

IN RE APPOINTMENTS DATED MARCH 30, 1998 OF HON. MATEO A. VALENZUELA AND HON. PLACIDO B. VALLARTA AS JUDGES OF THE REGIONAL TRIAL COURT OF BRANCH 62, BAGO CITY AND OF BRANCH 24, ...

A.M. No. 98-5-01-SC. November 09, 1998

Ponente: NARVASA, CJ.

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NARVASA, CJ.:

The question presented for resolution in the administrative matter at bar is whether, during the period of the ban on appointments imposed by Section 15, Article VII of the Constitution, the President is nonetheless required to fill vacancies in the judiciary, in view of Sections 4(1) and 9 of Article VIII. A corollary question is whether he can make appointments to the judiciary during the period of the ban in the interest of public service.

Resolution of the issues is needful; it will preclude a recurrence of any conflict in the matter of nominations and appointments to the Judiciary - as that here involved - between the Chief Executive, on the one hand, and on the other, the Supreme Court and the Judicial and Bar Council over which the Court exercises general supervision and wields specific powers including the assignment to it of other functions and duties in addition to its principal one of recommending appointees to the Judiciary, and the determination of its Members' emoluments.[1]

I The Relevant Facts

The Resolution of the Court En Banc, handed down on May 14, 1998, sets out the relevant facts and is for that reason hereunder reproduce in full.

Referred to the Court En Banc by the Chief Justice are the appointments signed by His Excellency the President under the date of March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively. The appointments were received at the Chief Justice's chambers on May 12, 1998. The referral was made in view of the serious constitutional issue concerning said appointments arising from the pertinent antecedents.

The issue was first ventilated at the meeting of the Judicial and Bar Council on March 9, 1998. The meeting had been called, according to the Chief Justice as Ex Officio Chairman, to discuss the question raised by some sectors about the "constitutionality of *** appointments" to the Court of Appeals, specifically, in light of the forthcoming presidential elections. Attention was drawn to Section 15, Article VII of the Constitution reading as follows:

"SEC 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

On the other hand, appointments to fill vacancies in the Supreme court during the period mentioned in the provision just quoted could seemingly be justified by another provision of the same Constitution. Section 4(1) of Article VIII which states:

"SEC 4 (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. ***. Any vacancy shall be filled within ninety days from the occurrence thereof."

Also pertinent although not specifically discussed is Section 9 of the same Article VIII which provides that for the lower courts, the President shall issue the appointments - from a list of at least three nominees prepared by the Council for every vacancy - within ninety days from the submission of the list.

The view was then expressed by Senior associate Justice Florenz D. Regalado, Consultant of the Council, who had been a member of the Committee of the Executive Department and of the Committee on the Judicial Department of the 1986 Constitutional Commission, that on the basis of the Commission's records, the election ban had no application to appointments to the Court of Appeals. Without any extended discussion or any prior research and study on the part of the other Members of the JBC, this hypothesis was accepted, and was then submitted to the President for consideration, together with the Council's nominations for eight (8) vacancies in the Court of Appeals.

On April 6, 1998 the Chief Justice received an official communication from the Executive Secretary transmitting the appointments of eight (8) Associate Justices of the Court of Appeals all of which had been duly signed on March 11, 1998 by His Excellency, the President. In view of the fact that all the appointments had been signed on March 11, 1998 - the day immediately before the commencement of the ban on appointments imposed by Section 15, Article VII of the Constitution - which impliedly but no less clearly indicated that the President's Office did not agree with the hypothesis that appointments to the Judiciary were not covered by said ban, the Chief Justice resolved to defer consideration of nominations for the vacancy in the Supreme Court created by the retirement of Associate Justice Ricardo J. Francisco, specially considering that the Court had scheduled sessions in Baguio City in April, 1998, that the legislature's representatives to the JBC were occupied with the forthcoming elections, and that a member of the Council was going on a trip out of the country.

On May 4, 1998, the Chief Justice received a letter from the President, addressed to the JBC requesting transmission of the "list of final nominees" for the vacancy "no later than Wednesday, May 6, 1998," in view of the duty imposed on him by the Constitution "to fill up the vacancy *** within ninety (90) days from February 13, 1998, the date the present vacancy occurred."

On May 5, 1998, Secretary of Justice Silvestre Bello III requested the Chief Justice for "guidance" respecting the expressed desire of the "regular members" of the JBC to hold a meeting immediately to fill up the vacancy in the Court in line with the President's letter of May 4. The Chief Justice advised Secretary Bello to await the reply that he was drafting to the President's communication, a copy of which he would give to the Secretary the following day.

On May 6, 1998 the Chief Justice sent his reply to the President. He began by stating that no sessions had been scheduled for the Council after the May elections for the reason that apparently the President's Office did not share the view posited by the JBC that Section 15, Article VII of the Constitution had no application to JBC-recommended appointments - the appointments to the Court of Appeals having been all uniformly dated March 11, 1998, before the commencement of the prohibition in said provision - thus giving rise to the "need to undertake further study of the matter," prescinding from "the desire to avoid any constitutional issue regarding the appointment to the mentioned vacancy" and the further fact that "certain senior members of the Court of Appeals *** (had) asked the Council to reopen the question of their exclusion on account of age from such (final) list." He closed with the assurance that the JBC expected to deliberate on the nominations "forthwith upon the completion of the coming elections." The letter was delivered to Malacañang at about 5 o'clock in the afternoon of May 6, 1998, and a copy given to the Office of Justice Secretary Bello shortly before that hour.

It would appear, however, that the Justice Secretary and the regular members of the Council had already taken action without awaiting the Chief Justice's promised response to the President's letter of May 4, 1998. On that

day, May 6, 1998, they met at some undisclosed place, deliberated, and came to an agreement on a resolution which they caused to be reduced to writing and thereafter signed. In that two-page Resolution they drew attention to Section 4 (1), Article VIII of the Constitution (omitting any mention of Section 15, Article VII) as well as to the President's letter of May 4 in which he "emphatically requested that the required list of final nominee be submitted to him;" and pointing out that the "Council would be remiss in its duties" should it fail to submit the nominations, closed with an appeal that the Chief Justice convene the Council for the purpose "on May 7, 1998, at 2:00 o'clock in the afternoon." This Resolution they transmitted to the Chief Justice together with their letter, also dated May 6, in which they emphasized that "we are pressed for time" again drawing attention to Section 4 (1). In Article VIII of the Constitution (and again omitting any reference to Section 15, Article VII). They ended their letter with the following intriguing paragraph:

"Should the Chief Justice be not disposed to call for the meeting aforesaid, the undersigned members constituting the majority will be constrained to convene the Council for the purpose of complying with its Constitutional mandate."

It seems evident, as just intimated, that the resolution and the covering letter were deliberated on, prepared and signed hours before delivery of the Chief Justice's letter to the President and the Justice Secretary.

Since the Members of the Council appeared determined to hold a meeting regardless of the Chief Justice's wishes, the latter convoked the Council to a meeting at 3 o'clock in the afternoon of May 7, 1998. Present at the meeting were Chief Justice, Secretary Bello, ex officio member and the regular members of the Council; Justice Regino Hermosisima, Atty. Teresita Cruz Sison, Judge Cesar C. Peralejo. Also present on the invitation of the Chief Justice, were Justices Hilario G. Davide, Jr., Florida Ruth P. Romero, Josue N. Bellosillo, Reynato S. Puno, Jose C. Vitug, Vicente V. Mendoza, Artemio V. Panganiban, Antonio M. Martinez, Leonardo A. Quisumbing and Fidel P. Purisima. The Chief Justice reviewed the events leading to the session, and after discussion, the body agreed to give the President time to answer the Chief Justice's letter of May 6, 1998.

On May 7, 1998, the Chief Justice received a letter from His Excellency the President in reply to his letter of May 6 (which the President said had been "received early this morning"). The President expressed the view that "the election-ban provision (Article VII, Sec. 15) *** applies only to executive appointments or appointments in the executive branch of government," the whole article being "entitled 'EXECUTIVE DEPARTMENT.'" He also observed that further proof of his theory "is the fact that appointments to the judiciary have special, specific provisions applicable to them" (citing Article VIII, Sec. 4 [1] and Article VIII, Section 9. In view thereof, he "firmly and respectfully reiterate(d) *** (his) request for the Judicial and Bar Council to transmit *** the final list of nominees for the lone Supreme Court vacancy."

The Chief Justice replied to the letter the following day, May 8, 1998. Since the Chief Justice's letter explains the issue quite plainly, it is here quoted in full.

"Thank you for your letter of May 7, 1998, responding to my own communication of May 6, 1998 which, I would like to say, reflects the collective sentiments of my colleagues in the Supreme Court. Knowing how busy you are, I will deal straightaway with the points set out in your letter.

The dating of the latest appointments to the Court of Appeals was adverted to merely to explain how we in the Court and the JBC came to have the impression that you did not share the view expressed in the JBC minutes of March 9, 1998 'that there is no election ban with regard to the JBC appointments.' Be this as it may, the Court feels that there is a serious question concerning the matter in light of the seemingly inconsistent provisions of the Constitution. The first of these is Section 15, Article VII, which reads:

'SEC. 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.'

The second is Section 4(1) of Article VIII which states:

'SEC 4(1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. ***. Any vacancy shall be filled within ninety days from the occurrence thereof.'

As you can see, Your Excellency, Section 15 of Article VII imposes a direct prohibition on the President: he "shall not make appointments" within the period mentioned, and since there is no specification of which appointments are proscribed, the same may be considered as applying to all appointments of any kind and nature. This is the general rule then, the only exception being only as regards "executive positions" as to which "temporary appointments" may be made within the interdicted period "when continued vacancies therein will prejudice public service or endanger public safety." As the exception makes reference only to "executive" positions, it would seem that "judicial" positions are covered by the general rule.

On the other hand, Section 4 (1) of Article VIII, requires that any vacancy in the Supreme Court "shall be filled within ninety days from the occurrence thereof." Unlike Section 15, Article VII, the duty of filling the vacancy is not specifically imposed on the President; hence, it may be inferred that it is a duty shared by the Judicial and Bar council and the President.

Now, in view of the general prohibition in the first-quoted provision, how is the requirement of filling vacancies in the Court within ninety days to be construed? One interpretation that immediately suggests itself is that Section 4(1), Article VIII is a general provision while Section 15, Article VII is a particular one; that is to say, normally, when there are no presidential elections - which after all occur only every six years - Section 4(1), Article VIII shall apply: vacancies in the Supreme Court shall be filled within 90 days; but when (as now) there are presidential elections, the prohibition in Section 15, Article VII comes into play: the President shall not make any appointments. The reason for said prohibition, according to Fr. J. Bernas, S.J., an authority on Constitutional Law and himself a member of the Constitutional Commission, is "(I)n order not to tie the hands of the incoming President through midnight appointments." Another interpretation is that put forth in the Minutes of the JBC Meeting of March 9, 1998.

I must emphasize that the validity of any appointment to the Supreme Court at this time hinges on the correct interpretation of the foregoing sections of the Constitution. On account of the importance of the question, I consulted the Court about it but, as I stated in my letter of May 6, 1998, "it declined to take any position, since obviously there had not been enough time to deliberate on the same *** (although it) did agree that further study was necessary ***."

Since the question has actually come up, and its importance cannot be gainsaid, and it is the Court that is empowered under the Constitution to make an authoritative interpretation of its (provisions) or of those of any other law. I believe that the Court may now perhaps consider the issue ripe for determination and come to grips with it, to avoid any possible polemics concerning the matter. However the Court resolves the issue, no serious prejudice will be done. Should the Court rule that the President is indeed prohibited to make appointments in a presidential election year, then any appointment attempted within the proscribed period would be void anyway. If the Court should adjudge that the ban has no application to appointments to the Supreme Court, the JBC may submit nominations and the President may make the appointment forthwith upon such adjudgment.

The matter is a delicate one, quite obviously, and must thus be dealt with with utmost circumspection, to avoid any question regarding the validity of an appointment to the Court at this time, or any accusation of "midnight" appointments or rash, hasty action on the part of the JBC or the President.

In view thereof, and upon the advice and consent of the Members of the Court, I am requesting the regular Members of the Judicial and Bar Council to defer action on the matter until further advice by the Court. I earnestly make the same request of you, Your Excellency, I assure you, however, that as befits a matter in which the Chief Executive has evinced much interest, my colleagues and I will give it preferential and expeditious attention and consideration. To this end, I intend to convene the Court by next week, at the latest."

On May 8, 1998, again on the insistence of the regular Members of the JBC, another meeting was held at which were present the Chief Justice, the Secretary of Justice and the three regular Members above mentioned, as well as Justices Hilario G. Davide, Jr., Florida Ruth P. Romero, Josue N. Bellosillo, Reynato S. Puno, Jose C. Vitug, Santiago M. Kapunan, Vicente V. Mendoza, Artemio V. Panganiban, Antonio M. Martinez, Leonardo A. Quisumbing and Fidel P. Purisima. The meeting closed with a resolution that "the constitutional provisions *** (in question) be referred to the Supreme Court En Banc for appropriate action, together with the request that the Supreme Court consider that the ninety-day period stated in Section 4 (1), Article VIII be suspended or interrupted in view of the peculiar circumstances ***."

On May 12, 1998, the Chief Justice received from Malacañang the appointments of two (2) Judges of the Regional Trial Court mentioned above. This places on the Chief Justice the obligation of acting thereon; i.e., transmitting the appointments to the appointees so that they might take their oaths and assume their duties of their office. The trouble is that in doing so, the Chief Justice runs the risk of acting in a manner inconsistent with the Constitution, for these appointments appear prima facie, at least, to be expressly prohibited by Section 15, Article VII of the charter. This circumstance, and the referral of the constitutional question to the Court in virtue of the Resolution of May 8, 1998, supra, operate to raise a justiciable issue before the Court, an issue of sufficient importance to warrant consideration and adjudication on the merits.

Accordingly, the Court Resolved to (1) CONSIDER the case at bar an administrative matter and cause it to be appropriately docketed; (2) to DIRECT the Clerk of Court to immediately serve copies of this Resolution on (a) the Office of the President, (b) the Office of the Solicitor General, (c) Hon. Mateo A. Valenzuela, and (d) Hon. Placido B. Vallarta (at their addresses recorded in the Judicial and Bar Council); and (3) to REQUIRE the Office of the President, the Office of the Solicitor General, Hon. Mateo A. Valenzuela, and Hon. Placido B. Vallarta to file their comments on this Resolution within fifteen (15) days from notice thereof.

The Court further Resolved that (1) pending the foregoing proceedings and the deliberation by the Court on the matter, and until further orders, no action be taken on the appointments of Hon. Valenzuela and Hon. Vallarta which in the meantime shall be held in abeyance and not given any effect and said appointees shall refrain from taking their oath of office; and that (2) exercising its power of supervision over the Judicial and Bar Council, said Council and its ex officio and regular Members herein mentioned be INSTRUCTED, as they are hereby INSTRUCTED, to defer all action on the matter of nominations to fill up the lone vacancy in the Supreme Court or any other vacancy until further orders.

SO ORDERED.

II The Relevant Pleadings

In compliance with the foregoing Resolution, the following pleadings and other documents were filed, to wit:

- 1) the manifestation dated May 28, 1998 of Hon. Mateo A. Valenzuela in compliance with the Resolution of May 14, 1998;
- 2) the letter dated June 1, 1998 of Hon. Placido B. Vallarta in compliance with the same Resolution;
- 3) the "Comments" of Hon. Valenzuela dated May 25, 1998;
- 4) his "Addendum to Comments" dated June 8, 1998;
- 5) his "Explanation" dated June 8, 1998;
- 6) the letter of Hon. Vallarta dated June 8, 1998;
- 7) his letter dated June 16, 1998;
- 8) the "Explanation" of Hon. Valenzuela dated July 17, 1998; and
- 9) the "Comment" of the Office of the Solicitor General dated August 5, 1998.

A. Valenzuela's Assumption of Duty as Judge on May 14, 1998

In his Manifestation dated May 28, 1998, Judge Valenzuela alleged inter alia:

****that on May 14, 1998, he took his Oath of Office as Judge, RTC Branch 62, Bago City, before Hon. Anastacio C. Rufon, Judge RTC, Branch 52, Bacolod City, pursuant to Appointment dated March 30, 1998, (and) he also reported for duty as such before said RTC Branch 62, Bago City *** (and that he did so) "faultlessly," *** without knowledge of the on-going deliberations on the matter."

At that time, the originals of the appointments of Messrs. Valenzuela and Vallarta, dated March 30, 1998 - addressed to them "Thru: the Chief Justice, Supreme Court of the Philippines, Manila." and which had been sent to and received by the Chief Justice on May 12, 1998[2] -- were still in the latter's Office, and had not been transmitted to them precisely because of the serious issue concerning the validity of their appointments. Indeed, one of the directives in the Resolution of May 14, 1998 was that "pending *** deliberation by the Court on the matter, and until further orders, no action be taken on the appointments *** which in the meantime shall be held in abeyance and not given any effect ***." For this reason, by Resolution dated June 23, 1998, the Court required Valenzuela to EXPLAIN by what authority he had taken his oath on May 14, 1998 as Judge of Branch 62 of the RTC at Bago City. In his "Explanation" dated July 17, 1998, Valenzuela stated that he did so because on May 7, 1998 he "received from Malacañang copy of his appointment ***" which contained the following direction: "By virtue hereof, you may qualify and enter upon the performance of the duties of the office***."

The Court then deliberated on the pleadings and documents above mentioned, in relation to the facts and circumstances on record, and thereafter Resolved to promulgate the following opinion.

III The Relevant Constitutional Provisions

The provision of the Constitution material to the inquiry at bar read as follows:[3]

Section 15, Article VII:

"Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to execute positions when continued vacancies therein will prejudice public service or endanger public safety."

Section 4 (1), Article VIII:

"The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof."

Section 9, Article VIII:

"The Members of the Supreme Court and judges in lower courts shall be appointed by the President from the list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list."

IV The Court's View

The Court's view is that during the period stated in Section 15, Article VII of the Constitution - "(t)wo months immediately before the next presidential elections and up to the end of his term" - the President is neither required to make appointments to the courts nor allowed to do so; and that Sections 4(1) and 9 of Article VIII simply mean that the President is required to fill vacancies in the courts within the time frames provided therein unless prohibited by Section 15 of Article VII. It is noteworthy that the prohibition on appointments comes into effect only once every six years.

V Intent of the Constitutional Commission

The journal of the Commission which drew up the present Constitution discloses that the original proposal was to have an eleven-member Supreme Court. Commissioner Eulogio Lerum wanted to increase the number of Justices to fifteen. He also wished to ensure that that number would not be reduced for any appreciable length of time (even only temporarily), and to this end proposed that any vacancy "must be filled within two months from the date that the vacancy occurs." His proposal to have a 15-member Court was not initially adopted. Persisting however in his desire to make certain that the size of the Court would not be decreased for any substantial period as a result of vacancies, Lerum proposed the insertion in the provision (anent the Court's membership) of the same mandate that "IN CASE OF ANY VACANCY, THE SAME SHALL BE FILLED WITHIN TWO MONTHS FROM OCCURRENCE THEREOF." He later agreed to suggestions to make the period three, instead of two, months. As thus amended, the proposal was approved.[4] As it turned out, however, the Commission ultimately agreed on a fifteen-member Court.[5] Thus it was that the section fixing the composition of the Supreme Court came to include a command to fill up any vacancy therein within 90 days from its occurrence.

In this connection, it may be pointed out that that instruction that any "vacancy shall be filled within ninety days" (in the last sentence of Section 4 (1) of Article VIII) contrasts with the prohibition in Section 15, Article VII, which is couched in stronger negative language - that "a President or Acting President shall not make appointments""

The commission later approved a proposal of Commissioner Hilario G. Davide, Jr. (now a Member of this Court) to add to what is now Section 9 of Article VIII, the following paragraph: "WITH RESPECT TO LOWER COURTS, THE PRESIDENT SHALL ISSUE THE APPOINTMENT WITHIN NINETY DAYS FROM THE SUBMISSION OF THE LIST" (of nominees by the Judicial and Bar Council to the President).[6] Davide stated that his purpose was to provide a "uniform rule" for lower courts. According to him, the 90-day period should be counted from submission of the list of nominees to the President in view of the possibility that the President might reject the list submitted to him and the JBC thus need more time to submit a new one.[7]

On the other hand, Section 15, Article VII - which in effect deprives the President of his appointing power "two months immediately before the next presidential elections up to the end of his term" - was approved without discussion.

VI. Analysis of Provisions

Now, it appears that Section 15, Article VII is directed against two types of appointments: (1) those made for buying votes and (2) those made for partisan considerations. The first refers to those appointments made within the two months preceding a Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code, viz.: [8]

SEC. 261. Prohibited Acts. - The following shall be guilty of an election offense:

(a) Vote buying and vote selling - (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination of choice of a candidate in a convention or similar selection process of a political party.

....

(g) Appointment of new employees, creation of new position, promotion, or giving salary increases. - During

the period of forty five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary, or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

The second type of appointments prohibited by Section 15, Article VII consists of the so-called "midnight" appointments. In *Aytona v. Castillo*,^[9] it was held that after the proclamation of Diosdado Macapagal as duly elected President, President Carlos P. Garcia, who was defeated in his bid for reelection, became no more than a "caretaker" administrator whose duty was to "prepare for the orderly transfer of authority to the incoming President." Said the Court:

"The filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and appointee's qualifications may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them in a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments."

As indicated, the Court recognized that there may well be appointments to important positions which have to be made even after the proclamation of the new President. Such appointments, so long as they are "few and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications,"^[10] can be made by the outgoing President. Accordingly, several appointments made by President Garcia, which were shown to have been well considered, were upheld.^[11]

Section 15, Article VII has a broader scope than the *Aytona* ruling. It may not unreasonably be deemed to contemplate not only "midnight" appointments - those made obviously for partisan reasons as shown by their number and the time of their making - but also appointments presumed made for the purpose of influencing the outcome of the Presidential election.

On the other hand, the exception in the same Section 15 of Article VII - allowing appointments to be made during the period of the ban therein provided - is much narrower than that recognized in *Aytona*. The exception allows only the making of temporary appointments to executive positions when continued vacancies will prejudice public service or endanger public safety. Obviously, the article greatly restricts the appointing power of the President during the period of the ban.

Considering the respective reasons for the time frames for filling vacancies in the courts and the restriction on the President's power of appointment, it is this Court's view that, as a general proposition, in case of conflict, the former should yield to the latter. Surely, the prevention of vote-buying and similar evils outweighs the need for avoiding delays in filling up of court vacancies or the disposition of some cases. Temporary vacancies can abide the period of the ban which, incidentally and as earlier pointed out, comes to exist only once in every six years. Moreover, those occurring in the lower courts can be filled temporarily by designation. But prohibited appointments are long-lasting and permanent in their effects. They may, as earlier pointed out, in fact influence the results of elections and, for that reason, their making is considered an election offense.

To the contention that may perhaps be asserted, that Sections 4 (1) and 9 of Article VIII should prevail over Section 15 of Article VII, because they may be considered later expressions of the people when they adopted the

Constitution, it suffices to point out that the Constitution must be construed in its entirety as one, single, instrument.

To be sure, instances may be conceived of the imperative need for an appointment, during the period of the ban, not only in the executive but also in the Supreme Court. This may be the case should the membership of the court be so reduced that it will have no quorum or should the voting on a particularly important question requiring expeditious resolution be evenly divided. Such a case, however, is covered by neither Section 15 of Article VII nor Section 4 (1) and 9 of Article VIII.[12]

VII. A Last Word

A final word, concerning Valenzuela's oath-taking and "reporting for duty" as Presiding Judge of RTC Branch 62, Bago City, on May 14, 1998.[13] Standing practice is for the originals of all appointments to the Judiciary - from the highest to the lowest courts - to be sent by the Office of the President to the Office of the Chief Justice, the appointments being addressed to the appointees "Thru: the Chief Justice, Supreme Court, Manila." It is a Clerk of Court of the Supreme Court, in the Chief Justice's behalf, who thereafter advises the individual appointees of their appointments and also of the date of commencement of the pre-requisite orientation seminar, to be conducted by the Philippine Judicial Academy for new Judges. The rationale of this procedure is salutary and readily perceived. The procedure ensures the authenticity of the appointments, enables the Court, particularly of the Office of the Court Administrator, to enter in the appropriate records all appointments to the Judiciary as well as other relevant data such as the dates of qualification, the completion by the appointees of their pre-requisite orientation seminars, their assumption of duty, etc.

The procedure also precludes the possibility, however remote, of Judges acting on spurious or otherwise defective appointments. It is obviously not advisable, to say the least, for a Judge to take his oath of office and enter upon the performance of his duties on the basis alone of a document purporting to be a copy of his appointment coming from Malacañang, the authenticity of which has not been verified from the latter of the Office of the Court Administrator; or otherwise to begin performing his duties as Judge without the Court Administrator knowing of that fact. The undesirability of such a situation is illustrated by the case of Judge Valenzuela who acted, with no little impatience or rashness, on a mere copy of his supposed appointment, without having received any formal notice from this Court, and without verifying the authenticity of the appointment or the propriety of taking oath on the basis thereof. Had he bothered to inquire about his appointment from the Court Administrator's Office, he would have been informed of the question concerning it and the Court's injunction.

VIII. Conclusion

The appointments of Messrs. Valenzuela and Vallarta on March 30, 1998 (transmitted to the Office of the Chief Justice on May 14, 1998) were unquestionably made during the period of the ban. Consequently, they come within the operation of the first prohibition relating to appointments which are considered to be for the purpose of buying votes or influencing the election. While the filling of vacancies in the judiciary is undoubtedly in the public interest, there is no showing in this case of any compelling reason to justify the making of the appointments during the period of the ban. On the other hand, as already discussed, there is a strong public policy for the prohibition against appointments made within the period of the ban.

In view of the foregoing considerations, the Court Resolved to DECLARE VOID the appointments signed by His Excellency the President under date of March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City, respectively, and to order them, forthwith on being served with notice of this decision, to forthwith CEASE AND DESIST from discharging the office of Judge of the Courts to which they were respectively appointed on March

30, 1998. This, without prejudice to their being considered anew by the Judicial and Bar Council for re-nomination to the same positions.

IT IS SO ORDERED.

Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima and Pardo, JJ., concur.

Martinez, J., on official leave.

[1] Section 8, Article VIII, Constitution.

[2] N.B. The letter of the JBC dated March 3, 1998 containing the nomination of Judge Valenzuela and two (2) others to RTC Branch 62, Bago City, together with nominations of other persons to four (4) other courts, was received by the Office of the President on March 20, 1998. The JBC's nominations of Judge Vallarta and three others to RTC Branch 24, Cabanatuan City, and of others to MeTC Branch 56, Malabon, are contained in its letter dated February 24, 1998, also received on March 20, 1998 at Malacañang. Of those thus nominated, only Messrs. Valenzuela and Vallarta were appointed by the President.

[3] Emphasis supplied.

[4] RECORD OF THE CONSTITUTIONAL COMMISSION (hereafter cited as RECORD) pp. 479-482 (Session of July 14, 1986).

[5] RECORD, pp. 632-634 (Session of Oct. 8, 1986).

[6] 1 RECORD, pp. 489-490 (Session of July 14, 1986).

[7] Id. at p. 445.

[8] Emphasis supplied.

[9] 114 Phil. vii (1962).

[10] Id at x-xi.

[11] See *Merrera v. Liwag*, 18 Phil. 1038 (1963); *Jorge v. Mayor*, 119 Phil. 595 (1964); *Quimsing v. Tajanglangit*, 119 Phil. 729 (1964).

[12] SEE Sec. 9, second paragraph, of R.A. No. 296 (The Judiciary Act of 1948), in relation to Sec. 47 of B.P. No. 129 (The Judiciary Reorganization Act of 1980); cf: *Rilloraza v. Vargas* 80 Phil. 297 (1948).

[13] SEE footnote 2, *supra*.

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