EN BANC

G.R. No. 202242 -- **Francisco I. Chavez,** *Petitioner*, ***versus*** **Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel C. Tupas, Jr.,** *Respondents*.

Promulgated:

JULY 17, 2012

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DISSENTING OPINION

ABAD, *J.*:

Some of my colleagues who have been nominated to the position of Chief Justice like me have inhibited themselves from this case at the outset. I respect their judgments. I, on the other hand, chose not to inhibit myself from the case since I have found no compelling reason for doing so.

I take no issue with the majority of the Court on the threshold question of whether or not the requisite conditions for the exercise of its power of judicial review have been met in this case. I am satisfied that those conditions are present.

It is the main question that concerns me: whether or not each of the Senate and the House of Representatives is entitled to one representative in the Judicial and Bar Council (JBC), both with the right to vote independently like its other members.

The problem has arisen because currently one representative each from the Senate and the House of Representatives take part as members of the JBC with each casting one vote in its deliberations. Petitioner Francisco I. Chavez challenges this arrangement, however, citing Section 8(1) of Article VIII of the 1987 Constitution which literally gives Congress just one representative in the JBC. Thus:

> "Article VIII, 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."[1] (Emphasis ours)

The majority heavily relies on the wordings of Section 8(1) above. According to them, the framers of the 1987 Constitution used plain, unambiguous, and certain terms in crafting that section and, therefore, it calls for no further interpretation. The provision uses the indefinite article "a" signifying "one" before the word "representative" which in itself is in singular form. Consequently, says the majority, Congress should have but just one representative in the JBC. Section 8(1) uses the term "Congress" in its generic sense, without any special and specific mention of the two houses that compose it, namely the Senate and the House of Representatives.

The majority also invokes the doctrine of *noscitur a sociis* which states that a proper interpretation may be had by considering the words that accompany the term or phrase in question.[2] By looking at the enumeration in Section 8(1) of who the JBC members are, one can readily discern that every category of membership in that body refers just to a single individual.

There are three well-settled principles of constitutional construction: first, *verba legis*, that is, wherever possible, the words used in the Constitution should be given their ordinary meaning except where technical terms are employed; second, where there is ambiguity, *ratio legis est anima*, meaning that the words of the Constitution should be interpreted in accordance with the intent of its framers; and third, *ut magis valeat quam pereat,* meaning that the Constitution is to be interpreted as a whole.[3]

There is no question that when the Constitutional Commission (ConCom) deliberated on the provisions regarding the composition of the JBC, the members of the commission thought, as the original draft of those provisions indicates, that the country would have a unicameral legislative body, like a parliament. For this reason, they allocated the three "ex officio" membership in the council to the Chief Justice, the Secretary of Justice, and a representative from the National Assembly, evidently to give representation in the JBC to the three great branches of government.

Subsequently, however, the ConCom decided, after a very close vote of 23 against 22, to adopt a bicameral legislative body, with a Senate and a House of Representatives. Unfortunately, as Fr. Joaquin Bernas, a member of the ConCom, admits, the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of the changed character of the legislature on the inclusion of "a representative of the Congress" in the membership of the JBC.[4]

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[1] The 1987 Constitution of the Republic of the Philippines.
[2] *Government Service Insurance System v. Commission on Audit*, G.R. No. 162372, October 19, 2011.
[3] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003.
[4] http://opinion.inquirer.net/31813/jbc-odds-and-ends (last accessed 18 July 2012).

Still, it is a basic principle in statutory construction that the law must be given a reasonable interpretation at all times.[5] The Court may, in some instances, consider the spirit and reason of a statute, where a literal meaning would lead to absurdity, contradiction, or injustice, or would defeat the clear purpose of the law makers.[6] Applying a *verba legis* or strictly literal interpretation of the constitution may render its provisions meaningless and lead to inconvenience, an absurd situation, or an injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be made to the rule that the spirit of the law controls its letter.[7]

To insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that while these two houses of Congress are involved in the common task of making laws, they are separate and distinct.[8] Senators are elected by the people at large, while the Members of the House of Representatives, by their respective districts or sectors. They have detached administrative organizations and deliberate on laws separately, indeed, often coming up with dissimilar drafts of those laws. Clearly, neither the Senate nor the House of Representatives can by itself claim to represent the Congress. Those who drafted Section 8(1) did not intend to limit the term "Congress" to just either of the two Houses.

Notably, the doctrine that a proper interpretation may be had by considering the words that accompany the term or phrase in question should apply to this case. While it is true that Section 8(1) provides for just "a representative of the Congress," it also provides that such representation is "ex officio." "Ex officio" is a Latin term, meaning "by virtue of one's office, or position."[9] This is not too different from the idea that a man, by virtue of being a husband to his wife, is also a father to their children. So in Section 8(1), whoever occupies the designated office or position becomes an "ex officio" JBC member. For instance, if the President appoints Mr. X as Chief Justice, Mr. X automatically becomes the chairman of the JBC, an attached function, by virtue of his being the Chief Justice. He replaces the former Chief Justice without need for another appointment or the taking of a separate oath of office. In the same way, if the President appoints Mr. Y as Secretary of Justice, Mr. Y also automatically becomes a member of the JBC, also an attached function, by virtue of his being the Secretary of Justice.

Now, under the rules of the Senate, the Chairman of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the rules of the House of Representatives, the Chairman of

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[5] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002.
[6] *People v. Manantan*, G.R. No. 14129, July 31, 1962, citing Crawford, Interpretation of Laws, Sec. 78, p. 294.
[7] *Navarro v. Executive Secretary*, G.R. No. 180050, February 10, 2010, dissenting opinion of *J.* Perez.
[8] *Supra* note 1, Article VI, Section 1.
[9] Webster's New World College Dictionary, 3rd Edition, p. 477.

its Justice Committee is the House representative to the JBC. Thus, there are two persons in Congress, not just one, who hold separate offices or positions with the attached function of sitting in the JBC. Section 8(1) cannot be literally applied simply because there is no office, serving both the Senate and the House of Representatives, with the attached function of sitting as member in the JBC.

Inevitably, if the Court were to stick to the literal reading of Section 8(1), which restricts JBC representation to just one person holding office in Congress and working under both houses, no one will qualify as "ex officio" member of JBC. No such individual exists. Congress would consequently be denied the representation that those who drafted the Constitution intended it to have.

Allowing a Senator and a Congressman to sit alternately at any one time cannot be a solution since each of them would actually be representing only his half of Congress when he takes part in JBC deliberations. Allowing both, on the other hand, to sit in those deliberations at the same time with half a vote each is absurd since that would diminish their standing and make them second class members of JBC, something that the Constitution clearly does not contemplate. It is presumed when drafting laws that the legislature does not intend to produce undesirable consequences. Thus, when a literal translation would result to such consequences, the same is to be utterly rejected.[10]

Indeed, the JBC abandoned the half-a-vote practice on January 12, 2000 and recognized the right of the Senator and the Congressman attending their deliberations to cast one vote each. Only by recognizing this right can the true spirit and intent of Section 8(1) be attained.

With respect to the seven-man membership of the JBC, the majority assumes that by providing for an odd-numbered composition those who drafted the Constitution sought to prevent the possibility of a stalemate in voting and that, consequently, an eight-man membership is out of the question. But a tie vote does not pose a problem. The JBC's main function is to choose at least three nominees for each judicial position from which the President will select the one he would want to appoint. Any tie in the voting is immaterial since this is not a yes or no proposition. Very often, those in the shortlist submitted to the President get even votes. On the other hand, when a yes or no proposition is voted upon and there is a tie, it merely means that the proposition is lost for failure to get the plurality of votes.

The majority points out that the framers of the 1987 Constitution created the JBC as a response to a public clamor for removing partisan politics from the selection process for judges and justices of the courts. It thus results that the private sector and the three branches of government

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[10] *Supra* note 5.

have been given active roles and equal voices in their selection. The majority contends that, if it were to allow two representatives from the Congress in the JBC, the balance of power within that body will tilt in favor of Congress.

But, it is not partisan politics *per se* that Section 8(1) intends to remove from the appointment process in the judiciary, but partisan domination of the same. Indeed, politicians have distinct roles in that process. For instance, it is the President, a politician, who appoints the six regular members of the JBC. And these appointees have to be confirmed by the Commission on Appointment, composed of politicians. What is more, although it is the JBC that screens candidates for positions in the judiciary, it is the President who eventually appoints them.

Further, if the idea was to absolutely eliminate politics from the JBC selection process, the framers of the Constitution could simply have barred all politicians from it. But the Constitution as enacted allows the Secretary of Justice, an alter-ego of the President, as well as representatives from the Congress to sit as members of JBC. Evidently, the Constitution wants certain representatives of the people to have a hand in the selection of the members of the judiciary.

The majority also holds the view that allowing two members of the Congress to sit in the JBC would undermine the Constitution's intent to maintain the balance of power in that body and give the legislature greater and unwarranted influence in the appointment of members of the Judiciary. But this fear is unwarranted. The lawmakers hold only two positions in that eight-man body. This will not give them greater power than the other six members have. Besides, historically, the representatives from the Senate and the lower house have frequently disagreed in their votes. Their outlooks differ.

Actually, if the Court would go by numbers, it is the President who appoints six of the members of the JBC (the Chief Justice, the Secretary of Justice, and the four regular members), thus establishing an edge in favor of presidential appointees. Placing one representative each from the Senate and the House of Representatives rather than just one congressional representative somewhat blunts that edge. As the OSG correctly points out, the current practice contributes two elective officials in the JBC whose membership is totally independent from the Office of the President.

Lastly, the presence of an elected Senator and an elected member of the House of Representatives in the JBC is more consistent with the republican nature of our government where all government authority emanates from the people and is exercised by representatives chosen by them.

For the above reasons, I vote to **DISMISS** the petition.

ROBERTO A. ABAD
Associate Justice