

EN BANC

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

Promulgated:

April 7, 2015

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CONCURRING OPINION

LEONEN, J.:

I concur in the dismissal of the Petition.

The Petition should be dismissed as it is procedurally infirm and fails to establish petitioner's right to be nominated to a judicial post.

I

A writ of mandamus, certiorari, or prohibition cannot be issued against the Judicial and Bar Council or can it be the subject of a petition for declaratory relief absent a clear and convincing case of grave abuse of discretion.

Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for mandamus may be availed to compel the performance of a duty, or to compel the inclusion of a person in the use and enjoyment of a right or office to which he or she is entitled. The provision states:

SEC. 3. Petition for mandamus. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages

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sustained by the petitioner by reason of the wrongful acts of the respondent.

In particular, the remedy of mandamus requires the performance of a ministerial duty:

Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that “requires neither the exercise of official discretion nor judgment.” It connotes an act in which nothing is left to the discretion of the person executing it. It is a “simple, definite duty arising under conditions admitted or proved to exist and imposed by law.” Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.<sup>1</sup> (Citations omitted)

Although petitioner filed, among others, a petition for mandamus, his prayer does not seek the performance by the Judicial and Bar Council of a specific ministerial act. In particular, he prays that:

[p]ending resolution of this Petition, a temporary Restraining order, and/ or a writ of preliminary injunction be issued compelling Public Respondents to refrain from disqualifying the Petitioner and all other Judges similarly situated with the petitioner in their present or future application for second level courts (RTC Judges) and to include the petitioner as applicants in the above mentioned RTCs and go through the process of selection and evaluation[.]<sup>2</sup>

It can be inferred from his prayer that petitioner seeks to compel the Judicial and Bar Council to include him in the list of applicants for the vacant positions in the Regional Trial Courts. In my dissenting opinion in *Jardeleza v. Judicial and Bar Council*:<sup>3</sup>

[t]he determination by the Judicial and Bar Council of the qualifications and fitness of applicants for positions in the judiciary is not a ministerial duty. It is constitutionally part of its discretion. *Mandamus cannot compel the amendment of any list already transmitted, and it cannot be made available to compel the Council to transmit a name not in the original list.*

*De Castro v. Judicial and Bar Council* clarifies a unique instance when mandamus lies against the Council. This is with respect only to the constitutional duty to allow the President the mandatory 90 days to make an appointment. Thus:

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<sup>1</sup> *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.*, 595 Phil. 305, 326 (2008) [Per J. Velasco, Jr., En Banc].

<sup>2</sup> Petition, pp. 15–16.

<sup>3</sup> G.R. No. 213181, August 19, 2014  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/213181.pdf>>  
[Per J. Mendoza, En Banc].

The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.<sup>4</sup> (Emphasis supplied)

A writ of certiorari or prohibition cannot also be issued against the Judicial and Bar Council as the remedy of certiorari can only be used against a tribunal, board, or officer exercising judicial or quasi-judicial functions while the remedy of prohibition can only be used against any tribunal, corporation, board, officer, or person exercising judicial, quasi-judicial, or ministerial functions.

Rule 65, Section 1 and Section 2 of the Rules of Civil Procedure state:

SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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SECTION 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether *exercising judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or

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<sup>4</sup> J. Leonen, Dissenting Opinion in *Jardeleza v. Judicial and Bar Council*, G.R. No. 213181, August 19, 2014  
<[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/213181\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/213181_leonen.pdf)> 21 [Per J. Mendoza, En Banc], *citing De Castro v. Judicial and Bar Council, et al.*, 629 Phil. 629, 706 (2010) [Per J. Bersamin, En Banc].

matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. (Emphasis supplied)

The ponencia correctly stated that “[i]n the process of selecting and screening applicants, the [Judicial and Bar Council] neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative.”<sup>5</sup>

The functions of the Judicial and Bar Council are neither judicial nor quasi-judicial in nature. It does not perform “adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court.”<sup>6</sup> The exercise by the Judicial and Bar Council of its constitutional duty is also not a ministerial act by which it may be restrained from performing.

The relief sought by petitioner cannot also be the subject of an action for declaratory relief. Under Rule 63, Section 1 of the Rules of Civil Procedure, a petition for declaratory relief may be filed before the Regional Trial Court by one “whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation[.]”

The ponencia correctly stated that “no person possess[es] a legal right under the Constitution to be included in the list of nominees for vacant judicial positions.”<sup>7</sup> The Constitution does not grant to any person the right to be nominated when he or she qualifies. The Judicial and Bar Council is given by the Constitution the full discretion on the selection and qualification of the nominees for judicial office. There are no rights adjudicated in the Judicial and Bar Council’s selection process.

It is also settled that this court does not have original jurisdiction over petitions for declaratory relief. In *Chavez v. Judicial and Bar Council*,<sup>8</sup> this court previously encountered a petition for declaratory relief for this court to interpret Article VIII, Section 8(1) of the Constitution. This court, in ruling that the Regional Trial Court has original jurisdiction over a petition for declaratory relief, stated the following:

*The Constitution as the subject matter, and the validity and construction of Section 8 (1), Article VIII as the issue raised, the petition should properly be considered as that which would result in the adjudication of rights sans the execution process because the only relief to be granted is the very declaration of the rights under the document sought to be construed. It being so, the original jurisdiction over the petition lies*

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<sup>5</sup> Ponencia, p. 4.

<sup>6</sup> *Santos v. Go*, 510 Phil. 137, 148 (2005) [Per J. Quisumbing, First Division].

<sup>7</sup> Ponencia, p. 6.

<sup>8</sup> G.R. No. 202242, July 17, 2012, 676 SCRA 579 [Per J. Mendoza, En Banc].

*with the appropriate Regional Trial Court (RTC).* Notwithstanding the fact that only questions of law are raised in the petition, an action for declaratory relief is not among those within the original jurisdiction of this Court as provided in Section 5, Article VIII of the Constitution.<sup>9</sup> (Emphasis supplied)

## II

The only exception to the use of Rule 65 is when this court's power of judicial review due to a constitutional violation is raised. While expansive, the exercise of this power is subject to limitations: "(1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; 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 possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case."<sup>10</sup>

In *Prof. David v. President Macapagal-Arroyo*:<sup>11</sup>

[a]n actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest"; a real and substantial controversy admitting of specific relief.<sup>12</sup>

Petitioner has no legally vested right to a nomination in an application before the Judicial and Bar Council. The relief he requests cannot be granted since there is nothing in the Constitution that gives this court the power to order the Judicial and Bar Council to nominate him. There is no actual case or controversy that merits this court's power of review.

## III

The zeal that characterizes the vigilance of petitioner to protect his constitutional right against unequal protection of the laws is commendable but unfortunately misplaced.

The five-year requirement imposed by the Judicial and Bar Council for first-level court judges before they can be considered for another tier is reasonable. This same requirement cannot be imposed on applicants from the public service, private practice, or the academe simply because they are

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<sup>9</sup> Id. at 592.

<sup>10</sup> Id. at 593–594, citing *Senate of the Philippines v. Executive Secretary Ermita*, 522 Phil. 1, 27 (2006) [Per J. Carpio Morales, En Banc].

<sup>11</sup> 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

<sup>12</sup> Id. at 753, citing *ISAGANI CRUZ, PHILIPPINE POLITICAL LAW* 259 (2002).

not from a judicial service. This does not mean, however, that there is no requirement or any consideration made by the Judicial and Bar Council that is equivalent or more stringent. We cannot assume that a constitutional body tasked to determine the fitness, competence, integrity, and independence of those that seek to serve in our branch of government will be less dedicated to its task when screening these applicants.

At the very least, petitioner has not shown clearly and convincingly that the burden that he imagines he bears has no equivalent to other applicants who are not similarly situated. Certainly, any petitioner who raises the constitutionality of an act of a constitutional organ tasked to discharge its duties bears the burden of showing that his claims are fully grounded.

ACCORDINGLY, I vote to **DENY** the Petition.



MARVIC M.V.F. LEONEN  
Associate Justice