

**ALFREDO M. DE LEON, ANGEL S. SALAMAT, MARIO C. STA. ANA,
JOSE C. TOLENTINO, ROGELIO J. DE LA ROSA AND JOSE M.
RESURRECCION, PETITIONERS, VS. HON. BENJAMIN B. ESGUERRA,
IN HIS CA...**

G.R. No. 78059. August 31, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An original action for Prohibition instituted by petitioners seeking to enjoin respondents from replacing them from their respective positions as Barangay Captain and Barangay Councilmen of Barangay Dolores, Municipality of Taytay, Province of Rizal.

As required by the Court, respondents submitted their Comment on the Petition, and petitioners their Reply to respondents' Comment.

In the Barangay elections held on May 17, 1982, petitioner Alfredo M. De Leon was elected Barangay Captain and the other petitioners Angel S. Salamat, Mario C. Sta. Ana, Jose, C. Tolentino, Rogelio J. de la Rosa and Jose M. Resurreccion, as Barangay Councilmen of Barangay Dolores, Taytay, Rizal under Batas Pambansa Blg. 222, otherwise known as the Barangay Election Act of 1982.

On February 9, 1987, petitioner Alfredo M. de Leon received a Memorandum antedated December 1, 1986 but signed by respondent OIC Governor Benjamin Esguerra on February 8, 1987 designating respondent Florentino G. Magno as Barangay Captain of Barangay Dolores, Taytay, Rizal. The designation made by the OIC Governor was "by authority of the Minister of Local Government."

Also on February 8, 1987, respondent OIC Governor signed a Memorandum, antedated December 1, 1986 designating respondents Remigio M. Tigas, Ricardo Z. Lacanienta, Teodoro V. Medina, Roberto S. Paz and Teresita L. Tolentino as members of the Barangay Council of the same Barangay and Municipality.

That the Memoranda had been antedated is evidenced by the Affidavit of respondent OIC Governor, the pertinent portions of which read:

"x x x

"That I am the OIC Governor of Rizal having been appointed as such on March 20, 1986;

"That as being OIC Governor of the Province of Rizal, and in the performance of my duties thereof, I among others, have signed as I did sign the unnumbered memorandum ordering the replacement of all the barangay officials of all the barangay(s) in the Municipality of Taytay, Rizal;

"That the above cited memorandum dated December 1, 1986 was signed by me personally on February 8, 1987;

"That said memorandum was further decimated (sic) to all concerned the following day, February 9, 1987.

"FURTHER AFFIANT SAYETH NONE.

"Pasig, Metro Manila, March 23, 1987."

Before us now, petitioners pray that the subject Memoranda of February 8, 1987 be declared null and void and that respondents be prohibited from taking over their positions of Barangay Captain and Barangay Councilmen, respectively. Petitioners maintain that pursuant to Section 3 of the Barangay Election Act of 1982 (BP Blg. 222), their terms of office "shall be six (6) years which shall commence on June 7, 1982 and shall continue until their successors shall have elected and shall have qualified", or up to June 7, 1988. It is also their position that with the ratification of the 1987 Constitution, respondent OIC Governor no longer has the authority to replace them and to designate their successors.

On the other hand, respondents rely on Section 2, Article III of the Provisional Constitution, promulgated on March 25, 1986, which provided:

"SECTION 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 25, 1986."

By reason of the foregoing provision, respondents contend that the terms of office of elective and appointive officials were abolished and that petitioners continued in office by virtue of the aforequoted provision and not because their term of six years had not yet expired; and that the provision in the Barangay Election Act fixing the term of office of Barangay officials to six (6) years must be deemed to have been repealed for being inconsistent with the aforequoted provision of the Provisional Constitution.

Examining the said provision, there should be no question that petitioners, as elective officials under the 1973 Constitution, may continue in office but should vacate their positions upon the occurrence of any of the events mentioned.[1]

Since the promulgation of the Provisional Constitution, there has been no proclamation or executive order terminating the term of elective Barangay officials. Thus, the issue for resolution is whether or not the designation of respondents to replace petitioners was validly made during the one-year period which ended on February 25, 1987.

Considering the candid Affidavit of respondent OIC Governor, we hold that February 8, 1987, should be considered as the effective date of replacement and not December 1, 1986 to which it was antedated, in keeping with the dictates of justice.

But while February 8, 1987 is ostensibly still within the one-year deadline, the aforequoted provision in the Provisional Constitution must be deemed to have been overtaken by Section 27, Article XVIII of the 1987 Constitution reading:

"Sec. 27 - This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions."

The 1987 Constitution was ratified in a plebiscite on February 2, 1987. By that date, therefore, the Provisional Constitution must be deemed to have been superseded. Having become inoperative, respondent OIC Governor could no longer rely on Section 2, Article III, thereof to designate respondents to the elective positions occupied by petitioners.

Petitioners must now be held to have acquired security of tenure specially considering that the Barangay Election Act of 1982 declares it "a policy of the State to guarantee and promote the autonomy of the barangays to ensure their fullest development as self-reliant communities".[2] Similarly, the 1987 Constitution ensures the autonomy of local governments and of political subdivisions of which the barangays form a part[3], and limits the President's power to "general supervision" over local governments.[4] Relevantly, Section 8, Article X of the same 1987 Constitution further provides in part:

"Sec. 8. - The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years x x x "

Until the term of office of barangay officials has been determined by law, therefore, the term of office of six (6) years provided for in the Barangay Election Act of 1982[5] should still govern.

Contrary to the stand of respondents, we find nothing inconsistent between the term of six (6) years for elective Barangay officials and the 1987 Constitution, and the same should, therefore, be considered as still operative, pursuant to Section 3, Article XVIII of the 1987 Constitution, reading:

"Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."

WHEREFORE, (1) The Memoranda issued by respondent OIC Governor on February 8, 1987 designating respondents as the Barangay Captain and Barangay Councilmen, respectively, of Barangay Dolores, Taytay, Rizal, are both declared to be of no legal force and effect; and (2) the Writ of Prohibition is granted enjoining respondents perpetually from proceeding with the ouster/take-over of petitioners' positions subject of this Petition. Without costs.

SO ORDERED.

Yap, Fernan, Narvasa, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.
Teehankee, C.J., concurs in a separate opinion.

Cruz, J., see concurrence.

Sarmiento, J., dissents in a separate opinion.

[1] Topacio, Jr. vs. Pimentel, G.R. No. 73770, April 10, 1986.

[2] Section 2, BP Blg. 222.

[3] Article II, Section 25 and Article X, Sections 1, 2, 14, among others.

[4] Article X, Section 4.

[5] Section 3, BP Blg. 222.

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CONCURRING OPINION

CRUZ, J.:

In her quiet and restrained manner, Justice Herrera is able to prove her point with more telling effect than the tones of thunder. She has written another persuasive opinion, and I am delighted to concur. I note that it in effect affirms my dissents in the De la Serna, Zamora, Duquing and Bayas cases, where I submitted that the local OICs may no longer be summarily replaced, having acquired security of tenure under the new Constitution. Our difference is that whereas I would make that right commence on February 25, 1987, after the deadline set by the Freedom Constitution, Justice Herrera would opt for February 2, 1987, when the new Constitution was ratified. I yield to that better view and agree with her ponencia completely.

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DISSENTING OPINION**SARMIENTO, J.:**

With due respect to the majority. I register this dissent.

While I agree that the one-year deadline prescribed by Section 2, Article III of the Provisional Constitution with respect to the tenure of government functionaries, as follows:

SECTION 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 25, 1986.

was cut short by the ratification of the 1987 Constitution, I entertain serious doubts whether or not that cut-off period began on February 2, 1987, the date of the plebiscite held to approve the new Charter. To my mind, the 1987 Constitution took effect on February 11, 1987, the date the same was proclaimed ratified pursuant to Proclamation No. 58 of the President of the Philippines, and not February 2, 1987, plebiscite day.

I rely, first and foremost, on the language of the 1987 Charter itself, thus:

Sec. 27. This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions.

It is my reading of this provision that the Constitution takes effect on the date its ratification shall have been ascertained, and not at the time the people cast their votes to approve or reject it. For it cannot be logically said that that Constitution was ratified during such a plebiscite, when the will of the people as of that time, had not, and could not have been, yet determined.

Other than that, pragmatic considerations compel me to take this view.

I have no doubt that between February 2, and February 11, 1987, the government performed acts that would have been valid under the Provisional Constitution but would otherwise have been void under the 1987 Charter. I recall, in particular, the appointments of some seven Court of Appeals Justices, 71 provincial fiscals, and 55 city fiscals the President reportedly extended on February 2, 1987.[1] Under Sections 8(1) and 9, Article VIII, of the

1987 Constitution, as follows:

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Sec. 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

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Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

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such appointments could be open to serious questions.

Since 1973, moreover, we have invariably reckoned the effectivity of the Constitution as well as the amendments thereto from the date it is proclaimed ratified.

In *Magtoto v. Manguera*,^[2] we held that the 1973 Constitution became in force and effect on January 17, 1973, the date Proclamation No. 1102, "Announcing the Ratification by the Filipino People of the Constitution Proposed by the 1971 Constitutional Convention," was issued, although Mr. Justice, now Chief Justice, Teehankee would push its effectivity date further to April 17, 1973, the date our decision in *Javellana v. Executive Secretary*,^[3] became final. And this was so notwithstanding Section 16, Article XVII, of the 1973 Constitution, thus:

SEC. 16. This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and, except as herein provided, shall supersede the Constitution of nineteen-hundred and thirty-five and all amendments thereto.

On October 27, 1976, then President Marcos promulgated Proclamation No. 1595, proclaiming the ratification of the 1976 amendments submitted in the plebiscite of October 16-17, 1976. The Proclamation states, inter alia, that:

By virtue of the powers vested in me by law, I hereby proclaim all the amendments embodied in this certificate as duly ratified by the Filipino people in the referendum-plebiscite held Oct. 16-17, 1976 and are therefore effective and in full force and effect as of this date.

It shall be noted that under Amendment No. 9 of the said 1976 amendments:

These amendments shall take effect after the incumbent President shall have proclaimed that they have been ratified by a majority of the votes cast in the referendum-plebiscite.

On April 1, 1980, the then Chief Executive issued Proclamation No. 1959, "Proclaiming the Ratification by the Filipino People of the Amendments of Section 7, Article X of the Constitution" (lengthening the terms of office of judges and justices). The Proclamation provides:

[t]he above-quoted amendment has been duly ratified by a majority of the votes cast in the plebiscite held, together with the election for local officials, on January 30, 1980, and that said amendment is hereby declared to take effect immediately.

It shall be noted that under Resolution No. 21, dated December 18, 1979, the proposed amendment shall take effect on the date the incumbent President/Prime Minister shall proclaim its ratification.

On April 7, 1981, Proclamation No. 2077 was issued, "Proclaiming the Ratification in the Plebiscite of April 7, 1981 of the Amendments to the Constitution Embodied in Batas Pambansa Blg. 122 and Declaring Them Therefore Effective and in Full Force and Effect." The Proclamation, in declaring the said amendments duly approved, further declared them "[e]ffective and in full force and in effect as of the date of this Proclamation." It shall be noted, in this connection, that under Resolutions Nos. 1 and 2 of the Batasang Pambansa, Third Regular Session, Sitting as a Constituent Assembly, which parented these amendments, the same:

. . . shall become valid as part of the Constitution when approved by a majority of the votes cast in a plebiscite to be held pursuant to Section 2, Article XVI of the Constitution.

On the other hand, Batas Pambansa Blg. 122, "An Act to Submit to the Filipino People, for Ratification or Rejection, the Amendment to the Constitution for the Philippines, Proposed by the Batasang Pambansa, Sitting as a Constituent Assembly, in its Resolutions Numbered Three, Two, and One, and to Appropriate Funds Therefor," provides, as follows:

SEC. 7. The Commission on Elections, sitting en banc, shall canvass and proclaim the result of the plebiscite using the certificates submitted to it, duly authenticated and certified by the Board of Canvassers of each province or city.

We have, finally, Proclamation No. 2332, "Proclaiming the Ratification in the Plebiscite of January 27, 1984, of the Amendments to the Constitution Embodied in Batasang Pambansa Resolutions Nos. 104, 105, 110, 111, 112 and 113." It states that the amendments:

... are therefore effective and in full force and effect as of the date of this Proclamation.

It carries out Resolution No. 104 itself (as well as Resolutions Nos. 110 and 112 and Section 9, Batas Blg. 643), which states, that:

The proposed amendments shall take effect on the date the President of the Philippines shall proclaim that they have been ratified by a majority of the votes cast in the plebiscite held for the purpose, but not later than three months from the approval of the amendments.

albeit Resolutions Nos. 105, 111, and 113 provide, that:

These amendments shall be valid as a part of the Constitution when approved by a majority of the votes cast in an election/plebiscite at which is submitted to the people for their ratification pursuant to Section 2 of Article XVI of the Constitution, as amended.

That a Constitution or amendments thereto take effect upon proclamation of their ratification and not at the time of the plebiscite is a view that is not peculiar to the Marcos era.

The Resolution of Both Houses (of Congress) in Joint Session on the March 11, 1947 plebiscite called pursuant to Republic Act No. 73 and the Resolution of Both Houses (of Congress) adopted on September 18, 1946, was adopted on April 9, 1947. The April 9, 1947 Resolution makes no mention of a retroactive application.

Accordingly, when the incumbent President (Mrs. Corazon C. Aquino) proclaimed on February 11, 1987, at Malacañang Palace:

. . . that the Constitution of the Republic of the Philippines adopted by the Constitutional Commission of 1986, including the Ordinance appended thereto, has been duly ratified by the Filipino people and is therefore effective and in full force and effect.[4]

the 1987 Constitution, in point of fact, came into force and effects. I hold that it took effect at no other time.

I submit that our ruling in *Ponsica v. Ignalage*[5] in which we declared, in passing, that the new Charter was ratified on February 2, 1987, does not in any way weaken this dissent. As I stated, the remark was said in passing -- we did not resolve the case on account of a categorical holding that the 1987 Constitution came to life on February 2, 1987. In any event, if we did, I now call for its reexamination.

I am therefore of the opinion, consistent with the views expressed above, that the challenged dismissals done on February 8, 1987 were valid, the 1987 Constitution not being then as yet in force.

[1] Manila Bulletin, Feb. 3, 1987, p. 1, cols. 6-7; Philippine Daily Inquirer, Feb. 3, 1987, p. 1, col. 1; Malaya, Feb. 3, 1987, p. 1, col. 1.

[2] Nos. L-37201-02, March 3, 1975, 63 SCRA 4 (1975).

[3] Nos. L-36142, March 31, 1973, 50 SCRA 30 (1973).

[4] Proclamation No. 58 (1987).

[5] G.R. No. 72301.

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CONCURRING OPINION

TEEHANKEE, C.J.:

The main issue resolved in the judgment at bar is whether the 1987 Constitution took effect on February 2, 1987, the date that the plebiscite for its ratification was held or whether it took effect on February 11, 1987, the date its ratification was proclaimed per Proclamation No. 58 of the President of the Philippines, Corazon C. Aquino.

The Court's decision, with the lone dissent of Mr. Justice Sarmiento, holds that by virtue of the provision of Article XVIII, Section 27 of the 1987 Constitution that it "shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose", the 1987 Constitution took effect on February 2, 1987, the date of its ratification in the plebiscite held on that same date.

The thrust of the dissent is that the Constitution should be deemed to "take effect on the date its ratification shall have been ascertained and not at the time the people cast their votes to approve or reject it." This view was actually proposed at the Constitutional Commission deliberations, but was withdrawn by its proponent in the face of the "overwhelming" contrary view that the Constitution "will be effective on the very day of the plebiscite."

The record of the proceedings and debates of the Constitutional Commission fully supports the Court's judgment. It shows that the clear, unequivocal and express intent of the Constitutional Commission in unanimously approving (by thirty-five votes in favor and none against) the aforementioned Section 27 of Transitory Article XVIII of the 1987 Constitution was that "the act of ratification is the act of voting by the people. So that is the date of the ratification" and that "the canvass thereafter [of the votes] is merely the mathematical confirmation of what was

done during the date of the plebiscite and the proclamation of the President is merely the official confirmatory declaration of an act which was actually done by the Filipino people in adopting the Constitution when they cast their votes on the date of the plebiscite."

The record of the deliberations and the voting is reproduced hereinbelow:[1]

"MR. MAAMBONG. Madam President, may we now put to a vote the original formulation of the committee as indicated in Section 12, unless there are other commissioners who would like to present amendments.

"MR. DAVIDE. Madam President.

"THE PRESIDENT. Commissioner Davide is recognized.

"MR. DAVIDE. May I propose the following amendments.

On line 2, delete the words 'its ratification' and in lieu thereof insert the following: 'THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED.' And on the last line, after 'constitutions,' add the following: 'AND THEIR AMENDMENTS.'

"MR. MAAMBONG. Just a moment, Madam President. If Commissioner Davide is going to propose an additional sentence, the committee would suggest that we take up first his amendment to the first sentence as originally formulated. We are now ready to comment on that proposed amendment.

The proposed amendment would be to delete the words 'its ratification' and in lieu thereof insert the words 'THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED.' And the second amendment would be: After the word 'constitutions,' add the words 'AND THEIR AMENDMENTS.'

The committee accepts the first proposed amendment. However, we regret that we cannot accept the second proposed amendment after the word 'constitutions' because the committee feels that when we talk of all previous Constitutions, necessarily it includes 'AND THEIR AMENDMENTS.'

"MR. DAVIDE. With that explanation, I will not insist on the second. But, Madam President, may I request that I be allowed to read the second amendment so the Commission would be able to appreciate the change in the first.

"MR. MAAMBONG. Yes, Madam President, we can now do that.

"MR. DAVIDE. The second sentence will read: 'THE PROCLAMATION SHALL BE MADE WITHIN FIVE DAYS FOLLOWING THE COMPLETION OF THE CANVASS BY THE COMMISSION ON ELECTIONS OF THE RESULTS OF SUCH PLEBISCITE.'

"MR. MAAMBONG. Madam President, after conferring with our chairman, the committee feels that the second proposed amendment in the form of a new sentence would not be exactly necessary and the committee feels that it would be too much for us to impose a time frame on the President to make the proclamation. As we would recall, Madam President, in the approved Article on the Executive, there is a provision which says that the President shall make certain that all laws shall be faithfully complied. When we approve this first sentence, and it says that there will be a proclamation by the President that the Constitution has been ratified, the President will naturally comply with the law in accordance with the provisions in the Article on the Executive which we have cited. It would be too much to impose on the President a time frame within which she will make that declaration. It would be assumed that the President would immediately do that after the results shall have been canvassed by the COMELEC.

Therefore, the committee regrets that it cannot accept the second sentence which the Gentleman is proposing, Madam President.

"MR. DAVIDE. I am prepared to withdraw the same on the assumption that there will be an immediate proclamation of the results by the President.

"MR. MAAMBONG. With that understanding, Madam President.

"MR. DAVIDE. I will not insist on the second sentence.

"FR. BERNAS. Madam President.

"THE PRESIDENT. Commissioner Bernas is recognized.

"FR. BERNAS. I would ask the committee to reconsider its acceptance of the amendment which makes the effectivity of the new Constitution dependent upon the proclamation of the President. The effectivity of the Constitution should commence on the date of the ratification, not on the date of the proclamation of the President. What is confusing, I think, is what happened in 1976 when the amendments of 1976 were ratified. In that particular case, the reason the amendments of 1976 were effective upon the proclamation of the President was that the draft presented to the people said that the amendment will be effective upon the proclamation made by the President. I have a suspicion that that was put in there precisely to give the President some kind of leeway on whether to announce the ratification or not. Therefore, we should not make this dependent on the action of the President since this will be a manifestation of the act of the people to be done under the supervision of the COMELEC and it should be the COMELEC who should make the announcement that, in fact, the votes show that the Constitution was ratified and there should be no need to wait any proclamation on the part of the President.

"MR. MAAMBONG. Would the Gentleman answer a few clarificatory questions?

"FR. BERNAS. Willingly, Madam President.

"MR. MAAMBONG. The Gentleman will agree that a date has to be fixed as to exactly when the Constitution is supposed to be ratified.

"FR. BERNAS. I would say that the ratification of the Constitution is on the date the votes were supposed to have been cast.

"MR. MAAMBONG. Let us go to the mechanics of the whole thing, Madam President. We present the Constitution to a plebiscite, the people exercise their right to vote, then the votes are canvassed by the Commission on Elections. If we delete the suggested amendment which says: 'THE PROCLAMATION BY THE PRESIDENT THAT IT HAS BEEN RATIFIED,' what would be, in clear terms, the date when the Constitution is supposed to be ratified or not ratified, as the case may be?

"FR. BERNAS. The date would be the casting of the ballots. If the President were to say that the plebiscite would be held, for instance, on January 19, 1987, then the date for the effectivity of the new Constitution would be January 19, 1987.

"MR. MAAMBONG. In other words, it would not depend on the actual issuance of the results by the Commission on Elections which will be doing the canvass? That is immaterial, Madam President.

"FR. BERNAS. It would not, Madam President, because 'ratification' is the act of saying 'yes' and the act of saying 'yes' is done when one casts his ballot.

"MR. MAAMBONG. So it is the date of the plebiscite itself, Madam President?

"FR. BERNAS. Yes, Madam President.

"MR. MAAMBONG. With that statement of Commissioner Bernas, we would like to know from the proponent, Commissioner Davide, if he is insisting on his amendment.

"MR. DAVIDE. Madam President, I am insisting on the amendment because I cannot subscribe to the view of Commissioner Bernas that the date of the ratification is reckoned from the date of the casting of the ballots. That cannot be the date of reckoning because it is a plebiscite all over the country. We do not split the moment of casting by each of the voters. Actually and technically speaking, it would be all right if it would be upon the announcement of the results of the canvass conducted by the COMELEC or the results of the plebiscite held all over the country. But it is necessary that there be a body which will make the formal announcement of the results of the plebiscite. So it is either the President or the COMELEC itself upon the completion of the canvass of the results of the plebiscite, and I opted for the President.

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"MR. NOLLEDO. Madam President.

"THE PRESIDENT. Commissioner Nolleddo is recognized.

"MR. NOLLEDO. Thank you, Madam President.

I beg to disagree with Commissioner Davide. I support the stand of Commissioner Bernas because it is really the date of the casting of the 'yes' votes that is the date of the ratification of the Constitution. The announcement merely confirms the ratification even if the results are released two or three days after. I think it is a fundamental principle in political law, even in civil law, because an announcement is a mere confirmation. The act of ratification is the act of voting by the people. So that is the date of the ratification. If there should be any need for presidential proclamation, that proclamation will merely confirm the act of ratification.

Thank you, Madam President.

"THE PRESIDENT. Does Commissioner Regalado want to contribute?

"MR. REGALADO. Madam President, I was precisely going to state the same support for Commissioner Bernas, because the canvass thereafter is merely the mathematical confirmation of what was done during the date of the plebiscite and the proclamation of the President is merely the official confirmatory declaration of an act which was actually done by the Filipino people in adopting the Constitution when they cast their votes on the date of the plebiscite.

"MR. LERUM. Madam President, may I be recognized.

"THE PRESIDENT. Commissioner Lerum is recognized.

"MR. LERUM. I am in favor of the Davide amendment, because we have to fix a date for the effectivity of the Constitution. Suppose the announcement is delayed by, say, 10 days or a month, what happens to the obligations and rights that accrue upon the approval of the Constitution? so I think we must have a definite date. I am, therefore, in favor of the Davide amendment.

"MR. MAAMBONG. Madam President.

"THE PRESIDENT. Commissioner Maambong is recognized.

"MR. MAAMBONG. With the theory of the Commissioner, would there be a necessity for the Commission on Elections to declare the results of the canvass?

"FR. BERNAS. There would be because it is the Commission on Elections which makes the official announcement of the results.

"MR. MAAMBONG. My next question which is the final one is: After the Commission on Elections has declared the results of the canvass, will there be a necessity for the President to make a proclamation of the results of the canvass as submitted by the Commission on Elections?

"FR. BERNAS. I would say there would be no necessity, Madam President.

"MR. MAAMBONG. In other words, the President may or may not make the proclamation whether the Constitution has been ratified or not.

"FR. BERNAS. I would say that the proclamation made by the President would be immaterial because under the law, the administration of all election laws is under an independent Commission on Elections. It is the Commission on Elections which announces the results.

""MR. MAAMBONG. But nevertheless, the President may make the proclamation.

"FR. BERNAS. Yes, the President may. And if what he says contradicts what the Commission on Elections says, it would have no effect. I would only add that when we say that the date of effectivity is on the day of the casting of the votes, what we mean is that the Constitution takes effect on every single minute and every single second of that day, because the Civil Code says a day has 24 hours. So that even if the votes are cast in the morning, the Constitution is really effective from the previous midnight.

So that when we adopted the new rule on citizenship, the children of Filipino mothers or anybody born on the date of effectivity of the 1973 Constitution, which is January 17, 1973, are natural-born citizens, no matter what time of day or night.

"MR. MAAMBONG. Could we, therefore, safely say that whatever date is the publication of the results of the canvass by the COMELEC retroacts to the date of the plebiscite?

"FR. BERNAS. Yes, Madam President.

"MR. MAAMBONG. I thank the Commissioner.

"MR. GUINGONA. Madam President.

"THE PRESIDENT. Commissioner Guingona is recognized.

"MR. GUINGONA. Mention was made about the need for having a definite date. I think it is precisely the proposal of Commissioner Bernas which speaks of the date of ratification that would have a definite date, because there would be no definite date if we depend upon the canvassing by the COMELEC.

Thank you.

"THE PRESIDENT. Commissioner Concepcion is recognized.

"MR. CONCEPCION. Thank you, Madam President.

"Whoever makes the announcement as to the result of the plebiscite, be it the COMELEC or the President, would announce that a majority of the votes cast on a given date was in favor of the Constitution. And that is the date when the Constitution takes effect, apart from the fact that the provision on the drafting or amendment of the Constitution provides that a constitution becomes effective upon ratification by a majority of the votes cast, although I would not say from the very beginning of the date of election because as of that time it is impossible to determine whether there is a majority. At the end of the day of election or plebiscite, the determination is made as of that time -- the majority of the votes cast in a plebiscite held on such and such a date. So that is the time when the new Constitution will be considered ratified and, therefore, effective.

"THE PRESIDENT. May we now hear Vice-President Padilla.

""MR. PADILLA. Madam President, I am against the proposed amendment of Commissioner Davide and I support the view of Commissioner Bernas and the others because the ratification of the Constitution is on the date the people, by a majority vote, have cast their votes in favor of the Constitution. Even in civil law, if there

is a contract, say, between an agent and a third person and that contract is confirmed or ratified by the principal, the validity does not begin on the date of ratification but it retroacts from the date the contract was executed.

Therefore, the date of the Constitution as ratified should retroact to the date that the people have cast their affirmative votes in favor of the Constitution.

"MR. MAAMBONG. Madam President.

"THE PRESIDENT. Commissioner Maambong is recognized.

"MR. MAAMBONG. We will now ask once more Commissioner Davide if he is insisting on his amendment.

"MR. DAVIDE. In view of the explanation and overwhelming tyranny of the opinion that it will be effective on the very day of the plebiscite, I am withdrawing my amendment on the assumption that any of the following bodies -- the Office of the President or the COMELEC -- will make the formal announcement of the results.

"MR. RAMA. Madam President, we are now ready to vote on the original provision as stated by the committee.

"MR. MAAMBONG. The committee will read again the formulation indicated in the original committee report as Section 12.

This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and shall supersede all previous Constitutions.

We ask for a vote, Madam President.

V O T I N G

"THE PRESIDENT. As many as are in favor, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 35 votes in favor and none against; Section 12 is approved."[2]

The Court next holds as a consequence of its declaration at bar that the Constitution took effect on the date of its ratification in the plebiscite held on February 2, 1987, that: (1) the Provisional Constitution promulgated on March 25, 1986 must be deemed to have been superseded by the 1987 Constitution on the same date February 2, 1987 and (2) by and after said date, February 2, 1987, absent any saving clause to the contrary in the Transitory Article of the Constitution, respondent OIC Governor could no longer exercise the power to replace petitioners in their positions as Barangay Captain and Councilmen. Hence, the attempted replacement of petitioners by respondent OIC Governor's designation on February 8, 1987 of their successors could no longer produce any legal force and effect. While the Provisional Constitution provided for a one-year period expiring on March 25, 1987 within which the power of replacement could be exercised, this period was shortened by the ratification and effectivity on February 2, 1987 of the Constitution. Had the intention of the framers of the Constitution been otherwise, they would have so provided for in the Transitory Article, as indeed they provided for multifarious transitory provisions in twenty-six sections of Article XVIII, e.g. extension of the six-year term of the incumbent President and Vice-President to noon of June 30, 1992 for purposes of synchronization of elections, the continued exercise of legislative powers by the incumbent President until the convening of the first Congress, etc.

A final note of clarification, as to the statement in the dissent that "the appointments of some seven Court of Appeals Justices, 71 provincial fiscals and 55 city fiscals reported extended (by) the President on February 2, 1987 ... could be open to serious questions", in view of the provisions of Sections 8(1) and 9, Article VIII of the

Constitution which require prior endorsement thereof by the Judicial and Bar Council created under the Constitution. It should be stated for the record that the reported date of the appointments, February 2, 1987, is incorrect. The official records of the Court show that the appointments of the seven Court of Appeals Justices were transmitted to this Court on February 1, 1987 and they were all appointed on or before January 31, 1987.[3] (Similarly, the records of the Department of Justice likewise show that the appointment papers of the last batch of provincial and city fiscals signed by the President in completion of the reorganization of the prosecution service were made on January 31, 1987 and transmitted to the Department on February 1, 1987.) It is also a matter of record that since February 2, 1987, no appointments to the Judiciary have been extended by the President, pending the constitution of the Judicial and Bar Council, indicating that the Chief Executive has likewise considered February 2, 1987 as the effective date of the Constitution, as now expressly declared by the Court.

[1] Volume Five, Record of the Constitutional Commission Proceedings and Debates, pages 620-623; emphasis supplied.

[2] The entire draft Constitution was approved on October 12, 1986 by forty-five votes in favor and two against.

[3] The seven Court of appeals Justices referred to are Justices Alfredo L. Benipayo, Minerva G. Reyes, Magdangal B. Elma, Cecilio Pe, Jesus Elbinias, Nicolas Lapeña, Jr. and Justo P. Torres, Jr., and their appointments bear various dates from January 9, 1987 to January 31, 1987.

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