

**SEN. MIRIAM DEFENSOR SANTIAGO AND SEN. FRANCISCO S. TATAD,
PETITIONERS, VS. SEN. TEOFISTO T. GUINGONA, JR. AND SEN.
MARCELO B. FERNAN, RESPONDENTS.**

G.R. No. 134577. November 18, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere.

Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents this Court from prying into the internal workings of the Senate. Where no provision of the Constitution or the laws or even the Rules of the Senate is clearly shown to have been violated, disregarded or overlooked, grave abuse of discretion cannot be imputed to Senate officials for acts done within their competence and authority. This Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and majesty of the law.

The Case

On July 31, 1998, Senators Miriam Defensor Santiago and Francisco S. Tatad instituted an original petition for quo warranto under Rule 66, Section 5, Rules of Court, seeking the ouster of Senator Teofisto T. Guingona Jr. as minority leader of the Senate and the declaration of Senator Tatad as the rightful minority leader.

On August 4, 1998, the Court, upon receipt of the Petition, required the respondents and the solicitor general "to file COMMENT thereon within a non-extendible period of fifteen (15) days from notice." On August 25, 1998, both respondents and the solicitor general submitted their respective Comments. In compliance with a Resolution of the Court dated September 1, 1998, petitioners filed their Consolidated Reply on September 23, 1998. Noting said pleading, this Court gave due course to the petition and deemed the controversy submitted for decision, without need of memoranda, on September 29, 1998.

In the regular course, the regional trial courts and this Court have concurrent jurisdiction^[1] to hear and decide petitions for quo warranto (as well as certiorari, prohibition and mandamus), and a basic deference to the hierarchy of courts impels a filing of such petitions in the lower tribunals.^[2] However, for special and important reasons or for exceptional and compelling circumstances, as in the present case, this Court has allowed exceptions to this doctrine.^[3] In fact, original petitions for certiorari, prohibition, mandamus and quo warranto assailing acts of legislative officers like the Senate President^[4] and the Speaker of the House^[5] have been recognized as exceptions to this rule.

The Facts

The Senate of the Philippines, with Sen. John Henry R. Osmeña as presiding officer, convened on July 27, 1998 for the first regular session of the eleventh Congress. At the time, in terms of party affiliation, the composition of the Senate was as follows:^[6]

10 members - Laban ng Masang Pilipino (LAMP)

7 members - Lakas-National Union of Christian Democrats-United Muslim Democrats of the Philippines (Lakas-NUCD-UMDP)

1 member - Liberal Party (LP)

1 member - Aksyon Demokrasya

1 member - People's Reform Party (PRP)

1 member - Gabay Bayan

2 members - Independent

23 - total number of senators[7] (The last six members are all classified by petitioners as "independent".)

On the agenda for the day was the election of officers. Nominated by Sen. Blas F. Ople to the position of Senate President was Sen. Marcelo B. Fernan. Sen. Francisco S. Tatad was also nominated to the same position by Sen. Miriam Defensor Santiago. By a vote of 20 to 2,[8] Senator Fernan was declared the duly elected President of the Senate.

The following were likewise elected: Senator Ople as president pro tempore, and Sen. Franklin M. Drilon as majority leader.

Senator Tatad thereafter manifested that, with the agreement of Senator Santiago, allegedly the only other member of the minority, he was assuming the position of minority leader. He explained that those who had voted for Senator Fernan comprised the "majority," while only those who had voted for him, the losing nominee, belonged to the "minority."

During the discussion on who should constitute the Senate "minority," Sen. Juan M. Flavio manifested that the senators belonging to the Lakas-NUCD-UMDP Party -- numbering seven (7) and, thus, also a minority -- had chosen Senator Guingona as the minority leader. No consensus on the matter was arrived at. The following session day, the debate on the question continued, with Senators Santiago and Tatad delivering privilege speeches. On the third session day, the Senate met in caucus, but still failed to resolve the issue.

On July 30, 1998, the majority leader informed the body that he was in receipt of a letter signed by the seven Lakas-NUCD-UMDP senators,[9] stating that they had elected Senator Guingona as the minority leader. By virtue thereof, the Senate President formally recognized Senator Guingona as the minority leader of the Senate.

The following day, Senators Santiago and Tatad filed before this Court the subject petition for quo warranto, alleging in the main that Senator Guingona had been usurping, unlawfully holding and exercising the position of Senate minority leader, a position that, according to them, rightfully belonged to Senator Tatad.

Issues

From the parties' pleadings, the Court formulated the following issues for resolution:

1. Does the Court have jurisdiction over the petition?
2. Was there an actual violation of the Constitution?
3. Was Respondent Guingona usurping, unlawfully holding and exercising the position of Senate minority leader?
4. Did Respondent Fernan act with grave abuse of discretion in recognizing Respondent Guingona as the minority leader?

The Court's Ruling

After a close perusal of the pleadings[10] and a careful deliberation on the arguments, pro and con, the Court

finds that no constitutional or legal infirmity or grave abuse of discretion attended the recognition of and the assumption into office by Respondent Guingona as the Senate minority leader.

First Issue: The Court's Jurisdiction

Petitioners principally invoke *Avelino v. Cuenco*[11] in arguing that this Court has jurisdiction to settle the issue of who is the lawful Senate minority leader. They submit that the definitions of "majority" and "minority" involve an interpretation of the Constitution, specifically Section 16 (1), Article VI thereof, stating that "[t]he Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members."

Respondents and the solicitor general, in their separate Comments, contend in common that the issue of who is the lawful Senate minority leader is an internal matter pertaining exclusively to the domain of the legislature, over which the Court cannot exercise jurisdiction without transgressing the principle of separation of powers. Allegedly, no constitutional issue is involved, as the fundamental law does not provide for the office of a minority leader in the Senate. The legislature alone has the full discretion to provide for such office and, in that event, to determine the procedure of selecting its occupant.

Respondents also maintain that *Avelino* cannot apply, because there exists no question involving an interpretation or application of the Constitution, the laws or even the Rules of the Senate; neither are there "peculiar circumstances" impelling the Court to assume jurisdiction over the petition. The solicitor general adds that there is not even any legislative practice to support the petitioners' theory that a senator who votes for the winning Senate President is precluded from becoming the minority leader.

To resolve the issue of jurisdiction, this Court carefully reviewed and deliberated on the various important cases involving this very important and basic question, which it has ruled upon in the past.

The early case *Avelino v. Cuenco* cautiously tackled the scope of the Court's power of judicial review; that is, questions involving an interpretation or application of a provision of the Constitution or the law, including the rules of either house of Congress. Within this scope falls the jurisdiction of the Court over questions on the validity of legislative or executive acts that are political in nature, whenever the tribunal "finds constitutionally imposed limits on powers or functions conferred upon political bodies." [12]

In the aforementioned case, the Court initially declined to resolve the question of who was the rightful Senate President, since it was deemed a political controversy falling exclusively within the domain of the Senate. Upon a motion for reconsideration, however, the Court ultimately assumed jurisdiction (1) "in the light of subsequent events which justify its intervention;" and (2) because the resolution of the issue hinged on the interpretation of the constitutional provision on the presence of a quorum to hold a session [13] and therein elect a Senate President.

Justice Feria elucidated in his Concurring Opinion: "[I] concur with the majority that this Court has jurisdiction over cases like the present x x x so as to establish in this country the judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, not only in justiceable but political questions as well." [14]

Justice Perfecto, also concurring, said in part:

"Indeed there is no denying that the situation, as obtaining in the upper chamber of Congress, is highly explosive. It had echoed in the House of Representatives. It has already involved the President of the Philippines. The situation has created a veritable national crisis, and it is apparent that solution cannot be expected from any quarter other than this Supreme Court, upon which the hopes of the people for an effective settlement are pinned." [15]

"x x x This case raises vital constitutional questions which no one can settle or decide if this Court should

refuse to decide them." [16]

"x x x The constitutional question of quorum should not be left unanswered." [17]

In *Tañada v. Cuenco*, [18] this Court endeavored to define political question. And we said that "it refers to 'those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.' It is concerned with issues dependent upon the wisdom, not [the] legality, of a particular measure." [19]

The Court ruled that the validity of the selection of members of the Senate Electoral Tribunal by the senators was not a political question. The choice of these members did not depend on the Senate's "full discretionary authority," but was subject to mandatory constitutional limitations. [20] Thus, the Court held that not only was it clearly within its jurisdiction to pass upon the validity of the selection proceedings, but it was also its duty to consider and determine the issue.

In another landmark case, *Lansang v. Garcia*, [21] Chief Justice Roberto Concepcion wrote that the Court "had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ [of habeas corpus]." This ruling was made in spite of the previous pronouncements in *Barcelon v. Baker* [22] and *Montenegro v. Castañeda* [23] that "the authority to decide whether the exigency has arisen requiring suspension (of the privilege x x x) belongs to the President and his 'decision is final and conclusive' upon the courts and upon all other persons." But the Chief Justice cautioned: "the function of the Court is merely to check -- not to supplant --- the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act."

The eminent Chief Justice aptly explained later in *Javellana v. Executive Secretary*: [24]

"The reason why the issue under consideration and other issues of similar character are justiciable, not political, is plain and simple. One of the principal bases of the non-justiciability of so-called political questions is the principle of separation of powers -- characteristic of the presidential system of government -- the functions of which are classified or divided, by reason of their nature, into three (3) categories, namely, 1) those involving the making of laws, which are allocated to the legislative department; 2) those concerning mainly with the enforcement of such laws and of judicial decisions applying and/or interpreting the same, which belong to the executive department; and 3) those dealing with the settlement of disputes, controversies or conflicts involving rights, duties or prerogatives that are legally demandable and enforceable, which are apportioned to courts of justice. Within its own sphere -- but only within such sphere each department is supreme and independent of the others, and each is devoid of authority not only to encroach upon the powers or field of action assigned to any of the other departments, but also to inquire into or pass upon the advisability or wisdom of the acts performed, measures taken or decisions made by the other departments -- provided that such acts, measures or decision are within the area allocated thereto by the Constitution."

"Accordingly, when the grant of power is qualified, conditional or subject to limitations, the issue of whether or not the prescribed qualifications or conditions have been met, or the limitations respected is justiciable or non-political, the crux of the problem being one of legality or validity of the contested act, not its wisdom. Otherwise, said qualifications, conditions or limitations -- particularly those prescribed by the Constitution -- would be set at naught. What is more, the judicial inquiry into such issue and the settlement thereof are the main functions of the courts of justice under the presidential form of government adopted in our 1935 Constitution, and the system of checks and balances, one of its basic predicates. As a consequence, we have neither the authority nor the discretion to decline passing upon said issue, but are under the ineluctable obligation -- made particularly more exacting and peremptory by our oath, as members of the highest Court of the land, to support and defend the Constitution -- to settle it. This explains why, in *Miller v. Johnson* [92 Ky.

589, 18 SW 522, 523], it was held that courts have a 'duty, rather than a power,' to determine whether another branch of the government has 'kept within constitutional limits.'"

Unlike our previous constitutions, the 1987 Constitution is explicit in defining the scope of judicial power. The present Constitution now fortifies the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. It speaks of judicial prerogative in terms of duty, viz.:

"Judicial power includes the duty of the 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 of any branch or instrumentality of the Government." [25]

This express definition has resulted in clearer and more resolute pronouncements of the Court. *Daza v. Singson*, [26] *Coseteng v. Mitra Jr.* [27] and *Guingona Jr. v. Gonzales* [28] similarly resolved issues assailing the acts of the leaders of both houses of Congress in apportioning among political parties the seats to which each chamber was entitled in the Commission on Appointments. The Court held that the issue was justiciable, "even if the question were political in nature," since it involved "the legality, not the wisdom, of the manner of filling the Commission on Appointments as prescribed by [Section 18, Article VI of] the Constitution."

The same question of jurisdiction was raised in *Tañada v. Angara*, [29] wherein the petitioners sought to nullify the Senate's concurrence in the ratification of the World Trade Organization (WTO) Agreement. The Court ruled: "Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute." The Court en banc unanimously stressed that in taking jurisdiction over petitions questioning an act of the political departments of government, it will not review the wisdom, merits or propriety of such action, and will strike it down only on either of two grounds: (1) unconstitutionality or illegality and (2) grave abuse of discretion.

Earlier in *Co v. Electoral Tribunal of the House of Representatives* [30] (HRET), the Court refused to reverse a decision of the HRET, in the absence of a showing that said tribunal had committed grave abuse of discretion amounting to lack of jurisdiction. The Court ruled that full authority had been conferred upon the electoral tribunals of the House of Representatives and of the Senate as sole judges of all contests relating to the election, the returns, and the qualifications of their respective members. Such jurisdiction is original and exclusive. [31] The Court may inquire into a decision or resolution of said tribunals only if such "decision or resolution was rendered without or in excess of jurisdiction, or with grave abuse of discretion." [32]

Recently, the Court, in *Arroyo v. De Venecia*, [33] was asked to reexamine the enrolled bill doctrine and to look beyond the certification of the Speaker of the House of Representatives that the bill, which was later enacted as Republic Act 8240, was properly approved by the legislative body. Petitioners claimed that certain procedural rules of the House had been breached in the passage of the bill. They averred further that a violation of the constitutionally mandated House rules was a violation of the Constitution itself.

The Court, however, dismissed the petition, because the matter complained of concerned the internal procedures of the House, with which the Court had no concern. It enucleated: [34]

"It would be an unwarranted invasion of the prerogative of a coequal department for this Court either to set aside a legislative action as void because the Court thinks the House has disregarded its own rules of procedure, or to allow those defeated in the political arena to seek a rematch in the judicial forum when petitioners can find their remedy in that department itself. The Court has not been invested with a roving commission to inquire into complaints, real or imagined, of legislative skullduggery. It would be acting in excess of its power and would itself be guilty of grave abuse of discretion were it to do so. x x x In the absence

of anything to the contrary, the Court must assume that Congress or any House thereof acted in the good faith belief that its conduct was permitted by its rules, and deference rather than disrespect is due the judgment of that body."

In the instant controversy, the petitioners -- one of whom is Senator Santiago, a well-known constitutionalist -- try to hew closely to these jurisprudential parameters. They claim that Section 16 (1), Article VI of the Constitution, has not been observed in the selection of the Senate minority leader. They also invoke the Court's "expanded" judicial power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of respondents.

Dissenting in part, Mr. Justice Vicente V. Mendoza submits that the Court has no jurisdiction over the petition. Well-settled is the doctrine, however, that jurisdiction over the subject matter of a case is determined by the allegations of the complaint or petition, regardless of whether the plaintiff or petitioner is entitled to the relief asserted.[35] In light of the aforesaid allegations of petitioners, it is clear that this Court has jurisdiction over the petition. It is well within the power and jurisdiction of the Court to inquire whether indeed the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives.

Second Issue: Violation of the Constitution

Having assumed jurisdiction over the petition, we now go to the next crucial question: In recognizing Respondent Guingona as the Senate minority leader, did the Senate or its officials, particularly Senate President Fernan, violate the Constitution or the laws?

Petitioners answer the above question in the affirmative. They contend that the constitutional provision requiring the election of the Senate President "by majority vote of all its members" carries with it a judicial duty to determine the concepts of "majority" and "minority," as well as who may elect a minority leader. They argue that "majority" in the aforequoted constitutional provision refers to that group of senators who (1) voted for the winning Senate President and (2) accepted committee chairmanships. Accordingly, those who voted for the losing nominee and accepted no such chairmanships comprise the minority, to whom the right to determine the minority leader belongs. As a result, petitioners assert, Respondent Guingona cannot be the legitimate minority leader, since he voted for Respondent Fernan as Senate President. Furthermore, the members of the Lakas-NUCD-UMDP cannot choose the minority leader, because they did not belong to the minority, having voted for Fernan and accepted committee chairmanships.

We believe, however, that the interpretation proposed by petitioners finds no clear support from the Constitution, the laws, the Rules of the Senate or even from practices of the Upper House.

The term "majority" has been judicially defined a number of times. When referring to a certain number out of a total or aggregate, it simply "means the number greater than half or more than half of any total." [36] The plain and unambiguous words of the subject constitutional clause simply mean that the Senate President must obtain the votes of more than one half of all the senators. Not by any construal does it thereby delineate who comprise the "majority," much less the "minority," in the said body. And there is no showing that the framers of our Constitution had in mind other than the usual meanings of these terms.

In effect, while the Constitution mandates that the President of the Senate must be elected by a number constituting more than one half of all the members thereof, it does not provide that the members who will not vote for him shall ipso facto constitute the "minority," who could thereby elect the minority leader. Verily, no law or regulation states that the defeated candidate shall automatically become the minority leader.

The Comment[37] of Respondent Guingona furnishes some relevant precedents, which were not contested in

petitioners' Reply. During the eighth Congress, which was the first to convene after the ratification of the 1987 Constitution, the nomination of Sen. Jovito R. Salonga as Senate President was seconded by a member of the minority, then Sen. Joseph E. Estrada.[38] During the ninth regular session, when Sen. Edgardo J. Angara assumed the Senate presidency in 1993, a consensus was reached to assign committee chairmanships to all senators, including those belonging to the minority.[39] This practice continued during the tenth Congress, where even the minority leader was allowed to chair a committee.[40] History would also show that the "majority" in either house of Congress has referred to the political party to which the most number of lawmakers belonged, while the "minority" normally referred to a party with a lesser number of members.

Let us go back to the definitions of the terms "majority" and "minority." Majority may also refer to "the group, party, or faction with the larger number of votes,"[41] not necessarily more than one half. This is sometimes referred to as plurality. In contrast, minority is "a group, party, or faction with a smaller number of votes or adherents than the majority." [42] Between two unequal parts or numbers comprising a whole or totality, the greater number would obviously be the majority, while the lesser would be the minority. But where there are more than two unequal groupings, it is not as easy to say which is the minority entitled to select the leader representing all the minorities. In a government with a multi-party system such as in the Philippines (as pointed out by petitioners themselves), there could be several minority parties, one of which has to be identified by the Comelec as the "dominant minority party" for purposes of the general elections. In the prevailing composition of the present Senate, members either belong to different political parties or are independent. No constitutional or statutory provision prescribe which of the many minority groups or the independents or a combination thereof has the right to select the minority leader.

While the Constitution is explicit on the manner of electing a Senate President and a House Speaker, it is, however, dead silent on the manner of selecting the other officers in both chambers of Congress. All that the Charter says is that "[e]ach House shall choose such other officers as it may deem necessary." [43] To our mind, the method of choosing who will be such other officers is merely a derivative of the exercise of the prerogative conferred by the aforementioned constitutional provision. Therefore, such method must be prescribed by the Senate itself, not by this Court.

In this regard, the Constitution vests in each house of Congress the power "to determine the rules of its proceedings." [44] Pursuant thereto, the Senate formulated and adopted a set of rules to govern its internal affairs. [45] Pertinent to the instant case are Rules I and II thereof, which provide:

"Rule I

ELECTIVE OFFICERS

"SECTION 1. The Senate shall elect, in the manner hereinafter provided, a President, a President Pro Tempore, a Secretary, and a Sergeant-at-Arms.

"These officers shall take their oath of office before entering into the discharge of their duties.

Rule II

ELECTION OF OFFICERS

"SEC. 2. The officers of the Senate shall be elected by the majority vote of all its Members. Should there be more than one candidate for the same office, a nominal vote shall be taken; otherwise, the elections shall be by viva voce or by resolution."

Notably, the Rules of the Senate do not provide for the positions of majority and minority leaders. Neither is there an open clause providing specifically for such offices and prescribing the manner of creating them or of choosing the holders thereof. At any rate, such offices, by tradition and long practice, are actually extant. But, in the

absence of constitutional or statutory guidelines or specific rules, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto. On grounds of respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province of courts to direct Congress how to do its work.[46] Paraphrasing the words of Justice Florentino P. Feliciano, this Court is of the opinion that where no specific, operable norms and standards are shown to exist, then the legislature must be given a real and effective opportunity to fashion and promulgate as well as to implement them, before the courts may intervene.[47]

Needless to state, legislative rules, unlike statutory laws, do not have the imprints of permanence and obligatoriness during their effectivity. In fact, they "are subject to revocation, modification or waiver at the pleasure of the body adopting them." [48] Being merely matters of procedure, their observance are of no concern to the courts, for said rules may be waived or disregarded by the legislative body [49] at will, upon the concurrence of a majority.

In view of the foregoing, Congress verily has the power and prerogative to provide for such officers as it may deem. And it is certainly within its own jurisdiction and discretion to prescribe the parameters for the exercise of this prerogative. This Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of constitutional principles that it is bound to protect and uphold -- the very duty that justifies the Court's being. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents this Court from prying into the internal workings of the Senate. To repeat, this Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and majesty of the law.

To accede, then, to the interpretation of petitioners would practically amount to judicial legislation, a clear breach of the constitutional doctrine of separation of powers. If for this argument alone, the petition would easily fail.

While no provision of the Constitution or the laws or the rules and even the practice of the Senate was violated, and while the judiciary is without power to decide matters over which full discretionary authority has been lodged in the legislative department, this Court may still inquire whether an act of Congress or its officials has been made with grave abuse of discretion.[50] This is the plain implication of Section 1, Article VIII of the Constitution, which expressly confers upon the judiciary the power and the duty not only "to settle actual controversies involving rights which are legally demandable and enforceable," but likewise "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Explaining the above-quoted clause, former Chief Justice Concepcion, who was a member of the 1986 Constitutional Commission, said in part:[51]

"xxx the powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy[, the] power to determine whether a given law is valid or not is vested in courts of justice.

"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 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."

With this paradigm, we now examine the two other issues challenging the actions, first, of Respondent Guingona

and, second, of Respondent Fernan.

Third Issue: Usurpation of Office

Usurpation generally refers to unauthorized arbitrary assumption and exercise of power^[52] by one without color of title or who is not entitled by law thereto.^[53] A quo warranto proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment.^[54] The action may be brought by the solicitor general or a public prosecutor^[55] or any person claiming to be entitled to the public office or position usurped or unlawfully held or exercised by another.^[56] The action shall be brought against the person who allegedly usurped, intruded into or is unlawfully holding or exercising such office.^[57]

In order for a quo warranto proceeding to be successful, the person suing must show that he or she has a clear right to the contested office or to use or exercise the functions of the office allegedly usurped or unlawfully held by the respondent.^[58] In this case, petitioners present no sufficient proof of a clear and indubitable franchise to the office of the Senate minority leader.

As discussed earlier, the specific norms or standards that may be used in determining who may lawfully occupy the disputed position has not been laid down by the Constitution, the statutes, or the Senate itself in which the power has been vested. Absent any clear-cut guideline, in no way can it be said that illegality or irregularity tainted Respondent Guingona's assumption and exercise of the powers of the office of Senate minority leader. Furthermore, no grave abuse of discretion has been shown to characterize any of his specific acts as minority leader.

Fourth Issue: Fernan's Recognition of Guingona

The all-embracing and plenary power and duty of the Court "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" is restricted only by the definition and confines of the term "grave abuse of discretion."

"By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."^[59]

By the above standard, we hold that Respondent Fernan did not gravely abuse his discretion as Senate President in recognizing Respondent Guingona as the minority leader. Let us recall that the latter belongs to one of the minority parties in the Senate, the Lakas-NUCD-UMDP. By unanimous resolution of the members of this party that he be the minority leader, he was recognized as such by the Senate President. Such formal recognition by Respondent Fernan came only after at least two Senate sessions and a caucus, wherein both sides were liberally allowed to articulate their standpoints.

Under these circumstances, we believe that the Senate President cannot be accused of "capricious or whimsical exercise of judgment" or of "an arbitrary and despotic manner by reason of passion or hostility." Where no provision of the Constitution, the laws or even the rules of the Senate has been clearly shown to have been violated, disregarded or overlooked, grave abuse of discretion cannot be imputed to Senate officials for acts done within their competence and authority.

WHEREFORE, for the above reasons, the petition is hereby DISMISSED.

SO ORDERED.

Narvasa CJ., Davide, Jr., Melo, Puno, Martinez, Quisumbing, and Pardo JJ., concur.

Romero, J., Please see Separate Opinion.

Bellosillo, J., No part. Did not take part in deliberation.

Vitug, J., Please see Separate Opinion.

Kapunan, J., concur with Justice Mendoza, see concurring and dissenting opinion.

Mendoza, J., Please see concurring and dissenting opinion.

Purissima, J., concur and dissent with the opinion of Justice Mendoza.

[1] § 21 (1), BP 129; § 5 (1), Art. VIII, Constitution.

[2] See *Manalo v. Gloria*, 236 SCRA 130, 138-139, September 1, 1994; citing *People v. Cuaresma*, 172 SCRA 415, 423-24, April 18, 1989, and *Defensor-Santiago v. Vasquez*, 217 SCRA 633, 651-652, January 27, 1993.

[3] *Uy v. Contreras*, 237 SCRA 167, September 26, 1994; *Vergara Sr. v. Suelto*, 156 SCRA 753, December 21, 1987.

[4] *Avelino v. Cuenco*, 83 Phil 17 (1949); *Guingona, Jr. v. Gonzales*, 214 SCRA 789, October 20, 1992.

[5] *Arroyo vs. De Venecia*, 277 SCRA 268, August 14, 1997.

[6] The solicitor general, in his Comment dated August 21, 1998, attributed to the 23 members of the Senate the following party affiliations:

"Senate President Marcelo B. Fernan - Laban ng Masang Pilipino

(LAMP)

Sen. Raul S. Roco - Aksyon Demokratiko

Sen. Ramon B. Magsaysay, Jr. - Lakas-National Union of Christian Democrats-United Muslim Democrats of the Philippines (Lakas-NUCD-UMDP)

Sen. Franklin M. Drilon - LAMP

Sen. Juan M. Flavie - Lakas-NUCD-UMDP

Sen. Miriam Defensor-Santiago - People's Reform Party (PRP)

Sen. Sergio R. Osmeña III -Liberal Party (LP)

Sen. Francisco S. Tatad - PRP

Sen. Gregorio B. Honasan - LP (Independent)

Sen. Juan Ponce Enrile - LP (Independent)

Sen. Anna Dominique M.L. Coseteng - LAMP

Sen. Loren Legarda-Leviste - Lakas-NUCD-UMDP

Sen. Renato L. Cayetano - Lakas-NUCD-UMDP

Sen. Vicente C. Sotto III - LAMP

Sen. Aquilino Q. Pimentel, Jr. - LAMP

Sen. Robert Z. Barbers - Lakas-NUCD-UMDP

Sen. Rodolfo G. Biazon - LAMP

Sen. Blas F. Ople - LAMP

Sen. John Henry R. Osmeña - LAMP

Sen. Robert S. Jaworski - LAMP

Sen. Ramon B. Revilla - Lakas-NUCD-UMDP

Sen. Teofisto T. Guingona, Jr. - Lakas-NUCD-UMDP

Sen. Tessie Aquino-Oreta - LAMP"

(Rollo, pp. 63-64. See also Comment of Respondent Guingona, Jr., rollo, p. 41.)

[7] One position was vacant, because of the election of the incumbent, Gloria Macapagal Arroyo, as the Vice President of the Philippines.

[8] Senator Fernan abstained from voting. (Petition, p. 4; rollo, p. 6. Comment of the solicitor general, p. 2; rollo, p. 63.)

[9] Senators Robert Z. Barbers, Renato L. Cayetano; Juan M. Flavies, Teofisto T. Guingona Jr., Loren Legarda-Leviste, Ramon B. Magsaysay Jr., and Ramon B. Revilla.

[10] The Petition was signed by both petitioners; the Comment of Senate President Fernan, by Senator Fernan himself and Attys. Mary Jane L. Zantua and Lani Grace R. Songco; the Comment of Senator Guingona, by Atty. Ricardo G. Nepomuceno Jr.; the Comment of the OSG, by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Carlos N. Ortega and Associate Solicitor Rico Sebastian D. Liwanag; while the Consolidated Reply, by Sen. Miriam Defensor Santiago.

[11] 83 Phil 17 (1949).

[12] Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. II, 1988 ed., p. 282.

[13] § 10 (2), Art. VI of the 1935 Constitution, reads:

"(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide."

[14] *Supra*, p. 72.

[15] *At* p. 76.

[16] *At* p. 78.

[17] *At* p. 79.

[18] 103 Phil 1051, 1068 (1957), per Concepcion, J.

[19] *Ibid.*, p. 1067, citing 16 CJS 413.

[20] § 11, Art. VI of the 1935 Constitution.

[21] 42 SCRA 448, December 11, 1971.

[22] 5 Phil 87 (1905).

[23] 91 Phil 882 (1952).

[24] 50 SCRA 30, 84, 87, March 31, 1973.

[25] Art. VIII, § 1, par. 2.

- [26] 180 SCRA 496, December 21, 1989, per Cruz, J.
- [27] 187 SCRA 377, July 12, 1990, per Griño-Aquino, J.
- [28] 214 SCRA 789, October 20, 1992, per Campos Jr., J.
- [29] 272 SCRA 18, 47, May 2, 1997, per Panganiban, J.
- [30] 199 SCRA 692, July 30, 1991, per Gutierrez Jr., J.
- [31] Citing *Lazatin v. HRET*, 168 SCRA 391, 1988.
- [32] Citing *Robles v. HRET*, 181 SCRA 780, 1990.
- [33] 277 SCRA 268, August 14, 1997, per Mendoza, J.
- [34] At p. 299.
- [35] *Alleje v. Court of Appeals*, 240 SCRA 495, January 25, 1995; *Sarmiento v. Court of Appeals*, 250 SCRA 108, November 16, 1995; *Times Broadcasting Network v. Court of Appeals*, 274 SCRA 366, June 19, 1997; *Chico v. Court of Appeals*, GR No. 122704, January 5, 1998.
- [36] *Perez v. De la Cruz*, 27 SCRA 587, 603 (1969), citing *Webster's International Dictionary, Unabridged*; Concurring Opinion of J. Perfecto in *Avelino v. Cuenco*, *supra*, p. 80. See also *Petition*, rollo, p. 12, citing *Black's Law Dictionary*, 6th ed., 1990.
- [37] P. 15; rollo, p. 55.
- [38] Citing *Record of the Senate*, 8th Congress, Vol. I, No. 14, p. 9.
- [39] Citing *Record of the Senate*, 9th Congress, Vol. III, No. 47-A, pp. 88-94.
- [40] Then Minority Leader Ernesto C. Maceda chaired the Committees on Constitutional Amendments, Revision of Codes and Laws; and on Foreign Relations. Senator Honasan chaired the Committees on Agrarian Reform; on Peace, Unification and Reconciliation; and on Urban Planning, Housing and Resettlement. Senator Coseteng was the chair of the Committees on Civil Service and Government Reorganization; and on Labor, Employment and Human Resources. (See footnote 40 of Respondent Guingona's Comment, *supra*.)
- [41] *Webster's New World Dictionary*, 2nd college ed., 1972.
- [42] *Ibid*.
- [43] § 16 (1), second par., Art. VI of the Constitution.
- [44] § 16 (3), Art. VI of the Constitution.
- [45] *Rules of the Senate* (see Appendix "A," *Guide to the Senate* by Reginald M. Pastrana and Demaree J.B. Raval).
- [46] *New York Public Interest Research Group, Inc. v. Steingut*, 353 NE2d 558.
- [47] Concurring Opinion in *Oposa v. Factoran Jr.*, 224 SCRA 792, 818, July 30, 1993.
- [48] *Osmeña Jr. v. Pendatun*, 109 Phil 863, 870-871 (1960), citing 76 CJS 870. See also *Arroyo v. De Venecia*, *supra*.
- [49] *Ibid*. See also Enrique M. Fernando, *Constitution of the Philippines Annotated*, 1977, pp. 188-189.

[50] *Ledesma v. Court of Appeals*, 278 SCRA 656, 681, September 5, 1997.

[51] I RECORD OF THE CONSTITUTIONAL COMMISSION 436.

[52] 91 CJS 551, citing *State ex rel Danielson v. Village of Mound*, 48 NW2d 855, 863.

[53] 67 CJS 317, citing *Wheat v. Smith*, 7 SW 161.

[54] *Lota v. Court of Appeals*, 2 SCRA 715, 718, June 30, 1961.

[55] § 2, Rule 66, Rules of Court.

[56] § 5, *ibid.* See also *Municipality of San Narciso, Quezon v. Mendez Sr.*, 239 SCRA 11, 18, December 6, 1994; *Tarrosa v. Singson*, 232 SCRA 553, 557, May 25, 1994.

In this regard, the Court notes that Petitioner Santiago has no standing to bring the instant petition for quo warranto, for she does not claim to be rightfully entitled to the position of Senate minority leader. We have ruled in the past:

"Nothing is better settled than that a petitioner, in a quo warranto proceeding to try title to a public office, must be able to show that he is entitled to said office. Absent such an element, the petition must be dismissed. This is a principle that goes back to *Acosta v. Flor* [5 Phil 18, 22], a 1905 decision. There, the doctrine has been laid down that: 'No individual can bring a civil action relating to usurpation of a public office without averring that he has a right to the same; and at any stage of the proceedings, if it be shown that such individual has no right, the action may be dismissed because there is no legal ground upon which it may proceed when the fundamental basis of such action is destroyed.' This has been the exacting rule, since then, followed with stricter firmness in *Cuyegkeng v. Cruz* [108 Phil 1147], where this Court held that one who does not claim to be entitled to the office allegedly usurped or unlawfully held or exercised by another, but who 'merely asserts a right to be appointed' thereto, cannot question the latter's title to the same by quo warranto. In other words, one whose claim is predicated solely upon a more or less remote possibility, that he may be the recipient of the appointment, has no cause of action against the office holder." (*Garcia v. Perez*, 99 SCRA 628, 633-34, September 11, 1980, per De Castro, J.)

However, any question on standing has been rendered moot by the inclusion of Petitioner Tatad, who claims to have the right to the contested office.

[57] § 1, Rule 66, Rules of Court. In relation to this rule, Respondent Fernan claims that he is not a proper party to the case, because he did not usurp nor is he unlawfully holding or exercising the office of minority leader. While the action commenced by petitioners was denominated a quo warranto petition under Rule 66, the Court notes that among the principal averments made was that Respondent Fernan committed grave abuse of discretion in recognizing Respondent Guingona as the Senate minority leader. Such averment brings the petition within the purview of a certiorari proceeding under Rule 65. A basic principle in remedial law states that it is not the title given by the parties to the action which determines its nature, but the averments made in the pleadings. The case may, thus, be treated as a joint certiorari and quo warranto action and, as such, Respondent Fernan is a proper, if not necessary, party thereto.

[58] *Batario Jr. v. Parentela Jr.*, 9 SCRA 601, November 29, 1963; *Caraon-Medina v. Quizon*, 18 SCRA 562, October 29, 1966.

[59] *Commissioner of Internal Revenue v. Court of Appeals*, 257 SCRA 200, 209, June 4, 1996, per Kapunan, J.; citing *Philippine Airlines, Inc. v. Confesor*, 231 SCRA 41, March 10, 1994, and other cases. See also *Imutan v.*

Court of Appeals, 102 SCRA 286, 292, January 27, 1981.

CONCURRING IN THE JUDGMENT AND DISSENTING IN PART:

MENDOZA, J.,

I concur in the judgment of the Court, but I disagree that "[it] has jurisdiction over the petition [in this case] to determine whether the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives."^[1]

The Court has no jurisdiction over this case. The question who constitute the minority in the Senate entitled to elect the minority leader of that chamber is political. It respects the internal affairs of a coequal department of the government and is thus addressed solely to that august body.

Courts have no power to inquire into the internal organization and business of a house of Congress except as the question affects the rights of third parties or a specific constitutional limitation is involved.

For this reason this Court has declined to take cognizance of cases involving the discipline of members^[2] of the legislature and the application and interpretation of the rules of procedure of a house.^[3] For indeed, these matters pertain to the internal government of Congress and are within its exclusive jurisdiction.

Dean Sinco has pointed out that the Speaker of the House of Representatives and the President of the Senate are not state officers. They do not attain these positions by popular vote but only the vote of their respective chambers. They receive their mandate as such not from the voters but from their peers in the house. While their offices are a constitutional creation, nevertheless they are only legislative officers. It is their position as members of Congress which gives them the status of state officers. As presiding officers of their respective chambers, their election as well as removal is determined by the vote of the majority of the members of the house to which they belong.^[4] Thus, Art. VI, §16(1) of the Constitution provides:

The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.

Each House shall choose such other officers as it may deem necessary.

This is likewise true of the "other officers" of each house whose election and removal rest solely within the prerogative of the members and is no concern of the courts.

Indeed, in those cases in which this Court took cognizance of matters pertaining to the internal government of each house, infringements of specific constitutional limitations were alleged.

In *Avelino v. Cuenco*,^[5] the question was whether with only 12 senators present there was a quorum for the election of the Senate President, considering that, of the 24 members, one was in the hospital while another one was abroad. The case called for an interpretation of Art. VI, §10(2) of the 1935 Constitution which provided that "A majority of each House shall constitute a quorum to do business. . . ." While initially declining to assume jurisdiction, this Court finally took cognizance of the matter. As Justice Perfecto, whose separate opinion in support of the assumption of jurisdiction was one of the reasons which persuaded the Court to intervene in the Senate imbroglio, stated, "Whether there was a quorum or not in the meeting of twelve Senators . . . is a question that calls for the interpretation, application and enforcement of an express and specific provisions of the Constitution."^[6] In his view, "The word quorum is a mathematical word. It has, as such, a precise and exact mathematical meaning. A majority means more than one-half (1/2)."^[7]

In *Tañada v. Cuenco*,^[8] the question was whether the majority could fill the seats intended for the minority party in the Senate Electoral Tribunal when there are not enough minority members in the Senate. Again, the question

was governed by a specific provision (Art. VI § 11) of the 1935 charter which provided that the Electoral Tribunals of each house should be composed of "nine Members, three of whom shall be Justices of the Supreme Court . . . and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number therein." There was, therefore, a specific constitutional provision to be applied.

The cases[9] concerning the composition of the Commission on Appointments likewise involved the mere application of a constitutional provision, specifically Art. VI §18 of the present Constitution which provides that the Commission shall be composed of "twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representations from the political parties and parties or organizations registered under the party-list system represented therein." Undoubtedly, the Court had jurisdiction over the cases.

On the other hand, as long as the proportional representation of political parties and organizations is observed the Court has held itself to be without jurisdiction over the choice of nominees. In *Cabili v. Francisco*,[10] it declined to take cognizance of a quo warranto suit seeking to annul the recomposition of the Senate representation in the Commission and to reinstate a particular senator after satisfying itself that such recomposition of the Senate representation was not a "departure from the constitution mandate requiring proportional representation of the political organizations in the Commission on Appointments."

It is true that in *Cunanan v. Tan*[11] this Court took cognizance of the case which involved the reorganization of the Commission as a result of the formation of political forces in the House of Representatives and the formation of a temporary alliance. But the Court's decision was justified because the case actually involved the right of a third party whose nomination by the President had been rejected by the reorganized Commission. As held in *Pacete v. The Secretary of the Commission on Appointments*,[12] where the construction to be given to a rule affects person other than members of the legislative body, the question presented is judicial in character.

In contrast to the specific constitutional limitations involved in the foregoing cases, beyond providing that the Senate and the House of Representatives shall elect a President and Speaker, respectively, and such other officers as each house shall determine "by a majority vote of all [their] respective Members," the Constitution leaves everything else to each house of Congress. Such matters are political and are left solely to the judgment of the legislative department of the government.

This case involves neither an infringement of specific constitutional limitations nor a violation of the rights of a party not a member of Congress. This Court has jurisdiction over this case only in the sense that determining whether the question involved is reserved to Congress is itself an exercise of jurisdiction in the same way that a court which dismisses a case for lack of jurisdiction must in a narrow sense have jurisdiction since it cannot dismiss the case if it were otherwise. The determination of whether the question involved is justiciable or not is in itself a process of constitutional interpretation. This is the great lesson of *Marbury v. Madison*[13] in which the U.S. Supreme Court, while affirming its power of review, in the end held itself to be without jurisdiction because the Judiciary Act of 1789 granting its jurisdiction over that case was unconstitutional. In other words, a court doing a *Marbury v. Madison* has no jurisdiction except to declare itself without jurisdiction over the case.

I vote to dismiss the petition in this case for lack of jurisdiction.

[1] Majority Opinion, p. 18.

[2] *Alejandro v. Quezon*, 46 Phil. 83 (1924) (suspension of senator for disorderly conduct for assaulting a fellow senator); *Osmeña v. Pendatun*, 109 Phil. 863 (1960) (suspension of senator for disorderly behavior for imputing

bribery to President Garcia.

[3] Arroyo v. De Venecia. 277 SCRA 268 (1997) (power of each house to determine its rules of proceedings).

[4] VICENTE G. SINCO, PHILIPPINE POLITICAL LAW 171-172 (11th ed. 1962).

[5] 83 Phil. 17 (1949)

[6] Id., at 50.

[7] Id., at 79.

[8] 103 Phil. 1051 (1957).

[9] Daza v. Singson. 180 SCRA 496 (1989); Coseteng v. Mitra, Jr., SCRA 377 (1990); Guigona, Jr. Gonzales, 214 SRCA 789 (1992).

[10] 88 Phil. 654 (1951).

[11] 115 Phil. vii (1962).

[12] 40 SCRA 58 (1971).

[13] Cranch 137, 2L. Ed. 60 (1803).

SEPARATE OPINION

ROMERO, J.:

"Loyalty to petrified opinion never yet broke a chain or freed a human soul."

These words vividly inscribed just beneath Mark Twain's bust at the Hall of Fame veritably speaks about the creativity and dynamism which ought to characterize our perspective of things. Its instructs us to broaden our horizon that we may not be held captive by ignorance. Free and robust thinking is the imperative.

But there are times when one has to render fealty to certain fundamental precepts and I believe that this occasion presents an opportunity to do so. Thus, as I join the majority and cast my vote today for the denial of the instant petition, may I just be allowed to reiterate jurisprudential postulates which I have long embraced, not for the sake of "loyalty to petrified opinion" but to stress consistency in doctrine in the hope that all future disputes of this nature may be similarly resolved in this manner.

This is not actually the first time that the Court has been invited to resolve a matter originating from the internal processes undertaken by a co-equal branch of government, more particularly the Senate in this case. Earlier, in the landmark case of Tolentino v. Secretary of Finance, et al.,^[1] we were confronted, among other things, by the issue of whether a significant tax measures namely, Republic Act No. 7716 (Expanded Value-Added Tax Law), went through the legislative mill in keeping with the constitutionally-mandated procedure for the passage of bills. Speaking through Justice Vicente V. Mendoza, the majority upheld the tax measure's validity, relying on the enrolled bill theory and the view that the Court is not the appropriate forum to enforce internal legislative rules supposedly violated when the bill was being passed by the Congress. I took a different view, however, from the majority because of what I felt was a sweeping reliance on said doctrines without giving due regard to the peculiar facts of the case. I underscored that these principles may not be applied where the internal legislative rules would breach the Constitution which this Court has a solemn duty to uphold. It was my position then that the introduction of several provisions in the Bicameral Committee Report violated the constitutional proscription against any amendment to a bill upon the last reading thereof and which this Court, in the exercise of its judicial

power, can properly inquire into without running afoul of the principle of separation of powers.

Last year,[2] Arroyo, et al. v. de Venecia, et al.[3] presented an opportunity for me to clarify my position further. In that case, Congressman Joker Arroyo filed a petition before the Court complaining that during a session by the House of Representatives, he was effectively prevented from raising the question of quorum which to him tainted the validity of Republic Act No. 8240 or the so-called "sin-taxes" law. The Court, speaking again through Justice Mendoza, dismissed Mr. Arroyo's petition, arguing in the main that courts are denied the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals. Concurring with the majority opinion, I discerned a need to explain my position then because of possible misinterpretation. I was very emphatic that I did not abandon my position in Tolentino, the facts as presented in Arroyo being radically different from the former. In keeping with my view that judicial review is permissible only to uphold the Constitution, I pointed out that the legislative rules allegedly violated were purely internal and had no direct or reasonable nexus to the requirements and proscriptions of the Constitution in the passage of a bill which would otherwise warrant the Court's intervention.

In the instant case, at the risk of being repetitious, I again take a similar stand as the ones I made in the two cited cases.

Although this case involves the question of who is the rightful occupant of a Senate "office" and does not deal with the passage of a bill or the observance of internal rules for the Senate's conduct of its business, the same ground as I previously invoked may justify the Court's refusal to pry into the procedures of the Senate. There is to me no constitutional breach which has been made and ergo, there is nothing for this Court to uphold. The interpretation placed by petitioners on Section 16 (1), Article VI of the 1987 Constitution clearly does not find support in the text thereof. Expressum facit cessare tacitum. What is expressed puts an end to that which is implied. The majority vote required for the election of a Senate President and a Speaker of the House of Representatives speaks only of such number or quantity of votes for an aspirant to be lawfully elected as such. There is here no declaration that by so electing, each of the two Houses of Congress is thereby divided into camps called the "majority" and the minority." In fact, the "offices" of Majority Floor Leader and Minority Floor Leader are not explicitly provided for as constitutional offices. As pointed out by my esteemed colleague, Justice Artemio V. Panganiban, who penned the herein majority opinion, even on the theory that under paragraph 2, Section 16 (1) of Article VI of the Constitution, each House shall choose such other officers as it may deem necessary, still "the method of choosing who will be such officers is merely a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision." With the prerogative being, therefore, bestowed upon the Senate, whatever differences the parties may have against each other must be settled in their own turf and the Court, conscious as it is of its constitutionally-delineated powers, will not take a perilous move to overstep the same.

[1] 235 SCRA 630.

[2] August 14, 1997.

[3] G.R. No. 127255; 277 SCRA 268 (1997).

SEPARATE OPINION

VITUG, J.:

The 1987 Constitution, like the counterpart 1935 and 1973 Constitutions, has continued to be implicit in its recognition of the time-honored precept of separation of powers which enjoins upon each of the three co-equal and independent, albeit coordinate, branches of the government - the Legislative, the Executive and the Judiciary -

proper acknowledgment and respect for each other. The Supreme Court, said to be holding neither the "purse" (held by Congress) nor the "sword" (held by the Executive) but serving as the balance wheel in the State governance, functions both as the tribunal of last resort and as the Constitutional Court of the nation.[1] Peculiar, however, to the present Constitution, specifically under Article VIII, Section 1, thereof, is the extended jurisdiction of judicial power that now explicitly allows the determination of "whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." [2] This expanded concept of judicial power seems to have been dictated by the martial law experience and to be an immediate reaction to the abuse in the frequent recourse to the political question doctrine that in no small measure has emasculated the Court. The term "political question," in this context, refers to matters which, under the Constitution, are to be decided by the people in their sovereign capacity or in regard to which discretionary authority has been delegated to the legislative or executive branch of the government.

The Supreme Court, nevertheless, should not be thought of as having been tasked with the awesome responsibility of overseeing the entire bureaucracy. I find it here opportune to reiterate what I have stated in *Tolentino vs. Secretary of Finance*, [3] viz:

"I cannot yet concede to the novel theory, so challengingly provocative as it might be, that under the 1987 Constitution the Court may now at good liberty intrude, in the guise of the people's imprimatur, into every affair of government. What significance can still then remain, I ask, of the time honored and widely acclaimed principle of separation of powers if, at every turn, the Court allows itself to pass upon at will the disposition of a co-equal, independent and coordinate branch in our system of government. I dread to think of the so varied uncertainties that such an undue interference can lead to. The respect for long standing doctrines in our jurisprudence, nourished through time, is one of maturity, not timidity, of stability rather than quiescence."

Pervasive and limitless, such as it may seem to be, judicial power still succumbs to the paramount doctrine of separation of powers. Congress is the branch of government, composed of the representative of the people, that lays down the policies of government and provides the direction that the nation must take. The executive carries out that mandate. Certainly, the Court will not negate that which is done by these co-equal and co-ordinate branches merely because of a perceived case of grave abuse of discretion on their part, clearly too relative a phrase to be its own sentinel against misuse, even as it will not hesitate to wield the power if that abuse becomes all too clear. The exercise of judicial statesmanship, not judicial tyranny, is what has been envisioned by and institutionalized in the 1987 Constitution.

There is no hornbook rule by which grave abuse of discretion may be determined. The provision was evidently couched in general terms to make it malleable to judicial interpretation in the light of any contemporary or emerging milieu. In its normal concept, the term has been said to imply capricious and whimsical exercise of judgment, amounting to lack or excess of jurisdiction, or that the power is exercised in an arbitrary or despotic manner such as by reason of passion or personal hostility. When the question, however, pertains to an affair internal to either of Congress or the Executive, I would subscribe to the dictum, somewhat made implicit in my understanding of *Arroyo vs. De Venecia*, [4] that unless an infringement of any specific Constitutional proscription thereby inheres the Court will not deign substitute its own judgment over that of any of the other two branches of government. Verily, in this situation, it is an impairment or a clear disregard of a specific constitutional precept or provision that can unbolt the steel door for the judicial intervention.

In the instant settings, I find insufficient indication to have the case hew to the above rule.

Accordingly, I vote for the dismissal of the petition.

[1] Justice Jose C. Vitug, *The Court and its Ways*, *The Court Systems Journal*, June 1998, Volume 3 No. 2.

[2] Sec. 1, Article VIII.

[3] 235 SCRA 630, 720.

[4] 277 SCRA 268, 289.

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