709 Phil. 478

EN BANC

[G.R. No. 202242, April 16, 2013]

FRANCISCO I. CHAVEZ, PETITIONER, VS. JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO AND REP. NIEL C. TUPAS, JR., RESPONDENTS.

R E S O L U T I O N

MENDOZA, J.:

This resolves the *Motion for Reconsideration*[1] filed by the Office of the Solicitor General (*OSG*) on behalf of the respondents, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. (*respondents*), duly opposed[2] by the petitioner, former Solicitor General Francisco I. Chavez (*petitioner*).

By way of recapitulation, the present action stemmed from the unexpected departure of former Chief Justice Renato C. Corona on May 29, 2012, and the nomination of petitioner, as his potential successor. In his initiatory pleading, petitioner asked the Court to determine 1] whether the first paragraph of Section 8, Article VIII of the 1987 Constitution allows more than one (1) member of Congress to sit in the JBC; and 2] if the practice of having two (2) representatives from each House of Congress with one (1) vote each is sanctioned by the Constitution.

On July 17, 2012, the Court handed down the assailed subject decision, disposing the same in the following manner:

> WHEREFORE, the petition is GRANTED. The current numerical composition of the Judicial and Bar Council is declared UNCONSTITUTIONAL. The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.
>
> This disposition is immediately executory.
>
> SO ORDERED.

On July 31, 2012, following respondents' motion for reconsideration and with due regard to Senate Resolution Nos. 111,[3] 112,[4] 113,[5] and 114,[6] the Court set the subject motion for oral arguments on August 2, 2012.[7] On August 3, 2012, the Court discussed the merits of the arguments and agreed, in the meantime, to suspend the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision which decreed that it was immediately executory. The decretal

portion of the August 3, 2012 Resolution[8] reads:

> WHEREFORE, the parties are hereby directed to submit their respective MEMORANDA within ten (10) days from notice. Until further orders, the Court hereby SUSPENDS the effect of the second paragraph of the dispositive portion of the Court's July 17, 2012 Decision, which reads: "This disposition is immediately executory."[9]

Pursuant to the same resolution, petitioner and respondents filed their respective memoranda.[10]

Brief Statement of the Antecedents

In this disposition, it bears reiterating that from the birth of the Philippine Republic, the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution[11] and the 1935 Constitution[12] vested the power to appoint the members of the Judiciary in the President, subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.[13]

Then, under the 1973 Constitution,[14] with the fusion of the executive and legislative powers in one body, the appointment of judges and justices ceased to be subject of scrutiny by another body. The power became exclusive and absolute to the Executive, subject only to the condition that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities,[15] the members of the Constitutional Commission saw it wise to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body, representative of all the stakeholders in the judicial appointment process, and called it the Judicial and Bar Council (JBC). The Framers carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and **a representative of the Congress** as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

From the moment of the creation of the JBC, Congress designated one (1) representative to sit in the JBC to act as one of the ex-officio members.[16] Pursuant to the constitutional provision that Congress is entitled to one (1) representative,

each House sent a representative to the JBC, not together, but alternately or by rotation.

In 1994, the seven-member composition of the JBC was substantially altered. An eighth member was added to the JBC as the two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote. [17]

In 2001, the JBC *En Banc* decided to allow the representatives from the Senate and the House of Representatives one full vote each.[18] It has been the situation since then.

Grounds relied upon by Respondents

Through the subject motion, respondents pray that the Court reconsider its decision and dismiss the petition on the following grounds: 1] that allowing only one representative from Congress in the JBC would lead to *absurdity* considering its bicameral nature; 2] that the failure of the Framers to make the proper adjustment when there was a shift from unilateralism to bicameralism was a *plain oversight*; 3] that two representatives from Congress would not subvert the intention of the Framers to insulate the JBC from political partisanship; and 4] that the rationale of the Court in declaring a seven-member composition would provide a solution should there be a stalemate is not exactly correct.

While the Court may find some sense in the reasoning in amplification of the third and fourth grounds listed by respondents, still, it finds itself unable to reverse the assailed decision on the principal issues covered by the first and second grounds for lack of merit. Significantly, the conclusion arrived at, with respect to the first and second grounds, carries greater bearing in the final resolution of this case.

As these two issues are interrelated, the Court shall discuss them jointly.

Ruling of the Court

The Constitution evinces the direct action of the Filipino people by which the fundamental powers of government are established, limited and defined and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic.[19] The Framers reposed their wisdom and vision on one *suprema lex* to be the ultimate expression of the principles and the framework upon which government and society were to operate. Thus, in the interpretation of the constitutional provisions, the Court firmly relies on the basic postulate that the Framers mean what they say. The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it.

For this reason, the Court cannot accede to the argument of plain oversight in order to justify constitutional construction. As stated in the July 17, 2012 Decision, in opting to use the singular letter "*a*" to describe "*representative of Congress*," the

Filipino people through the Framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have, in no uncertain terms, so provided, as can be read in its other provisions.

A reading of the 1987 Constitution would reveal that several provisions were indeed adjusted as to be in tune with the shift to bicameralism. One example is Section 4, Article VII, which provides that a tie in the presidential election shall be broken "*by a majority of all the Members of both Houses of the Congress, voting separately.*" [20] Another is Section 8 thereof which requires the nominee to replace the Vice-President to be confirmed "*by a majority of all the Members of both Houses of the Congress, voting separately.*"[21] Similarly, under Section 18, the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus *may be revoked or continued by the Congress, voting separately, by a vote of at least a majority of all its Members.*"[22] In all these provisions, the bicameral nature of Congress was recognized and, clearly, the corresponding adjustments were made as to how a matter would be handled and voted upon by its two Houses.

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

The underlying reason for such a limited participation can easily be discerned. Congress has two (2) Houses. The need to recognize the existence and the role of each House is essential considering that the Constitution employs precise language in laying down the functions which particular House plays, regardless of whether the two Houses consummate an official act by voting jointly or separately. Whether in the exercise of its legislative[23] or its non-legislative functions such as *inter alia*, the power of appropriation,[24] the declaration of an existence of a state of war,[25] canvassing of electoral returns for the President and Vice-President,[26] and impeachment,[27] the dichotomy of each House must be acknowledged and recognized considering the interplay between these two Houses. In all these instances, each House is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, as to the other branches of government.

In checkered contrast, there is essentially **no interaction between the two Houses in their participation in the JBC**. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as *ex-officio* Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The **total** is **seven (7)**, not eight. In so providing, the

Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

On this score, a Member of Congress, Hon. Simeon A. Datumanong, from the Second District of Maguindanao, submitted his well-considered position[28] to then Chief Justice Reynato S. Puno:

> I humbly reiterate my position that there should be **only one representative** of Congress in the JBC in accordance with Article VIII, Section 8 (1) of the 1987 Constitution x x x.
>
> The aforesaid provision is **clear** and **unambiguous** and does not need any further interpretation. Perhaps, it is apt to mention that the oft-repeated doctrine that "construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."
>
> Further, to allow Congress to **have two representatives** in the Council, with one vote each, is to **negate the principle of equality among the three branches of government** which is enshrined in the Constitution.
>
> In view of the foregoing, I vote for the proposition that the Council should adopt the rule of single representation of Congress in the JBC in order to respect and give the right meaning to the above-quoted provision of the Constitution. (Emphases and underscoring supplied)

On March 14, 2007, then Associate Justice Leonardo A. Quisumbing, also a JBC Consultant, submitted to the Chief Justice and *ex-officio* JBC Chairman his opinion, [29] which reads:

> 8. Two things can be gleaned from the excerpts and citations above: the creation of the JBC is intended to curtail the influence of politics in Congress in the appointment of judges, and the understanding is that **seven (7) persons** will compose the JBC. As such, the interpretation of **two votes** for Congress **runs counter to the intendment of the framers**. Such interpretation actually gives Congress more influence in the appointment of judges. Also, two votes for Congress **would increase the number of JBC members to eight**, which could lead to voting deadlock by reason of even-numbered membership, and a clear violation of 7 enumerated members in the Constitution. (Emphases and underscoring supplied)

In an undated position paper,[30] then Secretary of Justice Agnes VST Devanadera opined: