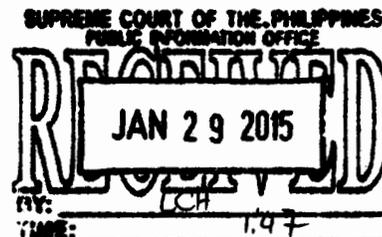


Re-issued*



Republic of the Philippines
Supreme Court
Manila

EN BANC



NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JANUARY 21, 2015, which reads as follows:

“G.R. No. 213181 (*Francis H. Jardeleza v. Chief Justice Maria Lourdes P. A. Sereno, the Judicial and Bar Council and Executive Secretary Paquito N. Ochoa, Jr.*) – Subject of this disposition is the Motion for Reconsideration,¹ dated September 22, 2014, filed by the respondents, Chief Justice Maria Lourdes P. A. Sereno (*Chief Justice Sereno*) and the Judicial and Bar Council (*JBC*), seeking a review of the Court’s August 19, 2014 Decision, the dispositive portion of which states:

WHEREFORE, the petition is GRANTED. Accordingly, it is hereby declared that Solicitor General Francis H. Jardeleza is deemed INCLUDED in the shortlist submitted to the President for consideration as an Associate Justice of the Supreme Court *vice* Associate Justice Roberto A. Abad.

The Court further DIRECTS that the Judicial and Bar Council REVIEW, and ADOPT, rules relevant to the observance of due process in its proceedings, particularly JBC-009 and JBC-010, subject to the approval of the Court.

This Decision is immediately EXECUTORY. Immediately notify the Office of the President of this Decision.

Preliminarily, the said motion does not question the appointment of then Solicitor General, now Associate Justice Francis H. Jardeleza (*petitioner*), inasmuch as Chief Justice Sereno herself administered his oath of office. Nonetheless, the respondents do not view this administration of oath as a reason to render the motion for reconsideration as moot, because the August 19, 2014 Decision of the Court has produced certain legal effects and created new legal doctrines on the basis of certain factual conclusions. Thus, the subject motion for reconsideration beckons the Court to review the said decision, particularly its following findings: 1] grave abuse of discretion

¹ *Rollo*, p. 374.

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on the part of the JBC; 2] the directive towards the JBC to review its rules on due process grounds; and 3] the alteration of the short list submitted by the JBC to the President.

The respondents submit that the August 19, 2014 Decision may undermine the constitutionally-ordained power of the JBC to recommend prospective appointees to the President. This power is singular and exclusive. The JBC was merely exercising the full extent of its powers in coming up with a short list that reflected its collective and collegial wisdom. In so doing, the JBC did not commit grave abuse of discretion.

Grounds Raised in the Motion for Reconsideration

I. The majority decision resulted in judicial overreach by altering the short list.

- A. *The Constitution granted the JBC the sole discretion to determine presidential recommendees to the President, entailing wisdom and discretion which cannot be altered. The short list sent by the JBC to the President is, by the very function of the JBC as a body, immutable.*

It was in the exercise of its constitutional duty that the JBC short list was formed and sent to the President containing four (4) names. When the Court added someone to the short list by deeming him as included therein, the Court effectively replaced the decision of the JBC with its own. In other words, the Court overturned the JBC, as a body, on the ground that it committed grave abuse of discretion in excluding petitioner's name. Even the JBC itself is without authority to revisit or review a list of recommendees once the list has been officially transmitted.

- B. *The Court's administrative supervision over the JBC does not include the power to overturn a decision, factual findings, or conclusion and to order a review or change of its rules.*

In view of the fact that the Court only has administrative supervision² over the JBC, it cannot order that a person be deemed included in the short list issued because to do so is tantamount to modification, which is an exercise of the power of control. Even under the assumption that there was grave abuse of discretion on the part of the JBC, the Court still could not

² "limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities." *Caballero v. Philippine Coast Guard*, 587 Phil. 631, 649 (2008).



rectify the act of the JBC by supplanting its alleged abusive act with the Court's own judgment, as it is not within its judicial or administrative powers to make decisions on behalf of the JBC. Neither can the Court direct the JBC to "review, and adopt, rules relevant to the observance of due process in its proceedings," when the JBC finds no gaps, inadequacy, or ambiguity in its own rules.

- C. *The Court erred in taking cognizance of the case in the absence of a vested right to be protected. In this case, there was no actual case or controversy that would merit the Court's exercise of its expanded power of judicial review.*

The Court's main function of settling actual controversies must involve conflicts of rights which are demandable and enforceable. Here, there was no enforceable right on the part of petitioner. No one has a vested right to a position being applied for, especially because the decision-makers in the process are authorized by law to use their discretion. No position in government, elective or appointive, can be enforced as a vested right by an aspirant against the wishes of the decision-makers. When petitioner voluntarily went through the rigid process of application to the Judiciary, he sanctioned the JBC to make a non-judicial judgment upon his character, ability and qualifications. This decision was then reflected, not in the votes cast, but by the short list submitted to the President.

In taking cognizance of the case, the Court made it possible for disgruntled applicants to file suits against the JBC based on due process grounds and an alleged right to the position being applied for.

- D. *The Court erred in finding grave abuse of discretion in the absence of any indicia on record.*

The JBC simply applied its rules when petitioner's integrity was challenged. Nothing on record shows that the JBC abused its discretion in a manner so grave, patent and arbitrary. The short list sans petitioner is an act of discretion on the part of a collegial body which was characterized not with passion or hostility but by a serious vote based on facts.

- E. *The Court erred when it made a factual conclusion on what constitutes an integrity issue.*

Defining what grounds constitute integrity issues is a power that falls solely within the discretion of the JBC. When the Court dismissed the first integrity issue as only of differing legal strategy or exercise of professional

judgment, it substituted its own judgment from that of the JBC. It is actually the JBC that has been deprived of due process as the Court gratuitously created an excuse for the position taken by petitioner. The “legal strategy” explanation could only have come from an off-pleadings justification by petitioner or those who have been carrying the fight for him. Further, by defining what constitutes an integrity issue, the Court shifted the onus of proving one’s integrity from the applicant to that of the JBC.

II. Due process was accorded to petitioner.

- A. The purpose of due process is to safeguard a person’s rights, but petitioner enjoys no vested right to be included in the short list.*

Due process may only be afforded to a party when he has duly proved possession of a clear and unmistakable right. This, however, is not extant in petitioner’s circumstances because inclusion in the short list is dependent upon the contingency of qualifying in the requirements set forth by the Constitution and the JBC. Without any vested right to the short list, there is nothing that should trigger the Court’s ability to declare that a person’s due process rights were violated.

- B. Due process was accorded the petitioner per JBC rules.*

Respondents submit that for as long as a person is notified of the charge, whichever form the notice is given and is ultimately given the opportunity to defend himself, then the requirement of due process is satisfied.

- C. Due process was observed despite the Decision’s misapprehension of the facts on record.*

A close scrutiny of the minutes of the JBC proceedings reveals that petitioner had been sufficiently informed of the nature of the objections raised against him. Had petitioner not been informed of the exact question on his integrity, he would not have cited an authority on sea disputes relative to a pending case. Petitioner cannot feign ignorance of the issues against him because by his conversation with Justice Lagman alone, he was able to defend himself. All he had to do was to reiterate and elaborate his position during the June 30, 2014 meeting, but he refused to do so. Hence, the discreet modality by which the JBC informed petitioner of the integrity challenge was fully compliant with the dictates of due process.

The Court's Ruling

Considering that the subject motion does not question the appointment of petitioner as Associate Justice of the Supreme Court and does not specifically pray for his unseating, the denial of the motion for reconsideration is in order. The subject motion does not present a justiciable controversy as far as petitioner is concerned.

Nevertheless, the respondents interpose this motion for reconsideration, averring that the August 19, 2014 Decision of the Court has produced certain legal effects. Suffice it to state that the conclusion was reached because the invocation of the unanimity rule, after the voting, resulted in petitioner's deprivation of his right to due process expressly provided in the internal rules of the JBC.

As to the discretionary power of the JBC, there has been no curtailment. It still retains a very wide degree of freedom and autonomy in the vetting of the applicants for vacant positions in the Judiciary. The Court, however, sustains or reiterates its position that the JBC should revisit, review and revise its internal rules because, among others, the "unanimity rule" can be misused or abused as it is effectively a veto power over the collective will of a majority. As stated in the decision, this should be clarified. If an invocation of the unanimity rule would be allowed *after* the voting, the attendant circumstances or conditions permitting such exercise should clearly be spelled out. Considering that the Court's power over the JBC is merely supervisory, the revisions in its internal rules need not be submitted to the Court for approval.

WHEREFORE, the motion for reconsideration is **DENIED**, except as to what were aforestated." Sereno, C.J. and Carpio, J., no part. Brion, J., on official leave, but left his vote. (adv35)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

** (With Separate Opinion of Justice Brion)*

** (With Concurring and Dissenting Opinion of Justice Leonen)*

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Chief Justice
Supreme Court

HON. FRANCIS H. JARDELEZA (x)
Associate Justice
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Supreme Court

G.R. No. 213181
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HON. JOSE V. MEJIA (x)
HON. MA. MILAGROS N. FERNAN-CAYOSA (x)
JBC SECRETARIAT (x)
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G. R. No. 213181 – Francis H. Jardeleza, *petitioner*, v. Chief Justice Maria Lourdes P. A. Sereno, the Judicial and Bar Council and Executive Secretary Paquito N. Ochoa, Jr., *respondents*.

Promulgated:

January 21, 2015



SEPARATE OPINION

BRION, J.:

I agree with the denial of the Motion for Reconsideration of our Decision of August 19, 2014 in the case in caption. It is high time that we put to rest an issue that has been casting a shadow on the appointment of our colleague, Justice Francis H. Jardeleza. Let us now allow him to serve his position as Associate Justice of this Court without this shadow of doubt.

We cannot forget that even if we were to change our minds over the matter, Justice Jardeleza's appointment to the Court was a political act on the part of the President that, unless shown to be gravely abusive, cannot now be undone without inviting a confrontation of constitutional magnitude. Our Decision never even hinted that such kind of abuse existed.

However, I disagree with the majority's statement that the Judicial and Bar Council's (*JBC*) revision of its rules no longer needs to be submitted for review to the Court because our jurisdiction over this agency is merely supervisory.

Supervision as a legal concept, is the power or authority to see that subordinate officers perform their duties.¹ This relationship ensures that the law or the rules governing the conduct of a government body or subordinate officer are followed. *Supervising officials merely see to it*

¹ More often than not, supervision is defined in relation with the concept of control. In *Social Justice Society v. Atienza*, 568 Phil. 658, 715, we defined "supervision" as follows:

[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Under this definition, the Court cannot dictate on the JBC the results of its assigned task, *i.e.*, who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "take such action or step as prescribed by law to make them perform their duties," if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory.



*that the rules are followed, but they themselves do not lay down these rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work undone or redone, but only to conform to the rules.*²

As I pointed out in my earlier Separate Concurring Opinion, we exercised this authority when we reviewed the JBC's actions in the present case and directed the JBC to revisit its own rules to ensure that they embody the minimum standards of due process.

At the same time, I invite the Court to note that the jurisdiction we exercised in this case was not merely supervisory. We likewise exercised our expanded jurisdiction over the JBC's acts of grave abuse of discretion pursuant to Article VIII, Section 1 of the Constitution. The Court's decision to nullify the JBC's action in applying Section 2, Rule 10 of JBC-009 (for failure to comply with the related, relevant provisions in the JBC rules) involves an exercise of the Court's expanded jurisdiction. We did not simply act in a supervisory capacity.

To reiterate, the Court's supervisory authority over the JBC does not mean that we can meddle with the exercise of its discretion in the performance of its duties. The JBC can, in the exercise of these duties, create its own rules, conduct its own affairs, and include in the shortlist for appointment to the Judiciary any candidate it finds worthy and qualified under the Constitution. Too, it can draw up its own standards – within the parameters of the Constitution – to determine the candidates' worthiness for the judicial positions applied for.

Note, too, that while we directed the JBC to revise its rules, we never indicated how the rules should be revised. We merely pointed to the portions in the rules that are not in accord with the tenets of due process, and left sufficient room for the JBC to amend its rules to comply with these basic constitutional standards.

Two questions logically spring from this directive to the JBC: *first*, since the Court's directive does not direct the manner the JBC rules should be revised, how do we ensure that their amendments do not continue to violate the Constitution? *Second*, how do we ensure that the JBC complies with this directive in the first place?

² In *Hon. Dadole v. COA*, 441 Phil. 532, 543-544, citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 336 SCRA 201, 214-215, we have further discussed the difference between control and supervision. "Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed."



These lingering questions, of course, may be addressed in another case involving these issues, but by then another constitutional violation might have been committed. In the mean time, do we stand idly by without determining whether a constitutional body placed under our supervision has been violating the Constitution?

To my mind, our ruling in *Jardeleza v. Chief Justice Sereno* has been a carefully measured exercise of transparency that allowed the public at large to see how this Court functions; how serious we can be in bringing transgressions to light even if committed by one of our own; and how critical we can be in supervising an agency that belongs to the Judiciary. What we did, in fact, was a trailblazing step that puts us in the direction of increased transparency and accountability, and towards the values and ideals of our Constitution. We should not waiver nor equivocate in availing of this unique authority by diluting the full effects of what we have already done.


ARTURO D. BRION
Associate Justice

EN BANC

G.R. No. 213181 – FRANCIS H. JARDELEZA, Petitioner v. CHIEF JUSTICE MARIA LOURDES P. A. SERENO, THE JUDICIAL AND BAR COUNCIL, and EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., Respondents.

Promulgated:

January 21, 2015

X-----X

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I present no objections to the dismissal of the motion for reconsideration on the ground that the principal issue is now moot with the appointment of Associate Justice Francis H. Jardeleza and his having taken his oath of office before the Chief Justice. I maintain, however, the points raised in my dissent in this case pertaining to the extent of our power of judicial review in relation to the power of the Judicial and Bar Council to promulgate its own rules as well as its procedures to vet candidates to judicial positions.


MARVIC M.V.F. LEONEN
Associate Justice