

EN BANC

G.R. No. 211140 – LORD ALLAN JAY Q. VELASCO, Petitioner, v. HON. SPEAKER FELICIANO R. BELMONTE, JR., SECRETARY GENERAL MARILYN B. BARUA-YAP AND REGINA ONGSIAKO REYES, Respondents.

Promulgated:

January 12, 2016

X-----

Feliciano R. Belmonte, Jr.

CONCURRING OPINION

LEONEN, J.:

I concur in the result.

The quo warranto cases¹ filed before the House of Representatives Electoral Tribunal have been dismissed in the Resolution² dated December 14, 2015. The proper constitutional body, the House of Representatives Electoral Tribunal, has already ruled on the basis of Lord Allan Jay Velasco's (Velasco) claim to a seat in Congress. There is thus no pending proceeding nor matter that bars this court from issuing the writ of mandamus in favor of Velasco.

Under the situation attendant in this case, I therefore concur in the grant of the Petition for Mandamus.

I

Election contests assailing Regina Ongsiako Reyes' (Reyes) title as a member of the House of Representatives were filed. Velasco filed an electoral protest before the House of Representatives Electoral Tribunal.³ For reasons only he understood, he opted to withdraw his case against Reyes before the House of Representatives Electoral Tribunal and, instead, after Reyes had taken her oath and proceeded to represent the Lone District of Marinduque, filed the present Petition for Mandamus.

¹ Rollo, p. 788, Regina Ongsiako Reyes' Memorandum. These cases were docketed as HRET Case Nos. 13-036 and 13-037.

² Petitioner's Manifestation dated January 6, 2016, annex D.

³ Rollo, p. 630, Hon. Speaker Feliciano R. Belmonte and Secretary General Marilyn B. Barua-Yap's Memorandum. The case was docketed as HRET Case No. 13-028.

However, three quo warranto cases were also filed against Reyes before the House of Representatives Electoral Tribunal.⁴

When Velasco filed this Petition for Mandamus, the House of Representatives Electoral Tribunal had yet to rule on Velasco's title to a seat in Congress. The quo warranto cases were still pending before the House of Representatives Electoral Tribunal.

While election contests were pending before the House of Representatives Electoral Tribunal, this Petition for Mandamus was, in effect, an election contest.⁵ It was a procedural vehicle to raise "contests relating to the election, returns, and qualifications"⁶ of a Member of the House of Representatives. This action set up the title of Velasco to a public office. Velasco claims a clear and better legal right as against the occupant. An election contest is a suit that can be filed by a candidate to question the title of an incumbent to a public office.⁷

The power to be the "sole judge"⁸ of all these contests is vested by our Constitution itself in the House of Representatives Electoral Tribunal to the exclusion of all others.⁹

The Constitution clearly provides:

SECTION 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.¹⁰

An election contest, whether an election protest¹¹ or petition for quo warranto,¹² is a remedy "to dislodge the winning candidate from office"¹³

⁴ Id. at 629-630.

⁵ HRET Rules, rule 15. The action filed may be an election protest or quo warranto under the HRET Rules.

⁶ CONST., art. VI, sec. 17.

⁷ HRET Rules, rules 15-17.

⁸ CONST., art. VI, sec. 17.

⁹ CONST., art. VI, sec. 17. *See also Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

¹⁰ CONST., art. VI, sec. 17.

¹¹ HRET Rules, rule 16 provides:

and “to establish who is the *actual winner* in the election.”¹⁴ The action puts in issue the validity of the incumbent’s claim to the office.

A contest contemplated by the Constitution settles disputes as to who is rightfully entitled to a position.¹⁵ It is not this court but the House of Representatives Electoral Tribunal that has sole jurisdiction of contests involving Members of the House of Representatives. This can be filed through (a) an election protest under Rule 16 of the 2011 Rules of the House of Representatives Electoral Tribunal; and (b) quo warranto under Rule 17 of the 2011 Rules of the House of Representatives Electoral Tribunal.

Thus, while the petitions for quo warranto were pending before the House of Representatives Electoral Tribunal, this court did not have the jurisdiction to rule on this Petition for Mandamus. A grant of the writ of mandamus would have openly defied the Constitution and, in all likelihood, would muddle the administration of justice as it would have rendered the quo warranto cases properly pending before the House of Representatives Electoral Tribunal moot and academic. We would have arrogated upon

RULE 16. Election Protest. – A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly. Thus, where there are two or more protests involving the same protestee and common principal causes of action, the subsequent protests shall be consolidated with the earlier case to avoid unnecessary costs or delay. In case of objection to the consolidation, the Tribunal shall resolve the same. An order resolving a motion for or objection to the consolidation shall be unappealable.

The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief or based on verifiable information or authentic records. A verification based on “information and belief,” or upon “knowledge, information and belief,” is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

An election protest shall state:

1. The date of proclamation of the winner and the number of votes obtained by the parties per proclamation;
2. The total number of contested individual and clustered precincts per municipality or city;
3. The individual and clustered precinct numbers and location of the contested precincts; and
4. The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts.

¹² HRET Rules, rule 17 provides:

RULE 17. Quo Warranto. – A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for quo warranto may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.

The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for quo warranto.

¹³ *Tecson v. Commission on Elections*, 468 Phil. 421, 461 (2004) [Per J. Vitug, En Banc].

¹⁴ *Lerias v. House of Representatives Electoral Tribunal*, 279 Phil. 877, 898 (1991) [Per J. Paras, En Banc].

¹⁵ CONST., art. VI, sec. 17.

ourselves the resolution of then pending House of Representatives Electoral Tribunal cases.

II

Notwithstanding the pendency of the quo warranto cases before the House of Representatives Electoral Tribunal, Velasco relies on the Decision in *Reyes v. Commission on Elections*¹⁶ upholding the jurisdiction of the Commission on Elections and affirming the Resolution of the Commission on Elections cancelling Reyes' Certificate of Candidacy for the grant of the writ of mandamus.

The Resolution on the Motion for Reconsideration in *Reyes v. Commission on Elections*¹⁷ was denied by a divided court.¹⁸ Five justices¹⁹ voted to deny the Motion for Reconsideration filed by Reyes, and four justices²⁰ voted to grant the Motion for Reconsideration.

On the same day that the Resolution was promulgated, this court En Banc decided *Tañada, Jr. v. Commission on Elections*²¹ **by a unanimous vote.**²² In *Tañada*, this court once again upheld the jurisdiction of the House of Representatives Electoral Tribunal “over disputes relating to the election, returns, and qualifications of the proclaimed representative[.]”²³ The issue on the validity of the proclamation of a Member of Congress is included in the term “returns.” We said:

Case law states that the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET. The phrase “election, returns, and qualifications” refers to all matters affecting the validity of the contestee’s title. In particular, the term “election” refers 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” refers 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” refers 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 CoC.²⁴ (Citation omitted)

¹⁶ G.R. No. 207264, June 25, 2013, 699 SCRA 522 [Per J. Perez, En Banc].

¹⁷ G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per J. Perez, En Banc].

¹⁸ Id. at 234.

¹⁹ The five justices were Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Teresita J. Leonardo-de Castro, Roberto A. Abad, Jose P. Perez, and Bienvenido L. Reyes.

²⁰ The four justices were Associate Justices Antonio T. Carpio, Arturo D. Brion, Martin S. Villarama, Jr., and Marvic Mario Victor F. Leonen.

²¹ G.R. Nos. 207199–200, October 22, 2013, 708 SCRA 188 [Per J. Perlas-Bernabe, En Banc].

²² Id. at 196.

²³ Id. at 195.

²⁴ Id. at 195–196.

In *Limkaichong v. Commission on Elections, et al.*:²⁵

Petitioners (in G.R. Nos. 179120, 179132–33, and 179240–41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction. The Court has shed light on this in the case of *Vinzons-Chato*, to the effect that:

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.

Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

....

²⁵ 601 Phil. 751 (2009) [Per J. Peralta, En Banc].

Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto*, within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*, we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.²⁶ (Emphasis in the original, citations omitted)

In *Vinzons-Chato v. Commission on Elections*,²⁷ this court ruled that:

once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. *Stated in another manner, where the candidate has already been proclaimed winner in the congressional elections, the remedy of the petitioner is to file an electoral protest with the HRET.*²⁸ (Emphasis supplied, citations omitted)

When Reyes was proclaimed by the Provincial Board of Canvassers as the duly elected Representative of the Lone District of Marinduque on May 18, 2013, Velasco should have continued his election protest or filed a *quo warranto* Petition before the House of Representatives Electoral Tribunal.²⁹ Instead, Velasco filed a Petition to annul the proceedings of the Provincial Board of Canvassers and the proclamation of Reyes on May 20, 2013 before the Commission on Elections.³⁰ At that time, the Commission on Elections no longer had jurisdiction over the Petition that was filed after Reyes' proclamation.

Any alleged invalidity of the proclamation of a Member of the House of Representatives does not divest the House of Representatives Electoral Tribunal of jurisdiction.³¹

Should there have been pending cases at the House of Representatives Electoral Tribunal, we should have deferred to the action of the constitutional body given the competence to act initially on the matter. Thus, in the Dissenting Opinion in *Reyes v. Commission on Elections*:

In case of doubt, there are fundamental reasons for this Court to be cautious in exercising its jurisdiction to determine who the members are of

²⁶ Id. at 782–783.

²⁷ 548 Phil. 712 (2007) [Per J. Callejo, Sr., En Banc].

²⁸ Id. at 725–726.

²⁹ HRET Rules, rules 16–17.

³⁰ *Rollo*, p. 574, Lord Allan Jay Q. Velasco's Consolidated Reply. The Petition was docketed as SPC No. 13-010.

³¹ *Gonzalez v. Commission on Elections, et al.*, 660 Phil. 225, 267 (2011) [Per J. Villarama, Jr., En Banc].

the House of Representatives. We should maintain our consistent doctrine that proclamation is the operative act that removes jurisdiction from this Court or the Commission on Elections and vests it on the House of Representatives Electoral Tribunal (HRET).

The first reason is that the Constitution unequivocally grants this discretion to another constitutional body called the House of Representative Electoral Tribunal (HRET). This is a separate organ from the Judiciary.

....

The second fundamental reason for us to exercise caution in determining the composition of the House of Representatives is that this is required for a better administration of justice. Matters relating to factual findings on election, returns, and qualifications must first be vetted in the appropriate electoral tribunal before these are raised in the Supreme Court.³²

The House of Representatives Electoral Tribunal is the sole judge of contests involving Members of the House of Representatives.³³ This is a power conferred by the sovereign through our Constitution.

Again, as in my dissent in *Reyes v. Commission on Elections*:³⁴

This Court may obtain jurisdiction over questions regarding the validity of the proclamation of a candidate vying for a seat in Congress without encroaching upon the jurisdiction of a constitutional body, the electoral tribunal. “[The remedies of] *certiorari* and prohibition will not lie in this case [to annul the proclamation of a candidate] considering that there is an available and adequate remedy in the ordinary course of law; [that is, the filing of an electoral protest before the electoral tribunals].” *These remedies, however, may lie only after a ruling by the House of Representatives Electoral Tribunal or the Senate Electoral Tribunal.*³⁵ (Emphasis supplied)

However, the House of Representatives Electoral Tribunal already ruled on the two quo warranto cases against Reyes that were consolidated.³⁶ The House of Representatives Electoral Tribunal held that it had no jurisdiction to resolve the petitions for quo warranto relying on this court’s

³² J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, G.R. No. 207264, October 22, 2013, 708 SCRA 197, 327–344 [Per J. Perez, En Banc].

³³ CONST., art. VI, sec. 17.

³⁴ G.R. No. 207264, October 22, 2013, 708 SCRA 197 [Per J. Perez, En Banc]

³⁵ J. Leonen, Dissenting Opinion in *Reyes v. Commission on Elections*, G.R. No. 207264, October 22, 2013, 708 SCRA 197, 342 [Per J. Perez, En Banc], quoting *Barbers v. Commission on Elections*, 499 Phil. 570, 585 (2005) [Per J. Carpio, En Banc].

³⁶ *Rollo*, p. 788, Regina Ongsiako Reyes’ Memorandum. HRET Case No. 13-036 was entitled *Noeme Mayores Tan & Jeasseca L. Mapaapac v. Regina Ongsiako Reyes*. HRET Case No. 13-037 was entitled *Eric D. Junio v. Regina Ongsiako Reyes*.

Decision in *Reyes v. Commission on Elections*.³⁷ In their Resolution, the House of Representatives pronounced:

Such element is obviously absent in the present cases as Regina Reyes' proclamation was *nullified* by the COMELEC, which nullification was *upheld* by the Supreme Court. On this ground alone, the Tribunal is without power to assume jurisdiction over the present petitions since Regina Reyes "**cannot be considered a Member of the House of Representatives,**" as declared by the Supreme Court *En Banc* in G.R. No. 207264.³⁸ (Emphasis in the original, citation omitted)

The tribunal dismissed the quo warranto cases holding that the Commission on Elections' cancellation of Reyes' certificate of candidacy resulted in the nullification of her proclamation.³⁹ Thus:

WHEREFORE, in view of the foregoing, the September 23, 2014 Motion for Reconsideration of Victor Vela Sioco is hereby **GRANTED**. The September 11, 2014 Resolution of Tribunal is hereby **REVERSED** and **SET ASIDE**. Accordingly, the present *Petitions for Quo Warranto* are hereby **DISMISSED** for lack of jurisdiction.⁴⁰ (Emphasis in the original)

In effect, the decision by the sole judge of all electoral contests acknowledges Reyes' lack of qualifications. While maintaining my dissent in *Reyes v. Commission on Elections*, I now acknowledge that there is no other remedy in law or equity to enforce a final decision of this court except through mandamus.

Applying *Codilla, Sr. v. Hon. de Venecia*,⁴¹ this Petition for Mandamus should be granted.

III

*Aratea v. Commission on Elections*⁷¹ qualified the second-placer rule. The candidate receiving the next highest number of votes would be entitled to the position if the Certificate of Candidacy of the candidate receiving the highest number of votes had been initially declared valid at the time of filing but had to be subsequently cancelled.⁷² Additionally, if the Certificate of Candidacy of the candidate receiving the highest number of votes was void ab initio, the votes of the candidate should be considered stray and not

³⁷ G.R. No. 207264, June 25, 2013, 699 SCRA 522 [Per J. Perez, En Banc].

³⁸ Petitioner's Manifestation dated January 6, 2016, annex D, p. 4. Annex D refers to HRET Resolution in HRET Case Nos. 13-036 and 13-037.

³⁹ *Id.* at 3.

⁴⁰ *Id.* at 5.

⁴¹ 442 Phil. 139 (2002) [Per J. Puno, En Banc].

⁷¹ G.R. No. 195229, October 9, 2012, 683 SCRA 105 [Per J. Carpio, En Banc].

⁷² *Id.* at 146.

counted.⁷³ This would entitle the candidate receiving the next highest number of votes to the position.⁷⁴ Thus:

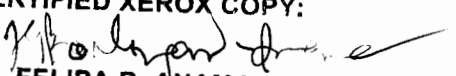
Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was **valid at the time of filing** but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.⁷⁵ (Emphasis in the original, citations omitted)

The Decision in *Aratea* was subsequently reiterated in *Jalosjos, Jr. v. Commission on Elections*⁷⁶ and *Maquiling v. Commission on Elections*.⁷⁷

ACCORDINGLY, I vote to **GRANT** the Petition for Mandamus.


MARVIC M.V.F. LEONEN
Associate Justice

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FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

⁷³ Id.

⁷⁴ Id.

⁷⁵ *Jalosjos, Jr. v. Commission on Elections*, G.R. No. 193237, October 9, 2012, 683 SCRA 1, 31–32 [Per J. Carpio, En Banc].

⁷⁶ G.R. No. 193237, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

⁷⁷ G.R. No. 195649, April 16, 2013, 696 SCRA 420 [Per C.J. Sereno, En Banc].