

EN BANC

[G.R. No. 213181, August 19, 2014]

FRANCIS H. JARDELEZA PETITIONER, VS. CHIEF JUSTICE MARIA LOURDES P. A. SERENO, THE JUDICIAL AND BAR COUNCIL AND EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Once again, the Court is faced with a controversy involving the acts of an independent body, which is considered as a constitutional innovation, the Judicial and Bar Council (*JBC*). It is not the first time that the Court is called upon to settle legal questions surrounding the JBC's exercise of its constitutional mandate. In *De Castro v. JBC*,^[1] the Court laid to rest issues such as the duty of the JBC to recommend prospective nominees for the position of Chief Justice vis-à-vis the appointing power of the President, the period within which the same may be exercised, and the ban on midnight appointments as set forth in the Constitution. In *Chavez v. JBC*,^[2] the Court provided an extensive discourse on constitutional intent as to the JBC's composition and membership.

This time, however, the selection and nomination process actually undertaken by the JBC is being challenged for being constitutionally infirm. The heart of the debate lies not only on the very soundness and validity of the application of JBC rules but also the extent of its discretionary power. More significantly, this case of first impression impugns the end-result of its acts - the *shortlist* from which the President appoints a deserving addition to the Highest Tribunal of the land.

To add yet another feature of novelty to this case, a member of the Court, no less than the Chief Justice herself, was being impleaded as party respondent.

The Facts

The present case finds its genesis from the compulsory retirement of Associate Justice Roberto Abad (*Associate Justice Abad*) last May 22, 2014. Before his retirement, on March 6, 2014, in accordance with its rules,^[3] the JBC announced the opening for application or recommendation for the said vacated position.

On March 14, 2014, the JBC received a letter from Dean Danilo Concepcion of the University of the Philippines nominating petitioner Francis H. Jardeleza (*Jardeleza*), incumbent Solicitor General of the Republic, for the said position. Upon acceptance of the nomination, Jardeleza was included in the names of candidates, as well as in the schedule of public interviews. On May 29, 2014, Jardeleza was interviewed by the JBC.

It appears from the averments in the petition that on June 16 and 17, 2014,

Jardeleza received telephone calls from former Court of Appeals Associate Justice and incumbent JBC member, Aurora Santiago Lagman (*Justice Lagman*), who informed him that during the meetings held on June 5 and 16, 2014, Chief Justice and JBC *ex-officio* Chairperson, Maria Lourdes P.A. Sereno (*Chief Justice Sereno*), manifested that she would be invoking Section 2, Rule 10 of JBC-009^[4] against him. Jardeleza was then directed to "make himself available" before the JBC on June 30, 2014, during which he would be informed of the objections to his integrity.

Consequently, Jardeleza filed a letter-petition (*letter-petition*)^[5] praying that the Court, in the exercise of its constitutional power of supervision over the JBC, issue an order: 1) directing the JBC to give him at least five (5) working days written notice of any hearing of the JBC to which he would be summoned; and the said notice to contain the sworn specifications of the charges against him by his oppositors, the sworn statements of supporting witnesses, if any, and copies of documents in support of the charges; and notice and sworn statements shall be made part of the public record of the JBC; 2) allowing him to cross-examine his oppositors and supporting witnesses, if any, and the cross-examination to be conducted in public, under the same conditions that attend the public interviews held for all applicants; 3) directing the JBC to reset the hearing scheduled on June 30, 2014 to another date; and 4) directing the JBC to disallow Chief Justice Sereno from participating in the voting on June 30, 2014 or at any adjournment thereof where such vote would be taken for the nominees for the position vacated by Associate Justice Abad.

During the June 30, 2014 meeting of the JBC, sans Jardeleza, incumbent Associate Justice Antonio T. Carpio (*Associate Justice Carpio*) appeared as a resource person to shed light on a classified legal memorandum (*legal memorandum*) that would clarify the objection to Jardeleza's integrity as posed by Chief Justice Sereno. According to the JBC, Chief Justice Sereno questioned Jardeleza's ability to discharge the duties of his office as shown in a confidential legal memorandum over his handling of an international arbitration case for the government.

Later, Jardeleza was directed to one of the Court's ante-rooms where Department of Justice Secretary Leila M. De Lima (*Secretary De Lima*) informed him that Associate Justice Carpio appeared before the JBC and disclosed confidential information which, to Chief Justice Sereno, characterized his integrity as dubious. After the briefing, Jardeleza was summoned by the JBC at around 2:00 o'clock in the afternoon.

Jardeleza alleged that he was asked by Chief Justice Sereno if he wanted to defend himself against the integrity issues raised against him. He answered that he would defend himself provided that due process would be observed. Jardeleza specifically demanded that Chief Justice Sereno execute a sworn statement specifying her objections and that he be afforded the right to cross-examine her in a public hearing. He requested that the same directive should also be imposed on Associate Justice Carpio. As claimed by the JBC, Representative Niel G. Tupas Jr. also manifested that he wanted to hear for himself Jardeleza's explanation on the matter. Jardeleza, however, refused as he would not be lulled into waiving his rights. Jardeleza then put into record a written statement^[6] expressing his views on the situation and requested the JBC to defer its meeting considering that the Court en banc would meet the next day to act on his pending letter-petition. At this juncture, Jardeleza was excused.

Later in the afternoon of the same day, and apparently denying Jardeleza's request for deferment of the proceedings, the JBC continued its deliberations and proceeded to vote for the nominees to be included in the shortlist. Thereafter, the JBC released the subject shortlist of four (4) nominees which included: Apolinario D. Bruselas, Jr. with six (6) votes, Jose C. Reyes, Jr. with six (6) votes, Maria Gracia M. Pulido Tan with five (5) votes, and Reynaldo B. Daway with four (4) votes. [7]

As mentioned in the petition, a newspaper article was later published in the online portal of the Philippine Daily Inquirer, stating that the Court's Spokesman, Atty. Theodore Te, revealed that there were actually five (5) nominees who made it to the JBC shortlist, but one (1) nominee could not be included because of the invocation of Rule 10, Section 2 of the JBC rules.

In its July 8, 2014 Resolution, the Court noted Jardeleza's letter-petition in view of the transmittal of the JBC list of nominees to the Office of the President, "without prejudice to any remedy available in law and the rules that petitioner may still wish to pursue." [8] The said resolution was accompanied by an extensive Dissenting Opinion penned by Associate Justice Arturo D. Brion, [9] expressing his respectful disagreement as to the position taken by the majority.

The Petition

Perceptibly based on the aforementioned resolution's declaration as to his availment of a remedy in law, Jardeleza filed the present petition for certiorari and mandamus under Rule 65 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order (TRO), seeking to compel the JBC to include him in the list of nominees for Supreme Court Associate Justice vice Associate Justice Abad, on the grounds that the JBC and Chief Justice Sereno acted in grave abuse of discretion amounting to lack or excess of jurisdiction in excluding him, despite having garnered a sufficient number of votes to qualify for the position.

Notably, Jardeleza's petition decries that despite the obvious urgency of his earlier letter-petition and its concomitant filing on June 25, 2014, the same was raffled only on July 1, 2014 or a day after the controversial JBC meeting. By the time that his letter-petition was scheduled for deliberation by the Court *en banc* on July 8, 2014, the disputed shortlist had already been transmitted to the Office of the President. He attributed this belated action on his letter-petition to Chief Justice Sereno, whose action on such matters, especially those impressed with urgency, was discretionary.

An in-depth perusal of Jardeleza's petition would reveal that his resort to judicial intervention hinges on the alleged illegality of his exclusion from the shortlist due to: 1) the deprivation of his constitutional right to due process; and 2) the JBC's erroneous application, if not direct violation, of its own rules. Suffice it to say, Jardeleza directly ascribes the supposed violation of his constitutional rights to the acts of Chief Justice Sereno in raising objections against his integrity and the manner by which the JBC addressed this challenge to his application, resulting in his arbitrary exclusion from the list of nominees.

Jardeleza's Position

For a better understanding of the above postulates proffered in the petition, the Court hereunder succinctly summarizes Jardeleza's arguments, as follows:

A. Chief Justice Sereno and the JBC violated Jardeleza's right to due process in the events leading up to and during the vote on the shortlist last June 30, 2014. When accusations against his integrity were made twice, *ex parte*, by Chief Justice Sereno, without informing him of the nature and cause thereof and without affording him an opportunity to be heard, Jardeleza was deprived of his right to due process. In turn, the JBC violated his right to due process when he was simply ordered to make himself available on the June 30, 2014 meeting and was told that the objections to his integrity would be made known to him on the same day. Apart from mere verbal notice (by way of a telephone call) of the invocation of Section 2, Rule 10 of JBC-009 against his application and not on the accusations against him *per se*, he was deprived of an opportunity to mount a proper defense against it. Not only did the JBC fail to ventilate questions on his integrity during his public interview, he was also divested of his rights as an applicant under Sections 3 and 4, Rule 4, JBC-009, to wit:

Section 3. Testimony of parties. – The Council may receive written opposition to an applicant on the ground of his moral fitness and, at its discretion, the Council may receive the testimony of the oppositor at a hearing conducted for the purpose, with due notice to the applicant who shall be allowed to cross-examine the oppositor and to offer countervailing evidence.

Section 4. Anonymous Complaints. – Anonymous complaints against an applicant shall not be given due course, unless there appears on its face a probable cause sufficient to engender belief that the allegations may be true. In the latter case, the Council may direct a discreet investigation or require the applicant to comment thereon in writing or during the interview.

His lack of knowledge as to the identity of his accusers (except for yet again, the verbal information conveyed to him that Associate Justice Carpio testified against him) and as to the nature of the very accusations against him caused him to suffer from the arbitrary action by the JBC and Chief Justice Sereno. The latter gravely abused her discretion when she acted as prosecutor, witness and judge, thereby violating the very essence of fair play and the Constitution itself. In his words: "the sui generis nature of JBC proceedings does not authorize the Chief Justice to assume these roles, nor does it dispense with the need to honor petitioner's right to due process."^[10]

B. The JBC committed grave abuse of discretion in excluding Jardeleza from the shortlist of nominees, in violation of its own rules. The "unanimity requirement" provided under Section 2, Rule 10 of JBC-009 does not find application when a member of the JBC raises an

objection to an applicant's integrity. Here, the lone objector constituted a part of the membership of the body set to vote. The lone objector could be completely capable of taking hostage the entire voting process by the mere expediency of raising an objection. Chief Justice Sereno's interpretation of the rule would allow a situation where all that a member has to do to veto other votes, including majority votes, would be to object to the qualification of a candidate, without need for factual basis.

C. Having secured the sufficient number of votes, it was ministerial on the part of the JBC to include Jardeleza in the subject shortlist. Section 1, Rule 10 of JBC-009 provides that a nomination for appointment to a judicial position requires the affirmative vote of at least a majority of all members of the JBC. The JBC cannot disregard its own rules. Considering that Jardeleza was able to secure four (4) out of six (6) votes, the only conclusion is that a majority of the members of the JBC found him to be qualified for the position of Associate Justice.

D. The unlawful exclusion of the petitioner from the subject shortlist impairs the President's constitutional power to appoint. Jardeleza's exclusion from the shortlist has unlawfully narrowed the President's choices. Simply put, the President would be constrained to choose from among four (4) nominees, when five (5) applicants rightfully qualified for the position. This limits the President to appoint a member of the Court from a list generated through a process tainted with patent constitutional violations and disregard for rules of justice and fair play. Until these constitutional infirmities are remedied, the petitioner has the right to prevent the appointment of an Associate Justice vice Associate Justice Abad.

Comment of the JBC

On August 11, 2014, the JBC filed its comment contending that Jardeleza's petition lacked procedural and substantive bases that would warrant favorable action by the Court. For the JBC, *certiorari* is only available against a tribunal, a board or an officer exercising judicial or quasi-judicial functions.^[11] The JBC, in its exercise of its mandate to recommend appointees to the Judiciary, does not exercise any of these functions. In a pending case,^[12] Jardeleza himself, as one of the lawyers for the government, argued in this wise: *Certiorari* cannot issue against the JBC in the implementation of its policies.

In the same vein, the remedy of *mandamus* is incorrect. *Mandamus* does not lie to compel a discretionary act. For it to prosper, a petition for *mandamus* must, among other things, show that the petitioner has a clear legal right to the act demanded. In Jardeleza's case, there is no legal right to be included in the list of nominees for judicial vacancies. Possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy. One's inclusion in the shortlist is strictly within the discretion of the JBC.

Anent the substantive issues, the JBC mainly denied that Jardeleza was deprived of