Fair play calls for equal justice. There cannot be equal justice where a suitor approaches a court already committed to the other party and with a judgment already made and waiting only to be formalized after the litigants shall have undergone the charade of a formal hearing. Judicial (and also extrajudicial) proceedings are not orchestrated plays in which the parties are supposed to make the motions and reach the denouement according to a prepared script. There is no writer to foreordain the ending. The judge will reach his conclusions only after all the evidence is in and all the arguments are filed, on the basis of the established facts and the pertinent law.

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[15] *Mateo vs. Villaluz*, 50 SCRA 18; *Gutierrez vs. Santos*, 2 SCRA 249.

[16] *People vs. Opida*, G.R. No. L-46272, July 13, 1986, citing *Fernandez vs. Presbitero*, 79 SCRA 61; *Sardinia-Linco vs. Pineda*, 104 SCRA 757.

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The relationship of the judge with one of the parties may color the facts and distort the law to the prejudice of a just decision. Where this is probable or even only possible, due process demands that the judge inhibit himself, if only out of a sense of *delicadeza*. For like Caesar's wife, he must be above suspicion. Commissioner Opinion, being a lawyer, should have recognized his duty and abided by this well-known rule of judicial conduct. For refusing to do so, he divested the Second Division of the necessary vote for the questioned decision, assuming it could act, and rendered the proceeding null and void.[17]

Since this case began in 1984, many significant developments have taken place, not the least significant of which was the February revolution of "people power" that dislodged the past regime and ended well nigh twenty years of travail for this captive nation. The petitioner is gone, felled by a hail of bullets sprayed with deadly purpose by assassins whose motive is yet to be disclosed. The private respondent has disappeared with the "pomp of power" he had before enjoyed. Even the Batasang Pambansa itself has been abolished, "an iniquitous vestige of the previous regime" discontinued by the Freedom Constitution. It is so easy now, as has been suggested not without reason, to send the records of this case to the archives and say the case is finished and the book is closed.

But not yet.

Let us first say these meager words in tribute to a fallen hero who was struck down in the vigor of his youth because he dared to speak against tyranny. Where many kept a meekly silence for fear of retaliation, and still others feigned and fawned in hopes of safety and even reward, he chose to fight. He was not afraid. Money did not tempt him. Threats did not daunt him. Power did not awe him. His was a singular and allexacting obsession: the return of freedom to his country. And though he fought not in the barricades of war amid the sound and smoke of shot and shell, he was a soldier nonetheless, fighting valiantly for the liberties of his people against the enemies of his race,

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[17] Comelec Res. No. 1669, Sec. 5.

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unfortunately of his race too, who would impose upon the land a perpetual night of dark enslavement. He did not see the breaking of the dawn, sad to say, but in a very real sense Evelio B. Javier made that dawn draw nearer because he was, like Saul and Jonathan, "swifter than eagles and stronger than lions."

A year ago this Court received a letter which began: "I am the sister of the late Justice Calixto Zaldivar. I am the mother of Rhium Z. Sanchez, the grandmother of Plaridel Sanchez IV and Aldrich Sanchez, the aunt of Mamerta Zaldivar. I lost all four of them in the election eve ambush in Antique last year." She pleaded, as so did hundreds of others of her provincemates in separate signed petitions sent us, for the early resolution of that horrible crime, saying "I am 82 years old now. I am sick. May I convey to you my prayer in church and my plea to you, 'Before I die, I would like to see justice to my son and grandsons,' May I also add that the people of Antique have not stopped praying that the true winner of the last elections will be decided upon by the Supreme Court soon."

That was a year ago and since then a new government has taken over in the wake of the February revolution. The despot has escaped, and with him, let us pray, all the oppressions and repressions of the past have also been banished forever. A new spirit is now upon our land. A new vision limns the horizon. Now we can look forward with new hope that under the Constitution of the future every Filipino shall be truly sovereign in his own country, able to express his will through the pristine ballow with only his conscience as his counsel.

This is not an impossible dream. Indeed, it is an approachable goal. It can and will be won if we are able at last, after our long ordeal, to say never again to tyranny. If we can do this with courage and conviction, then and only then, and not until then, can we truly say that the case is finished and the book is closed.

WHEREFORE, let it be spread in the records of this case that were it not for the supervening events that have legally rendered it moot and academic, this petition would have been

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granted and the decision of the Commission on Elections dated July 23, 1984, set aside as violative of the Constitution.

SO ORDERED.

Feria, Yap, Narvasa, Alampay, and *Paras, JJ.,* concur.

Teehankee, C.J., concurs and reserves the filing of a separate concurrence.

Melencio-Herrera and *Feliciano. JJ.,* see concurring opinion.

Fernan and *Gutierrez, Jr., JJ.,* concur in the result.

MELENCIO-HERRERA, *J., concurring*:

I concur in the result. The questioned Decision of the Second Division of the COMELEC, dated July 23, 1984, proclaiming private respondent, Arturo F. Pacificador, as the duly elected Assemblyman of the province of Antique, should be set aside for the legal reason that all election contests, without any distinction as to cases or contests, involving members of the defunct Batasang Pambansa fall under the jurisdiction of the COMELEC *en banc* pursuant to Sections 2 and 3 of Article XII-C of the 1973 Constitution.

FELICIANO, *J., concurring*:

I agree with the result reached, that is, although this petition has become moot and academic, the decision, dated 23 July 1984, of the Second Division of the Commission on Elections which had proclaimed Arturo F. Pacificador as the duly elected Assemblyman of the Province of Antique must be set aside or, more accurately, must be disregarded as bereft of any effect in law. I reach this result on the same single, precisely drawn, ground relied upon by Melencio-Herrera, *J.*: that all election contests involving members of the former Batasan Pambansa must be decided by the Commission on Elections en banc under Sections 2 and 3 of Article XII-C of the 1973 Constitution. These Sections do not distinguish between "pre-proclamation" and "post-proclamation" contests nor between "cases" and "contests."