

G.R. No. 211833 — FERDINAND R. VILLANUEVA, Presiding Judge, MCTC, Compostela-New Bataan Compostela Valley Province, Petitioner, versus JUDICIAL AND BAR COUNCIL, Respondent.

Promulgated:

April 7, 2015

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SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the majority's ruling to dismiss the petition and with the directive to the Judicial and Bar Council (*JBC*). I am filing this Separate Concurring Opinion, however, to reflect my own views on the confluence of the Court's exercise of its supervisory jurisdiction over the JBC and its expanded jurisdiction in determining grave abuse of discretion on the part of governmental entities and agencies.

Before us is Ferdinand Villanueva's (*Villanueva* or *petitioner*) petition for *certiorari*, prohibition and *mandamus* assailing the Judicial and Bar Council (*JBC* or *respondent*) action of excluding him from the list of candidates for the vacancies in the following Regional Trial Courts: Branch 31, Tagum City; Branch 13, Davao City; and Branch 6, Prosperidad, Agusan del Sur.

In taking cognizance of Villanueva's petition, the majority applied the Court's expanded jurisdiction under Section 1, Article VIII of the Constitution and explained that the remedies of *certiorari* and prohibition are both available *to correct grave abuse of discretion amounting to lack or excess of jurisdiction not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government even if the latter does not exercise judicial, quasi-judicial or ministerial functions.*¹

A very recent case before this Court involving the JBC (which the *ponencia* cited in its earlier draft) is *Jardeleza v. Sereno*,² where the Court, for the first time since the enactment of the 1987 Constitution, nullified an action by the JBC. In so doing, the Court exercised both its expanded jurisdiction to review acts of government agencies amounting to grave abuse of discretion, and its supervisory jurisdiction over the JBC.

¹ *Araullo v. Aquino*, G.R. No. 209827, July 1, 2014.

² G.R. No. 213181, August 19, 2014.

In *Jardeleza*, the JBC's act of selectively applying its own rules, which resulted in the violation of the petitioner (now Justice) Francis Jardeleza's due process rights, ***both amounted to a grave abuse of discretion and to a cause that triggered the Court's supervisory jurisdiction*** over the JBC. The JBC's grave abuse of discretion necessarily called for the Court's duty to supervise the JBC – under the circumstances of that case – to make sure that it would follow its own rules.

Unlike the selective application of the JBC's own rules in *Jardeleza*, the JBC's assailed actions in the present case were in accord with the policies it had long laid down. The application of this policy, according to the Villanueva petition, violated the Constitution as it disregarded the enumeration of qualifications of members of the judiciary under Article VIII, Section 7; violated as well his due process and equal protection rights; and are contrary to the socio-economic provisions in Article XIII, Section 3.

A reading of Villanueva's allegations shows that he properly alleged that the JBC committed grave abuse of discretion, but he ultimately failed to prove his claims. As the majority eventually held, the JBC acted within its power to prescribe its own policies as part, and in the course, of determining the constitutional qualifications required of every member of the bench. ***I agree with the majority's approach and thus maintain that it properly took cognizance of the Villanueva petition.***

In acting as it did, the Court – while acting pursuant to its expanded jurisdiction (by testing for grave abuse of discretion and finding none) – *effectively and subsequently* acted pursuant to its supervisory jurisdiction over the JBC. That the Court so acted is not improper as the ***petition in fact also validly invoked the Court's supervisory jurisdiction over the JBC under its allegations.*** Note that the petition called for the determination of whether the JBC's policy contravened constitutional precepts.

In other words, the present petition *prima facie* claimed the commission of grave abuse of discretion by the JBC to sufficiently trigger the Court's expanded jurisdiction. No grave abuse however or any "capricious or whimsical exercise of judgment," as claimed, was found. But at the same time, the allegations likewise brought into question the JBC's actions, which actions are within the power of the Court to direct under its constitutional supervisory power over the JBC.

Notably, the Court, in examining whether Villanueva's right to due process had been violated, ruled that the JBC's failure to publish its policy of requiring five years of service to qualify for a lower court judge position did not rise to the level of a grave abuse of discretion. Nevertheless, the majority held that, under the circumstances, these policies should have been published; it further directed the JBC to publish policies or guidelines that it is or will be implementing, subject to the approval of the Court.

I agree with the majority's conclusion and directive, and note that the publication of the JBC's policies is in line with its thrust to "to insure transparency in its proceedings and promote stability and uniformity in its guiding precepts and principles,"³ as well as with the Constitutional policy to promote transparency in government processes.⁴

Lest the thrust and full import of the Court's present ruling be lost, let me stress that the present case gives us the opportunity to address important questions left unaddressed by the Court's recent ruling in *Jardeleza*:

May the Court exercise its supervisory jurisdiction over the JBC separate from the exercise of its expanded jurisdiction over acts of grave abuse of discretion of government agencies?

If so, what remedy is available for parties wishing to secure redress under this legal situation and how can this remedy be availed of?

To fully address these questions, it is crucial to first fully understand the nature of *certiorari* before and after the 1987 Constitution and how the Court has been using this remedy.

³ Whereas clause of JBC-009 provides:

WHEREAS, while the Council has been applying similar criteria in its assessment of candidates to the judicial office or the Ombudsman or deputy Ombudsman, there is a need to put these criteria in writing ***to insure transparency in its proceedings and promote stability and uniformity in its guiding precepts and principles;***

⁴ See, for instance, the following provisions:

Article III, Section 7

Section 7. The ***right of the people to information on matters of public concern shall be recognized.*** Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Article VI, Section 16, par. 4

Each House shall ***keep a Journal of its proceedings, and from time to time publish the same,*** excepting such parts as may, in its judgment, affect national security; and the yeas and nays on any question shall, at the request of one-fifth of the Members present, be entered in the Journal. Each House shall also keep a Record of its proceedings.

Article VI, Section 20

Section 20. The records and ***books of accounts of the Congress shall be preserved and be open to the public*** in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses for each Member.

Article VI, Section 21

Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its ***duly published rules of procedure.*** The rights of persons appearing in, or affected by, such inquiries shall be respected.

Article XI, Section 17

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be ***disclosed to the public*** in the manner provided by law.

A. Certiorari under the 1987 Constitution

Our use of the remedy of *certiorari* has evolved and expanded along with the development of constitutional litigation under the 1987 Constitution.

The Court – in giving due course to (or dismissing) public interest petitions brought before it – has breathed life to the second paragraph of Section 1, Article VIII of the 1987 Constitution, an innovation that eventually has been labeled as its “***expanded jurisdiction.***” At the same time, it continues to adhere to the practice of judicial review embodied in the first paragraph of Section 1 or what, for clarity, I refer to as the Court’s “***traditional jurisdiction.***”

The Court’s exercise of its traditional jurisdiction is rooted in its power of judicial review which gives the Court the authority to strike down acts of the legislative and/or executive, constitutional bodies or administrative agencies that are contrary to the Constitution. ***The power of judicial review is part and parcel of the Court’s judicial power and is a power inherent in all courts.***⁵

To be successfully mounted, the petition before the Court must be embodied in an actual case, and the following requirements must be complied with: (1) there must be an ***actual case or controversy*** calling for the exercise of judicial power; (2) the person challenging the act must have the ***standing*** to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must ***be raised at the earliest***

⁵ As the Court in *Angara v. Electoral Commission* 63 Phil. 139, 156-157 (1936) said:

xxx The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitation and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, ***this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our constitution.***

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? ***The Constitution itself has provided for the instrumentality of the judiciary as the rational way.*** And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

⁶ *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.⁶

Remedies used to invoke judicial review under the Court's traditional jurisdiction include declaratory relief, *certiorari* and prohibition. These remedies mirror the nature of the traditional concept of judicial review – *i.e.*, that the declaration of the unconstitutionality of a law or act of government must be within the context of an actual case or controversy brought before the courts. Thus, the requirements for filing an action for declaratory relief⁷ echo the requisites for an actual case or controversy, similarly with *certiorari* and prohibition which historically developed as petitions to assail judicial or quasi-judicial acts and which effectively confine these remedies to errors of jurisdiction involving adjudicatory functions.

Note, at this point, that the enumeration of the Supreme Court's appellate jurisdiction under Section 5, paragraph 2 of the 1987 Constitution refers to the exercise of its traditional jurisdiction. The enumeration of what may be reviewed by the Court all refer to *cases*, with reference to the traditional jurisdiction of settling *actual cases or controversies* under Section 1, Article VIII, *viz.*:

2. Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
 - a. All *cases* in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
 - b. All *cases* involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
 - c. All *cases* in which the jurisdiction of any lower court is in issue.
 - d. All criminal *cases* in which the penalty imposed is *reclusion perpetua* or higher.
 - e. All *cases* in which only an error or question of law is involved. (emphases supplied)

The modes by which these cases may reach the Supreme Court for review are either through an *appeal* of errors involving *questions of law* or *questions of law and facts* (*via* a petition for review on *certiorari*), or through a *petition for certiorari* assailing errors of *jurisdiction*.

⁷ Rule 63, Section 1 of the Rules of Court provides:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Bar Matter No. 803, 17 February 1998)

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (1a, R64)

Thus, *certiorari* under Section 5, paragraph 2 refers to a recourse under the traditional jurisdiction of the Supreme Court, as provided under the first paragraph of Section 1, Article VIII of the 1987 Constitution.

At the same time, the Court has recognized and acted on the basis of its expanded jurisdiction under the second paragraph of Section 1, Article VIII of the 1987 Constitution, *albeit* not explicitly at first. Thus, we have cases where the Court, recognizing its *duty* to determine grave abuse of discretion on the part of governmental agencies or entities, reviewed acts that are neither judicial nor quasi-judicial in nature. Notably, the procedural media used in invoking the Court's expanded jurisdiction have been petitions for *certiorari*, or prohibition.⁸ This practice reflects the wording of Section 1, paragraph 2, which does not limit the determination of grave abuse of discretion to quasi-judicial or judicial acts, but to *any* act involving the exercise of discretion on the part of the government.⁹

⁸ See, for instance, the recent cases where the Court exercised its expanded jurisdiction: *Greco Antonious Beda B. Belgica, et. al. v. Honorable Executive Secretary Paquito N. Ochoa, Jr., et. al.*, GR No. 208566, November 19, 2013; *James M. Imbong, et. al. v. Hon. Paquito N. Ochoa, Jr., et. al.*, GR No. 204819, April 8, 2014; *Maria Carolina P. Araullo, et. al. v. Benigno Simeon Aquino III, et. al.*, GR No. 209287, July 1, 2014

⁹ See the discussion on the "expanded certiorari jurisdiction" of the Court in *Francisco v. House of Representatives*, 460 Phil. 830, 883, 909 – 910 (2003), viz:

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "any branch or instrumentalities of government," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded certiorari jurisdiction" of this Court, the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

x x x

The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

x x x

Briefly stated, *courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the*

A distinctive feature in these developments is the strong correlation between the Court's exercise of its expanded jurisdiction, and its relaxation of the requirements for actual case or controversies.¹⁰ The Court relaxes the requirements for judicial review when the petition raises matters of transcendental importance. That a matter is of transcendental importance tempers the standing requirement for judicial review, which in turn, indirectly relaxes the presence of an actual case or controversy itself.

Amidst these jurisprudential developments, the Rules of Court has remained static; its express terms remained confined to the courts' exercise of traditional jurisdiction over judicial or quasi-judicial acts. Yet the Court unhesitatingly used the remedies of *certiorari* and prohibition to enforce its power and to undertake its ***duty*** to determine grave abuse of discretion on the part of the government. Thereby, the Court effectively relaxed the rules on *certiorari*, notably by allowing its use in the review of acts of government that are neither judicial nor quasi-judicial.¹¹

It is in this latter sense that the majority in *Jardeleza* and in the present case allowed the use of *certiorari* to determine whether there had been grave abuse of discretion on the part of the JBC. As I emphasized in my Concurring and Dissenting Opinion in *Araullo v. Aquino*,¹² a *prima facie* showing of grave abuse of discretion is both sufficient and necessary to trigger the Court's expanded jurisdiction, in the same way that an actual case or controversy is necessary to invoke the Court's traditional power of judicial review. In cases that successfully invoked the Court's expanded jurisdiction, the transcendental importance of the public issue presented by the petition likewise relaxed the standing requirement (such that a Filipino citizen, by virtue of his citizenship, possesses the standing to question a governmental act). ***The prima facie showing of a grave abuse of discretion, on the other hand, takes the place of the actual case or controversy requirement in the traditional concept of judicial review.***

The present petition, as earlier mentioned, successfully alleged the commission of grave abuse of discretion, but the allegation, on deeper consideration, was not grave nor serious enough to trigger the Court's expanded jurisdiction. Unlike in *Jardeleza* where the JBC violated its own rules thereby gravely abusing its discretion, the JBC's action in the present

question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.³⁵ (Italics in the original; emphasis and underscoring supplied)

¹⁰ See the *ponencia*'s discussion of the transcendental importance doctrine in *Arturo de Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010, 615 SCRA 666, 722 - 728.

¹¹ *Gutierrez v. House of Representatives Committee on Justice*, G.R. No. 193459, February 15, 2011, 643 SCRA 198, 230 - 233.

¹² *Supra* note 1.

petition was actually in accordance with its policy, which policy is within its power to formulate. That this policy later turns out not to be a "grave" abuse of discretion translates to the petitioner's failure to prove that he is entitled to redress under the Court's expanded jurisdiction. ***This legal conclusion, however, does not render the JBC fully immune to the Court scrutiny as the claimed transgression may also open or trigger a parallel and separate constitutionally granted Court action - the Court's supervisory jurisdiction over the JBC.***

B. Supervisory jurisdiction over the JBC

Article VIII, Section 8(1) and (5) provide that "A Judicial and Bar Council is hereby created under the supervision of the Supreme Court... It may exercise such other functions and duties as the Supreme Court may assign to it."

Supervision, as a legal concept, has been defined as the power of oversight, or the authority to see that subordinate officers perform their duties.¹³ The Constitution's use of the concept of "supervision" carries various significations that should not be missed.

First, the JBC is a body ***subordinate to the Supreme Court*** although the Chief Justice who is *primus inter pares* within the Court also heads the JBC as its *ex officio* Chair.

Second, the Court's power of supervision over the JBC gives the Court the power to ensure that the law or the rules governing the conduct of the JBC are followed.

And third, the Court as the supervising entity merely sees to it that the rules are followed, but it does not, by itself, lay down these rules, nor does it have the discretion to modify or replace them. If the rules are not observed, the Court may only order the work done or redone, but only to conform to higher applicable rules.¹⁴

¹³ 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.

¹⁴ In *Hon. Dadole v. COA*, 441 Phil. 532, 543-544, citing *Drilon v. Lim*, 336 SCRA 201, 214-215, we have further discussed the difference between control and supervision. "Officers in control lay down the

In more succinct terms, the Court's supervisory authority over the JBC involves ensuring that the JBC's actions are in accord with the Constitution, as well as with its own rules. Thus, when there are allegations regarding the JBC's non-compliance with the Constitution or its own rules, especially when it comes from an applicant who is in the position to know of these infirmities, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with the laws applicable to it.

B.1 The Court's supervisory jurisdiction over the JBC is general, and not limited to administration

That the Court's supervisory authority extends beyond mere administrative supervision is beyond question.

Administrative supervision involves overseeing the operations of agencies to ensure that they are managed effectively, efficiently and economically, but without interference with day-to-day activities.¹⁵ In contrast, general supervision involves ensuring that the agency supervised follows their functions, directing them to redo their actions should these be contrary to law.

Textually, nothing in the 1987 Constitution limits the Court to the exercise of mere administrative powers over the JBC when called for. Section 8, Article VIII of the 1987 Constitution provides:

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.

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.”

¹⁵ See the definition of Administrative Supervision in Section 38, paragraph 2, Chapter 7, Book IV of the Administrative Code:

(2) Administrative Supervision.—(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be 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; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

The Council shall have the principal function of recommending appointees to the judiciary. It **may exercise such other functions and duties as the Supreme Court may assign** to it.

Section 8, Article VIII clearly grants to the Supreme Court the power and duty of supervision over the JBC. It does not specify nor limit the Court to administrative supervision over the JBC, but couches the grant of power to the Court in general terms, *i.e.*, “supervision.”

When the Constitution used the general term “supervision” over the JBC, it meant to grant the Court general supervision, for had it meant to limit the Court to administrative supervision, or to the JBC’s administration, then it could have used these words to convey this concept. Even the Administrative Code, which provides definitions of administrative relationships, recognizes the need for a law to specify its intent to limit the supervising authority’s to administrative supervision, by making the function of administration a part of supervision, *viz*:

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word “supervision” shall encompass administrative supervision as defined in this paragraph.¹⁶

Otherwise stated, when a law grants a government agency supervision over another agency, it automatically includes administrative supervision. Thus, if an agency merely exercises administrative authority over another, this should be specified in the law granting it.

Additionally, the Court, has, in the past, exercised its general supervision over the JBC. In *In Re Appointments dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta (Valenzuela)*,¹⁷ for instance, the Court en banc *motu proprio* decided to resolve the issue of whether the election ban applies to the Judiciary in lieu of the constitutional questions raised by the JBC’s attempts to

¹⁶ Section 38, paragraph 2 (c), Chapter 7, Book IV of the 1987 Administrative Code

¹⁷ A.M. No. 98-5-01-SC, November 9, 1998. 298 SCRA 408.

continue its deliberations in order to transmit a list of nominees to the President despite the ban. In a Resolution ordering the interested parties (none of whom raised a petition before the Court) to submit a comment regarding the matter, the Court *en banc* instructed the JBC to defer any action over the appointments pending the Court's resolution of the election ban issue.

The Court's acts in *Valenzuela* can hardly be described as administrative supervision. In *Valenzuela*, the Court *en banc* found that the JBC's actions could violate the Constitution and thus instructed its members to defer its deliberations and to desist from transmitting any list of nominees to the President until the Court *en banc* had resolved the constitutional question. The Court *en banc* initiated the determination of the constitutional question without any interested party filing a petition for its resolution; from this unique perspective, the Court's action was an exercise of its power to ensure that the JBC performed its functions in accordance with the law, *i.e.*, its power of general supervision over the JBC.

The Court, after considering the pleadings filed by interested parties in *Valenzuela*, decided to annul appointments that violated the constitutional prohibition on the election ban. This Court action no longer involved an exercise of its supervisory jurisdiction, but had spilled over into its expanded jurisdiction to annul acts of grave abuse of discretion, which according to *Valenzuela*, violated the Constitution. Interestingly, the Court distinguished this ruling from *de Castro v. JBC*¹⁸ with respect to appointments to vacancies in the Supreme Court. The fine distinctions raised, however, do not negate the fact that the Court exercised acts of general supervision over the JBC in *Valenzuela*.

The distinction between the Court's exercises of its power of supervision over the JBC and its expanded jurisdiction over all government agencies is important, lest we be accused of exceeding our own jurisdiction and meddling with the exclusive affairs of an independent constitutional body.

To reiterate, the Court, as an aspect of its supervisory power, can direct the JBC to defer or stop its actions and to redo them, should it be necessary to comply with the Constitution. We have, in the past, exercised our supervisory jurisdiction when we instructed the JBC in *Valenzuela* to defer its proceedings pending the resolution of a constitutional question; directed the JBC to review its rules in *Jardeleza v. Sereno*¹⁹; and now, directed the JBC to publish its own rules.

In contrast, the Court, as an aspect of its expanded jurisdiction, has annulled acts that violate the Constitution: the Court did this when it

¹⁸ G.R. No. 191002, March 17, 2010, 615 SCRA 666.

¹⁹ *Supra* note 2.

annulled the appointments made by the President in violation of the election ban in *Valenzuela*; and when it annulled the application of the Rule 10, Section 2 of the JBC Rules to Justice Francis H. Jardeleza in *Jardeleza v. Sereno*.

Note at this point, that ***the independent character of a constitutional body does not remove it from the Court's jurisdiction.*** The Commission on Elections, Commission on Audit, Commission on Civil Service and the Office of the Ombudsman are all independent constitutional bodies – and none of them can invoke their independence as a means to avoid judicial review, more so when their assailed acts involve grave abuse of discretion.

Additionally, the Court's general supervision over the JBC is in line with its constitutionally-bestowed discretion ***to assign additional functions and duties to the JBC.***

This grant of discretion empowers the Court to direct the JBC to redo its acts that are contrary to law. To be sure, the Court's power to assign duties to the JBC as an aspect of general supervision over it does not grant the Court the power to substitute its discretion over the JBC; the Court, in exercising its supervisory jurisdiction over the JBC, can at most direct it to redo their actions that are contrary to the law or to the Constitution.

Lastly, that the Court has issued A.M. No. 03-11-16-SC or A Resolution Strengthening The Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein, which acknowledges the Chief Justice's administrative authority of the JBC, does not contradict the Court's power of general supervision over it. ***First***, the Constitution recognizes the Chief Justice as the JBC's *ex officio* chair, implying her administrative authority over the JBC. A.M. No. 03-11-16-SC merely affirms this provision in the Constitution. ***Second***, the Court's administrative authority over the JBC does not rule out its power to supervise it, and may, as illustrated in the Administrative Code, be construed as an aspect of general supervision.

B.2 The Court's supervisory jurisdiction as applied in the present case

The current petition questions the JBC's policies for having violated the Constitution but not at the level where these policies have been issued with grave abuse of discretion. As the majority eventually held, these policies are in accord with the JBC's powers to determine whether applicants possess the requirements for members of the bench. The majority, however, noted that these policies should be published, and issued a directive to this effect.

To arrive at this conclusion, however, the Court must necessarily wear its supervisory hat to determine whether the JBC's actions had been in accord with the Constitution and relevant laws.

In this regard, I ask: *is the Court, in exercising its supervisory jurisdiction over the JBC, limited to the examination of acts alleged to have been committed with grave abuse of discretion?*

The Court is not and cannot be so limited under the terms of the 1987 Constitution.

Article VIII, Section 8 □ the provision for the Court's supervision over the JBC □ is separate and more specific than the general grave abuse of discretion provision under Section 1, Article VIII of the 1987 Constitution. Thus, this supervisory authority, as a separate and more specific grant of power, may be invoked and exercised separately from the Court's traditional and expanded jurisdictions.

In the present case, I believe that what we ultimately undertook, based on the conclusion we arrived at, was an exercise of our supervisory jurisdiction over the JBC, made as a parallel power in the course of acting pursuant to our expanded jurisdiction. From the prism of a petition for *certiorari*, we yet again relaxed our rules when we allowed the use of the petition for another power of the Court; we allowed the use of *certiorari* to invoke the Court's supervisory jurisdiction.

In these lights, the Court should neither be hesitant nor timid in exercising its supervisory jurisdiction over the JBC, *without encroaching on their prerogative to determine whether applicants to the judiciary possess the characteristics that the Constitution requires of each member of the bench.*

I believe, too, that this active Court role is necessary in light of the recent cases brought before us and the issues that they presented. But the Court's approach should be made very clear, particularly when a *certiorari* would be the medium used, to avoid confusing the traditional, the expanded, and the supervisory occasions in invoking the Court's jurisdiction.

To reiterate, the Court's power of supervision over the JBC is a power granted distinctly and separately from the Court's traditional judicial review and expanded jurisdiction powers. Thus, the exercise of supervision does not need to be limited to instances where there is a *prima facie* showing of grave abuse of discretion (as in petitions invoking the Court's expanded jurisdiction). Neither should it be exercised only in conjunction with the Court's judicial power to settle actual cases or controversies.

To forestall confusion in the future, the rules in this regard should be very clear, particularly on *when and how* the Court's supervisory power over the JBC may be invoked. Because the Court's power is independently granted, recourse to the Court based on its duty to supervise should not be confined to highly exceptional circumstances of grave abuse of discretion or as an adjunct of adjudication.

Note, too, that we exercised our power of supervision over the JBC when the Court's majority in *Jardeleza* recommended that a review of its rules be made in light of the due process rights violations in that case. This was a review of the JBC's quasi-legislative power and was a distinct act of supervision separate from the exercise of our expanded jurisdiction to nullify the grave abuse of discretion the JBC committed when it applied the unanimity rule against *Jardeleza*.

As a final point, the recent cases involving the JBC has shown us that its exercise of discretion is not infallible, and that it can commit errors that violate the Constitution, or even its own rules. These abuses, no matter how well-intentioned, should not be left unchecked, and the Court, as the body tasked with supervisory authority over the JBC, should open up and clarify the avenues by which these JBC errors may be remedied. The power to take part in the President's power to appoint judicial officers is too important to be hindered by mere technicalities and should be closely safeguarded.


ARTURO D. BRION
Associate Justice