THIS IS JUDICIAL TYRANNY, PLAIN AND SIMPLE

Camilo L. Sabio*

On November 13, 1985 the Clerk of Court of the Supreme Court released to the *sacada* the sugar workers of Negros then presently peacefully assembled in picket before the Court since November 12, 1985) a resolution of the Court *en banc* dated November 12, 1985 in *Federation of Free Farmers vs. The Honorable Court of Appeals*, G.R. Nos. L-41161, L-41222, L-43153 and L-43359, otherwise known as the *Victorias Case*. Then on November 19, 1985 the Clerk of Court released a "REVISED RESOLUTION" on the Court en banc dated November 19, 1985. The "REVISION consists in the enumeration of the voting of the number of the Justices of the Court in this case".

The principal thrust and the real *ratio decidend* of revised resolution dated November 19, 1985 is that, with respect to the High Tribunal, Section 11, Article X of the Constitution is NOT MANDATORY BUT MERELY DIRECTORY:

> "To put at rest any doubt regarding the provision of Section 11 of Article X of the Constitution providing for a maximum period within which a case shall be decided or resolved is mandatory or merely directory x x x WE find and so hold that the said provision is merely directory." (P. 10)

Section 11, Article X of the Constitution reads:

> "Sec. 11 (1) Upon the effectivity of this Constitution, *the maximum period within which a case or matter shall be decided or resolved from the date of its submission, shall be eighteen months for the Supreme Court,* and, unless reduced by the Supreme Court, twelve months for all inferior collegiate courts, and three months for all other inferior courts.
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> "(2) *With respect to the Supreme Court* and other collegiate appellate courts, *when the applicable maximum period shall have lapsed without the rendition of the corresponding decision or resolution because the necessary vote cannot be had, the judgment, order, or resolution appealed from shall be deemed affirmed,* except in those cases where a qualified majority is required and in appeals from judgments of conviction in criminal cases; and in original special civil actions and proceedings for habeas corpus, the petition in such cases shall be deemed dismissed; and a certification to this effect signed by the Chief Magistrate of the court shall be issued and a copy thereof attached to the record of the case." (Italics supplied)

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*Professor of Law, Ateneo College of Law.

Thus, with respect to the Supreme Court, the mandate of Section 11, Article X of the Constitution is clear and unequivocal: when the 18-month period shall have elapsed without the rendition of the corresponding decision because the necessary vote cannot be had, the decision appealed from shall *ipso facto* be deemed affirmed. Upon the expiration of said period the Supreme Court would *automatically* lose jurisdiction or power to review and reverse or even modify said decision. Its jurisdiction or power would be limited to affirming or declaring said decision as deemed affirmed, and, thereafter, to insure its execution and implementation.

The *Victorias Case* is a consolidated appeal from a unanimous decision rendered on August 12, 1975 by the Court of Appeals (now Intermediate Appellate Court) with Associate (now Presiding) Justice Ramon G. Gaviola, Jr. as *ponente.*

This appeal was considered by the Supreme Court as submitted for decision as early as July 1978.

Despite the lapse of more than thirty-eight (38) months after the case had been considered submitted for decision and despite the filing of eleven (11) motions to promulgate decision or to consider as deemed affirmed the appellate court's judgment, the Supreme Court could not render the corresponding decision, The reason: the necessary vote could not be had. Thus, by the clear and unequivocal mandate of the fundamental law, the decision dated August 12, 1975 had already become final and unalterable.

In said decision promulgated on August 12, 1975, the Court of Appeals, relying on voluminous documentary and testimonial evidence submitted during the 9-year proceedings before the trial court, found that Victorias Milling Company (VICMICO) "engineered" and "wrung" from the *hacienderos* in the Victorias Mill District of Negros Occidental the so-called "1956 General Collective Sugar Milling Contract" which was instrumental in depriving the *sacadas* of their just share in the annual sugar production expressly granted to them by a piece of social legislation – – – Republic Act No. 809 otherwise known as the Sugar Act of 1952. The appellate court adjudged VICMICO solidarily liable with the *hacienderos* for the just claim of the *sacadas.*

On September 10, 1981, two (2) days after the filing by the *sacadas* of their eleventh (11th) motion to promulgate decision or to reconsider as deemed affirmed the appellate court's decision – then Associate Justice Antonio P. Barredo, who had been assigned as the *ponente,* caused the promulgation by the Court *en banc* of a decision prepared by him. Justice Barredo not only did not affirm the Court of Appeals decision but: completely absolved VICMICO from any and all liability; required the *sacadas* to go back to the trial court and prove therein the exact amount of their recovery notwithstanding the fact that all pertinent facts and figures were on record; and while holding the *hacienderos* as solidarily liable with each other, required that in the implementation of said decision the primary and priority recourse would be against the members of the "Board of Trustees", who had already disbanded and most of whom were already dead, and, secondly, against the Victorias Mill District Planters Association, Inc.

which did not appear to have had sufficient resources to meet recovery of the *sacadas*. Considering the fact that the trial court had already been abolished under the new judicial reorganization law, all the *sacadas* would have long been dead before they could climb the "second calvary" demanded by Justice Barredo.

Of the eleven (11) Members of the High Tribunal only six (6) Members concurred *in toto* with Justice Barredo. Associate Justice Claudio Teehankee and Associate (now Chief Justice) Ramon C. Aquino did not take part in said decision. Associate Justice (later Chief Justice) Felix V. Makasiar rejected completely the opinion and conclusion of Justice Barredo and took the position that: "The Court of Appeals should be entirely affirmed". Chief Justice Enrique M. Fernando concurred only "in the result" and reserved his right to file a separate opinion. But he never did.

On October 16, 1981 the *sacadas,* through their counsel, filed a motion for reconsideration praying that: (1) the decision dated September 10, 1981 penned by Justice Barredo be reconsidered and set aside, and, (2) the decision rendered on August 12, 1975 by the Court of Appeals be declared as deemed affirmed. The counsel argued that the decision dated September 10, 1981 is null and void *ab initio* because in promulgating the same, the Court acted in violation of the clear and unequivocal mandate of Section 11, Article X of the Constitution, and, acted thereby, without or in excess of its jurisdiction. When said decision was penned by Justice Barredo on September 10, 1981 the Court no longer had any jurisdiction to review and reverse or even modify the decision promulgated by the Court of Appeals on August 12, 1975. Its jurisdiction, more than thirty-eight (38) months after the case was considered submitted for decision, was already confined or limited to declaring the decision dated August 12, 1975 as deemed affirmed. Long before said date, September 10, 1981, the appellate court decision had already been *ipso facto* deemed affirmed.

On the same date, October 16, 1981, the counsel of the *sacadas* filed an impeachment complaint with the Interim Batasang Pambansa against Justice Barredo for culpable violation of Section 11, Article X of the Constitution.

On November 11, 1985 the *sacadas* commenced their picket before the Supreme Court. It was already more than twenty-three (23) years since they went to the Court of Agrarian Relations in Bacolod City seeking for justice. Their counsel had already filed with the Supreme Court forty-two (42) reiterations of their request for the Court to promulgate the decision in compliance with the clear mandate of Section 11, Article X of the Constitution during the more than eighty-four (84) months that had elapsed since the High Tribunal considered their case submitted for decision.

Two (2) days later, on November 13, 1985, resolution of the Court *en banc* dated November 12, 1985 was released. The part thereof explaining the long delay in the resolution of the motion for reconsideration filed by the *sacadas* on October 16, 1981 and enumerating the voting thereon reads:

> "Of the Justices who were members of the Court on September 10, 1981 at the time the decision in these cases was rendered, five had since retired from

> the Court including the *penente,* Justice Barredo. Of those who remained, two, Justice Teehankee and Justice Aquino, did not take part. *Even when new members of the Court were appointed, the concurrence of the required number of votes to render a decision cannot be obtained since a number of the members of the Court including some of the new ones appointed opted not to take part.* Of the members of the Court who participated in the decision of September 10, 1981, only Justice, now Chief Justice Makasiar, and Justice Concepcion, Abad Santos (who later decided not to take part) and Herrera have remained with the Court. The members of the Court who were appointed after September 10, 1981 needed also some time to study these cases, the records of which are quite voluminous. *Makasiar, C.J., maintains his dissent to affirm the decision of the Court of Appeals (now Intermediate Appellate Court) en toto. Concepcion Jr. and Relova, JJ., are on leave."* (Pp. 13-14) (Italics supplied)

Resolution dated November 12, 1985 was superseded seven (7) days later by revised resolution of the Court *en banc* dated November 19, 1985. The part of the revised resolution explaining the long delay in the resolution of the motion for reconsideration filed by the *sacadas* on October 16, 1981 and enumerating the voting thereon reads:

> "Of the Justices who were members of the Court on September 10, 1981 at the time the decision in these cases was rendered, five had since retired from the Court including the *ponente,* Justice Barredo. Of those who remained, two, Justice Teehankee and Justice Aquino, did not take part. *Even when new members of the Court were appointed, the concurrence of the required number of votes to render a decision cannot be obtained since a number of the members of the Court including some of the new ones appointed opted not to take part.* Of the members of the Court who participated in the decision of September 10, 1981, only Justice now Chief Justice Makasiar, and Justices Concepcion, Abad Santos (who later decided not to take part) and Herrera have remained with the 1981 needed also some time to study these cases, the records of which are quiet voluminous. *(Makasiar, C.J., Herrera, Plana, Gutierrez, de la Fuente, Cuevas, Alampay and Patajo, JJ., concur in the result. Teehankee, Aquino, Abad Santos, and Escolin, JJ. took no part. Concepcion is absent, Relova, J. is on leave."* Pp. 13-14)

As pointed out earlier, the principal thrust and the real *ratio decidendi* of revised resolution of the Court *en banc* dated November 19, 1985 is that, with respect to the High Tribunal, Section 11, Article X of the Constitution is NOT MANDATORY but MERELY DIRECTORY.

Having ruled that Section 11, Article X of the Constitution is MERELY DIRECTORY, revised resolution of the Court *en banc* dated November 19, 1985 DENIED the motion for reconsideration filed by the *sacadas* on October 16, 1981 and RE-AFFIRMED the decision dated September 10, 1981 penned by Justice Barredo COMPLETELY ABSOLVING VICMICO, reputedly the biggest sugar central in the country, from the claim of the *sacadas* - - - now estimated at ₱500 MILLION. And, more devastating, the revised resolution, in effect, directed the *sacadas*, who have already been litigating for more than twenty-three (23) years, to INDIVIDUALLY GO BACK TO THE TRIAL COURT and to proceed AGAINST EACH AND EVERY ONE of the *hacienderos* for the satisfaction of their respective claims. Considering that the *hacienderos* are already either bankrupt, are dead or can no longer be located, ALL THE *SACADAS* WOULD

INDEED HAVE LONG BEEN DEAD BEFORE THEY COULD CLIMB THE "SECOND CALVARY" DEMANDED BY REVISED RESOLUTION OF THE COURT *EN BANC* DATED NOVEMBER 19, 1985.

Reading the revised resolution of the Court *en banc* dated November 19, 1985, one cannot help but recall the reprimand pronounced by the High Court on January 31, 1979[1] and reiterated on February 28, 1981[2]:

> "Technically, this case should be remanded to the respondent Commission for further proceedings.
>
> "(BUT) x x x
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> " x x x WE have previously ruled that on the basis of the pleadings before US, despite technical or procedural lapse in the hearing below, WE can decide a compensation claim and terminate the matter here and now. WE reasoned out that the law being in claimant's favor, human reasons aimed at promoting justice and the general welfare of the workingman, justify the rendition of a decision on the merits. The niceties and refinements of technical rules on procedure must give way to effect substantial justice to the claimant.
>
> x x x
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> "This posture of the hearing officer unabated by the respondent company is a foul blow to the social justice clause of the Constitution, and its injunction for the State to afford protection to labor. Indeed, WE have repeatedly reminded agencies of the government at all times to give meaning and substance to these constitutional guarantees in favor of the workingman; for otherwise these constitutional safeguards would be merely a lot of 'meaningless patter' "

More tragic for the 40,000 impoverished *sacada* families is the fact that in the *Victorias Case* the pertinent facts and figures are either undisputed, fully established on record and/or stipulated upon by the parties when, after the filing of the impeachment case, Justice Barredo valiantly attempted to effect a settlement of the case.

But what is of supreme significance about revised resolution of the Court *en banc* dated November 19, 1985 is not the massive injustice that it inflicted and would continue to inflict upon the 40,000 impoverished *sacada* families.

Revised resulution of the Court *en banc* dated November 19, 1985 HAS NO KNOWN *PONENTE.* Of the fourteen (14) Members of the High Court, ONLY eight (8) Members took part therein and lent their votes, (Eight votes were barely sufficient to comply with the mandatory requirement of Section 2(2), Article X of the Constitution). BUT EACH AND EVERY ONE OF THE EIGHT (8) MEMBERS CONCURRED ONLY "IN THE RESULT" WITHOUT GIVING ANY REASON FOR HIS VOTE! There is no *per curiam* opinion. NONE OF THE EIGHT (8) MEMBERS CONCURRED IN THE *RATIO DECIDENDI:* - - - i.e., THAT ARTICLE 11, SECTION X OF THE CONSTITUTION IS MERELY DIRECTORY! That this is so is also evident from the fact that Chief Justice Felix V. Makasiar and Associate Justice Hugo E. Gutierrez, Jr. were among the afore-mentioned eight (8) Members who took part and concurred ONLY "in the result". On September 10, 1981 then Associate Justice Makasiar had rejected completely the opinion and conclusion in the decision penned by Justice Barredo and had taken the position that "The Court of Appeals should be entirely affirmed". And, according to the resolution of the Court *en banc* dated November 12, 1985: "Makasiar, C.J., maintains his dissent to affirm the decision of the Court of Appeals (now Intermediate Appellate Court) *en toto.*" With respect to Justice

Gutierrez, according to the resolution of the Court *en banc* dated March 1, 1983, he voted to GRANT the motion for reconsideration filed on October 16, 1981 by the *sacadas:* He being in agreement with the (movants') position that the 18 months requirement in Section 11, Article X of the Constitution is of mandatory and imperative nature. He also made of record his concurrence with the view of Justice Pacifico de Castro in G.R. No. 51042 *Malacora et al. v. Court of Appeals* x x x." So, like Chief Justice Makasiar and Justice Gutierrez, the other six (6) Members of the Court did not also concur in the declaration therein: that, with respect to the Supreme Court, Section 11, Article X of the Constitution is MERELY DIRECTORY. IT IS INCONCEIVABLE THAT CHIEF JUSTICE MAKASIAR AND JUSTICE GUTIERREZ WOULD REVERSE THEIR WELL-CONSIDERED AND LONG HELD POSITION WITHOUT GIVING ANY REASON FOR SUCH REVERSAL!

Consequently, the *ponente* who authored and drafted the *ratio decidendi* revised resolution of the Court *en banc* dated November 19, 1985 STANDS ALONE and will forever remain ANONYMOUS. He will go down in the annals of Philippine Jurisprudence without a name. And herein lies the deeper significance of revised resolution of the Court *en banc* dated November 19, 1985.

IN FIRMLY DECLARING THAT, WITH RESPECT TO THE SUPREME COURT, SECTION 11, ARTICLE X OF THE CONSTITUTION IS NOT MANDATORY BUT MERELY DIRECTORY, THIS UNNAMED *PONENTE* DID, IN EFFECT, FALSIFY THE TRUE INTENT OF THE DELEGATES TO THE 1971 CONSTITUTIONAL CONVENTION AND OUR PEOPLE IN ADOPTING THE NEW CONSTITUTION[3].

HERE ARE THE FACTS ON RECORD FULLY KNOWN TO THE MEMBERS OF THE HIGH TRIBUNAL.

The records of the proceedings of the 1971 Constitutional Convention (which are available in the U.P. Law Center because several Delegates donated their collection to the Center) evidence beyond the shadow of doubt the manifest intent of the Delegates to make Section II, Article X of the manifest intent of the Delegates to make Section 11, Article X of the supreme law IMPERATIVE AND MANDATORY in character.

What is now Section 11, Article X of the Constitution was sponsored on the floor of the Convention by Delegate (now Governor) Sandiale Sambolawan of Cotabato. In the course of his sponsorship speech delivered on June 23, 1972, Delegate Sambolawan expressed the MANDATORY character of said Section and explained why it became a national imperative:

> "To further insure speedy justice, the courts are given *specific time* within which to perform their specific duties of rendering decisions.
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> "This is provided for in the afore-mentioned paragraph two (2) of section ten (10) of the Draft Article assigned to me for sponsorship which reads as follows and I quote 'the maximum period, from date of submission, within which to decide the case or matter submitted to it for decision or resolution, is eighteen months for the Supreme Court; twelve months for the Court of Appeals and the Administrative Courts; three months for the Courts of First Instance and Court of Special jurisdiction, including the Public Service Commission, thirty days for all other courts. The date when the decision or resolution is actually attached to the records of the case shall be considered the date of its rendition'.

"The afore-quoted portion of section 10, refers to the periods within which the different courts are, by constitutional mandate, compelled to render decisions.

"Substantial justice requires the speedy disposition of judicial disputes of whatever nature. The lapse of unreasonable period of time in making decisions or resolving cases or proceedings produces many pernicious results, among the most serious of which are as follows to wit:

"1) The undue curtailment of the liberties of persons accused of capital offenses or those accused of non-capital crimes, but are prevented by their low economic standing from posting the necessary bail bond for their provisional liberties. Oftentimes, because of the failure of the courts to decide earlier or within a reasonable time, these accused spend the most vigorous and productive years of their lives in confinement without proper and legal grounds. In these instances, vindication of innocence becomes illusory and sometimes even rendering absurd by the contingency of death during the period that the court fail to render a decision;

"2) The prolongation of a condition of illegality and the opportunity given to those who subvert the legal ordinances to resort to other clever manipulation to avoid the effect of adverse judgments or the practical invalidation of corrective or compensatory judgment by the subsequent insolvency of the losing party;

"3) The perpetuation of conditions of uncertainty and the great moral strain upon the parties; and

"4) The opening of avenues for corrupt maneuvers on the part of unscrupulous court personnel and their conspirators outside of court premises.

"Experience has shown that it is not sufficient to ordain that justice should be speedy. The adage 'Justice delayed is justice denied' is an articulation of a very serious and nagging problem that has long plagued the administration of justice in the country for a long period of time. Quite apart from the clogged dockets of the varous courts, it has been observed that in particular cases, courts indulge in foot-dragging for a variety of reasons, to the prejudice of one or more parties to cases." (Pp. 3-5, Sponsorship Speech; Col. of Del. Adolfo S. Azcuna, Committee on Administrative and Specialized Courts, Part. II) *(Italics Supplied).*

Originally, Section 11, Article X of the Constitution pertinently read: "The maximum period, from date of submission, within which *to* decide x x x." Upon motion of Delegate Pedro S. Castillo of Davao del Sur, the aforequoted portion was amended to read: "The maximum period, from date of submission, within which IT MUST (later on changed for reasons of style to SHALL) decide x x x" (Emphasis supplied). In explaining his proposed amendment on June 23, 1975, Delegate Castillo expressed the true intent of the Delegates:

"This amendment is proposed for the purpose of *clarification as well as* to *emphasize* the *true import* of this noteworthy provision. The *primordial purpose* of this provision x x x is *to set a limitation on the time* it takes for these different tribunals to render their respective decisions. The purpose can *only* be served *if* the *time limitations* provided under the said section are *to be strictly enforced and are mandatory in character.*

"This amendment seeks to avoid the possibility that the noble purpose of this provision will be defeated by a future judicial interpretation that such is merely directory and not otherwise, as intended by this assembly." (Col. of Del. Antonio R. Tupaz of Agusan del Norte, Committee on Administrative and Specialized Courts) *(Italics Supplied).*

The proceedings on the proposed amendments submitted by Delegate Ramon A. Gonzales of Iloilo on July 25, 1972, by Delegate Aquilino Pimentel, Jr. of Misamis Oriental on July 27, 1972 and by Delegate Jose F.S. Bengzon, Jr. of Pangasinan on August 7, 1972[4] all attest to the manifest intent of the Delegates that Section 11, Article X of the Constitution is of IMPERATIVE AND MANDATORY character.

After January 17, 1973, four prominent law professors and authors who served as Delegates to the 1971 Constitutional Convention explained the provisions of the Constitution in the books authored by them[5]. Drawing from the knowledge obtained by them as participants in the proceedings of the 1971 Constitutional Convention these Delegates attested to and affirmed the manifest intent of the framers and the people as to the IMPERATIVE AND MANDATORY character of Section 11, Article X of the Constitution. These were:

1. Dean Jose M. Aruego, Delegate from Pangasian[6]
2. Dean Jose Y. Feria, Delegate from Rizal[7]
3. Professor Jose N. Nolledo, Delegate from Palawan[8] and,
4. Professor Emmanuel T. Santos, Delegate from Nueva Ecija[9]

Prof. Emmanuel T. Santos was a member of the Committee on Administrative and Specialized Courts, chairmanned by Delegate Jose T. Suarez of Pampanga. This Committee, together with the Committee on Judicial Power, chairmanned by Delegate Dakila F. Castro of Bulacan, prepared the Joint Revised Report which became Article X of the Constitution (Collection of Delegate Adolfo S.Ascuna, Committee on Judicial Power, and, Administrative and Specialized Courts, Parts I and II, U.P. Law Center). Professor Santos was also a member of the 33-man Ad Hoc Committee On The Final Draft of the Constitution. He said:

> "The rule on the maximum period is mandatory on all other cases which do not fall under the two exceptions. Precisely, exceptions were intentionally made by the Constitutional Convention in order to convey the mandatory character of general rules on maximum period."

Of course, among the most prominent of the professors and authors on *Political Law* and *Constitutional Law* who affirmed the IMPERATIVE AND MANDATORY character of Section 11, Article X of the Constituion was Former Associate Justice of the Supreme Court and Dean of the College of Law of the University of the East Ruperto G. Martin[10].

When some sympathizers of Justice Barredo in the impeachment case attempted to cast doubt upon the IMPERATIVE AND MANDATORY character of Section 11, Article X of the Constitution they were immediately overwhelmed by a massive national consensus among the citizenry led by the nations legal luminaries, two of whom were Former Acting Chief Justice of the Supreme Court J.B.L. Reyes, then serving as the first National President of the Integrated Bar of the Philippines (IBP), and, Associate Justice of the Court of Appeals (now Intermediate Appellate Court) Vicente V. Mendoza. Justice Mendoza was the leading professor and authority on *Politcal Law* and *Constitutional Law* in the College of Law of the University of the Philippines. The March 14, 1982 issue of the *Weekend,* the Sunday magazine of the *Daily Express,* had an article by Dalisay

C.L. Mandap entitled "Another Look At the Problem Of Court Delays". Quoting Justice J.B.L. Reyes, the article stated (p. 20):

> Justice Reyes says that cases should be taken up in Court in the order of priority. When the justices cannot agree on a case, they were allowed more time to study it further. It is under such conditions that delays happen, Justice Reyes says. "The decision should therefore be given within a period of time", he says.
>
> He points to the Constitution as the source of determining the reasonable period within which a case should be decided. *As to the ongoing issue over the said provision (Section 11, Article X) being merely directory or mandatory, Justice Reyes says, "Of Course, it has to be mandatory; otherwise, how can we get rid of court congestion? " (Italics Supplied).*

And quoting Justice Vicente V. Mendoza, the article stated (p. 21):

> *Like Justice Reyes,* he (Justice Mendoza) thinks a big headway can be gained if the constitutional provision stating the period within which cases should be decided is followed. *He also subscribes to the belief that the provision is mandatory.* – "We only have to relate it to the individual's Constitutional right to a speedy disposition of his case to realize that it is binding on the courts," Justice Mendoza says. *"Besides, I don't think there is any other Constitution that addresses itself specifically to the problem of clogged dockets aside from providing for the right to a speedy disposition of cases besides our own Constitution." (Italics Supplied).*

Reflecting this overwhelming consensus among citizenry, the Interim Batasang Pambansa, led by Speaker Querube C. Makalintal, former Chief Jusitce of the Supreme Court, unanimously approved the Committee Report dated May 6, 1982 which the Committee on Justice, Human Rights andGovernment, Chairmanned by Justice Minister Ricardo C. Puno, Sr., submitted in connection with the impeachment case against Justice Barredo. Although the Batasan dismissed the impeachement complaint on the ground that Justice Barredo could still rectify the injustice by granting the motion for reconsideration, it affirmed the IMPERATIVE AND MANDATORY character of Section 11, Article X ofthe New Constitution. As approved by the Batasan, the Committee Report pertinently read:

> "There was no difficulty x x x in arriving at a consensus that compliance with the provisions of Section 11, Article X of the Constitution is *mndatory,* largely for the reason that the language of the provision is clear as to the meaning sought to be conveyed."

In support of its position the Batasan stated that –

> "a) There is no necessity to interpret the provision of Section 11, Article X, of the Constitution. The provision states that the Supreme Court must decide a case or matter submitted to the court for decision or resolution within 18 months computed from the time of submission of the case, the next paragraph 2 of the same section prescribed the effect of a failure of the Supreme Court to decide a case within the prescribed period i.e., the judgment, order or resolution appealed from shall be deemed affirmed except in those cases where a qualified majority is required and in appeals from judgments of convictions and, secondly, in original

special civil actions and proceedings for habeas corpus, the petition in such cases shall be deemed dismissed.

"b) The history of this particular provision of the Constitution discloses the obvious intent of the framers to fix a mandatory period for deciding cases, in order to avoid the regrettable incidents in the past where cases remained undecided for a long period of time, to the detriment of the party and/or parties whose lives, properties and/or individual rights are involved in pending litigation."[12]

Concluding, the Batasan stated that –

"there is a strong consensus x x x that as a matter of law, compliance with the period prescirbed in the Constitution for the rendetion of a judgment or resolution of the Supreme Court is mandatory x x x[13]

Among the legal luminaries who co-authored with Minister Puno the Committee Report affirming the IMPERATIVE AND MANDATORY character of Section 11, Article X of the Constitution were the following Assemblymen:

1. The Vice-Chairman of the Committee on Justice, Human Rights and Good Govcrnment, former Secretary (now Minister) of Justice and former Associate Justice of the Supreme Court Jose P. Bengzon,
2. 1971 Constitutional Convention Delegate and former Associate Jusitce of the Supreme Court Estanislao A. Fernandez,
3. Ambassador (later Foreign Minister) Arturo M. Tolentino,
4. Political Affairs Minister Leonardo B. Perez, and,
5. 1971 Constitutional Convention Delegate Hilario G. Davide, Jr.

Personifying the national political leadership, President Ferdinand E. Marcos assumed the lead in this national consensus. Speaking during that time at a KBL caucus in Malacañang Palace, President Marcos declared that: Section 11, Article X of the fundamental law is MANDATORY and must be followed.

Taking note of the overwhelming national consensus, led by no less than the President of the Philippines and the Batasang Pambansa, the Supreme Court on September 30, 1982, speaking through Associate Justice Pacifico P. de Castro, placed its *imprimatur* upon the IMPERATIVE AND MANDATORY chracter of Section 11, Article X of the Constitution.[14] Justice Castro explained the rationale of this provision of the fundamental law and at the same time demolished all the imagined obstacles to its immediate and full enforcement:

"Under the provision of Article X, Section 11 of the 1973 Constitution which provides for a period of eighteen (18) months within which an appealed case should be decided by this Court, the appealed decision may also be deemed affirmed, this case having been submitted for decision on October 8, 1980. I wish to go on record that I am personally for applying the aforesaid provision with due respect to my colleagues, who may have a different view.

"During my first days in January, 1979 in the Supreme Court, I had occasion to bring up, while the Court was in session en banc, the question of why the aforementioned provision has not been implemented despite the lapse of so long a period as more than six (6) years at the time, from the effectivity of the New Constitution. The answer given was that the constitutional provision referred to is merely directory, not mandatory, and furthermore, the court was not then in its full strength of fifteen (15) members.

"We have since May 14, 1982, been brought to the full membership of (15) justices, including the Chief Justice, as provided by the Constitution. *We have heard that both the President and the Batasan Pambansa have taken the view that the provision is mandatory. This is, too, the view of the Court of Appeals* which, while I was still there, had already started to draft internal rules for the implementation of the cited constitutional provision and had, some years ago, already approved said rules. Actual application of the said internal rules was, however, held in abeyance in deferrence to the Supreme Court which has not seemed as eager to avail of the benefits as envisioned by the provision.

"I have always felt very strongly, and more so now, for the reasons above stated, that the provision of Article X, Section 11 of the Constitution, is mandatory and should have been complied with immediately after the effectivity of the New Constitution. This has always been my position, basically, on the legal principle that all provisions of the Constitution which direct specific acts to be done, or prohibit certain acts to be done, should be construed as mandatory. To construe them as merely directory would be to thwart the intention of the Constitution which, its command being of the highest order should, under no circumstance, be permitted if they are the 'great ordinances' as Justice Holmes had called the provisions of the Constitution (*Springer vs. Government of the Philippine Island*, 27 U.S. 189, 216 [1928].

'The provision in question states:

'Section 11. (1) Upon the effectivity of this Constitution, the maximum period within which a case or matter shall be decided or resolved from the date of its submission, shall be eighteen (18) months for the Supreme Court, and unless reduced by the Supreme Court, twelve (12) months for all inferior collegiate courts, and three (3) months for all other inferior courts.

'(2) With respect to the Supreme Court and other collegiate appellate courts, when the applicable maximum period shall have lapsed without the rendition of the corresponding decision or resolution because the necessary vote cannot be had, the judgment, order, or resolution appealed from shall be deemed affirmed except in those cases where a qualified majority is required and in appeals from judgment of conviction in criminal cases; and in original special civil actions and proceedings for habeas corpus, the petition in such cases shall be deemed dismissed; and a certification to this effect signed by the chief magistrate of the court shall be issued and a copy thereof attached to the record of the case'.'

"From the plain language of the provision, the Constitution could not have intended anything but full and immediate compliance therewith. The manifest purpose of the provision is to avoid delay in the disposition of cases, which always is a cause of injustice, under the familiar aphorism that 'justice delayed is justice denied.' It would, at the same time, ease up the clogged dockets of the courts, which had long presented a problem that defies solution, despite the striving of this Court in constant quest of one.

"To begin with, it is, to me, not correct to say that it is impossible to comply with the provision of Section 11, Article X of the Constitution. There is nothing hard to just follow its simple mandate of considering an appealed decision affirmed if no decision is rendered before the lapse of time limit set therefor. What may be impossible is for the Supreme Court, for example, to decide a case on the merit within the eighteen (18) months given to it from its submission for decision, because so many other appealed cases had already accumulated and will increasing-

ly do so, as long as we do not apply the clear mandate of the Constitution. It is precisely with full cognizance of this fact – the impossibility of avoiding delays in dispoing of appealed cases on the merits – that prompted the adoption of this special remedy by no less than the Constitution because similar time limitations as provided by mere statutes, without an alternative prescription of what would be the effect of failure to meet the deadline, had been held merely directory. To hold the Constitutional provision as also merely directory would render it nugatory, because the unmistakable and clear intent of the framers would be put to naught. The automatic affirmance of the appealed provision in case of failure to decide or resolve within the time limit is precisely the alternative prescription, believed to better serve the cause of justice than waiting, no matter how long, for a decision on the merit.

"This may be illustrated with a case in which a money award is made in favor of the plaintiff. By applying the Constitution, the appealed decision is deemed affirmed if no decision is rendered within the applicable maximum period allowed. Without the constitutional provision, it may take many years more from the lapse of that period before decision is actually rendered on the merits. If statistics showing that 95% more or less, of the appealed cases to this Court are affirmed, if decision on the merits is rendered. The injustice caused by the delay becomes instantly patent when it is considered that if the award is paid earlier, the money would have a greater purchasing value than when it is paid years later. This is due to inflation which had long since gripped the whole world so tightly and unrelentingly as the Constitutional Convention was obviously aware of, for which it saw the need of inserting the unique and novel provision in the new Constitution, as a much needed extraordinary remedy.

"Under Section 2 of Article X of the Constitution, eight (8) votes are required for a decision of the Court en banc, five (5) votes, for a decision of a Division, if the necessary vote is not obtained, the petition is dismissed, and the appealed decision, order or resolution is then deemed affirmed. This is what happens when this Court acts on the case within the period fixed in Section 11 of Article X of the Constitution, but fails to obtain the necessary vote. From this observation, it becomes apparent that to hold the provision of Section 11 of Article X of the Constitution as only directory would make said provision serve no purpose at all, because notwithstanding the lapse of the applicable maximum period without a decision or resolution having been rendered, the case may nevertheless still be decided on the merit, as if the provision did not exist.

"It seems to me crystal clear that the Constitution intends that aside from the way an appealed decision, order or resolution is deemed affirmed because of lack of necessary vote under Section 2 of Article X, the same effect is contemplated by reason of the lapse of the period fixed without the case being decided on the merits. If however, the maximum periods fixed in Section 11, which is the real core of said provision, its heart and soul, as it were, may be disregarded, because the provision is merely directory, We would be attributing to the framers of the Constitution, with all their vision and wisdom, an act of colossal absurdity. They have inserted a new provision which would have no different effect than what is already covered by Section 2 of the same Article, thus rendering Section 11 a complete surplusage. Only by holding that Section 11 is of mandatory character would such an absurdity be avoided, as both Section 2 and Section 11 would each be given distinct identity achieving a common objective but through two different and separate ways: (1) the necessary vote could not be had, under Section 2, and (2)

the period fixed had lapsed, under Section 11.

"It is elementary that all parts of a statute, and this should be more so of the Constitution, should be given effect and made to serve its own distinct purpose, as no useless provision or one without any purpose at all could have been intended to be made part of, or incorporated in, the law. This is actually what had happened with Section 11 of Article X of the Constitution on its being considered as merely directory, not mandatory. There has been applied despite that it has been in the Constitution for more than nine (9) years now. This is unheard of with reference to no less than a constitutional mandate.

"Examining how the provision works with the Court of First Instance, a one-man court, not a colleagite court, may help in reaching the correct construction of the provision in question. If the Court of First Instance fails to decide the case within the 3-month period given it, what happens? If the case is an ordinary civil action, there is no provision that after the lapse of the 3-month period this case would be dismissed. What the provision of Section 11, paragraph 2, makes specific mention that after the lapse of the 3-month period this case would be dismissed. What the provision of Section 11, paragraph 2, makes specific mention of are only (1) appealed cases and (2) original special civil actions. In a one-man court, the condition, 'because the necessary vote could not be had' has no application. If the period has lapsed without the decision or resolution being rendered, that is all that is required for the appealed decision to be deemed affirmed, or the original special civil action, dismissed, if the provision in question is to be given meaning and purpose.

"What the above observation proves is that all that paragraphs 2 of Section 11 requires for the appealed decision to be deemed affirmed and original special civil actions, dismissed, is that the applicable maximum period has lapsed without the decision of the merits being rendered, because of failure to act on the case and put it to a vote, not that it was put to a vote, but 'the necessary vote could not be had.' This phrase would thus appear to be either a mere surplusage or as merely descriptive of how a decision is reached in the Supreme Court, where alone that phrase has application. It cannot apply to the Court of Appeals, because there the necessary votes can always be had for a decision to be reached, just like in the one-man Court of First Instance, as long as the Court acts. What the Constitution has in mind, therefore, is 'inaction' on the part of the court during the applicable period, as the reason or cause for the failure to render a decision or resolution within the applicable period, not that 'the necessary vote cannot be had.'

"If the arguments thus far presented is not enough to support the view that the provision in question is mandatory, not merely directory. We need not go outside of the text of the provision to look for perhaps the argument that will end all arguments. The express mention by Section 11 itself of exceptions to the automatic affimance of appealed decisions, orders or resolutions when not reversed or modified within the prescribed period, namely (1) cases where a qualified majority is required and (2) appeals from judgment of conviction in criminal cases, which even after the lapse of the fixed period may still be decided on the merits, clearly, means under the maxim 'expressio unius est exclusio alterius," that aside from the exceptions expressly mentioned, all other cases may no longer be decided on the merits after the lapse of the applicable maximum period. The appealed decision, order and resolution would be deemed affirmed, and shall then be so certified by the chief magistrate of the court, as provided in the last part of paragraph 2 of Section 11. Said provision would be rendered also useless by holding Section 11

merely directory because the occasion for the certification will never arise. It will thus be seen that the exceptions expressly mentioned in the provision and the certification required thereby as just pointed out, argue most eloquently and convincingly in favor of the mandatory character of Section 11of Article X of the New Constitutuion.

"It may have to be stressed that in any case where, by operaation of the constitutional provision, the appealed decision, again for example, of the Court of Appeals, is deemed affirmed by the Supreme Court, because the latter has not been able to decide the appeal on the merits within the prescribed period, no member of the Court is meant to be singled out for any culpability or dereliction of duty. Neither is any adverse reflection meant to be made against the Court as a whole, because there is in the Constitution an implicit recognition of the probability of many appealed cases not being decided or resolved within the period as short as that prescribed, not because of culpable neglect, inefficiency or incompetence of any member of the Court or of the Court itself as a body, but because of sheer physical impossibility. A contrary view which to me is completely unfounded, seems to be what has created a very strong influence towards holding the provision as merely directory, to avoid incurring in some form of guilt or culpability for not deciding an appealed case within the time limit set.

"Another deterrent, as has been perceived during our deliberation, to holding the provision in question as mandatory, is the fear that all our decisions already rendered reversing or modifying the appealed decisions after the lapse of the period prescribed, would be questioned even at this late hour. I do not share in this fear because to me, what the provision does is to give a party the right to invoke its mandate and enjoy its beneficial effects. As all rights go, the particular right to demand for the certification of the Chief Magistrate that the appealed decision is deemed affirmed by the lapse of the specified period without a decision on the merits having been rendered, is waivable, and is deemed waived if not invoked within a reasonable time from notice of the questioned decision. At least, the Supreme Court can come up with this ruling, should a case be brought up to raise the question as above intimated, a ruling, I believe, would be impressed with absolute rationality and soundness.

"In any event, what should engage the Court's attention is to work out a procedure that would avoid, as much as possible, having to apply the automatic affirmance as provided in the Constitution. I am convinced of the possibility of the adoption of such a workable procedure.

"The Constitution provides that the conclusion of the Court shall be reached in consultation before the case is assigned to a member for the writing of the opinion of the Court (Section 8, Article X). Setting a case for that required consultation can reasonably be done within just months from its submission for decision, long before the lapse of the applicable period. This same case had already been discussed among the members and dismissing it or giving due course to it is not so difficult a matter to determine. Either of these actions is usually taken in the session when the agenda in which the new petition is placed is discussed just one day or so after the new cases are assigned to the members for report and recommendation as to what action to take. There should perhaps be less difficulty in reaching the final conclusion when, after a long period of study, and with the aid of briefs and/or memoranda, the Court next sits in consultation to reach its decision. It is seldom that the taking of the vote of each member on the issue to be resolved has not been held forthwith, following the consultation or exchange of view. After

the voting, the case is actually decided on the merits, or the appealed decision, order or resolution is deemed affirmed by operation of the Constitution, depending on the result of the voting.

"If this procedure is adopted, no unnecessary delay need be incurred in. What really takes some time is the writing of the decision by the ponente who is chosen after a final conclusion is reached, because most often if not always, he has many other opinions to write. But if by appropriate Resolution, which may be just a Minute Resolution, it would be made of record that in that session when the voting was held after the required consultation, the Court had reached its conclusion the case has, in fact, been already decided, at least for the purpose of compliance with the Constitution. The decision complete with the opinion as written by the ponente chosen for the purpose may be actually released later, as indeed, there have been instances when decisions were promulgated without prejudice to the writing of the extended opinion.

"It is believed that under the procedure as roughly described above, but with the finer details to be laid down, the disposition of any case in this Court can take place well within the period fixed by the Constitution, specially if greater strictness is observed in giving due course to every petition filed with this Court, which at times tends to be quite liberal in this regard.

"As to the original special civil actions including habeas corpus, my recollection fails me as to whether any such kind of action has not been disposed of on the merits within the applicable period. In any event, all that the Constitution mandates with respect to original special civil actions is that the petitions in such cases shall be deemed dismissed if the necessary vote cannot be had within the period fixed, which as previously explained, is actually another way of saying that no decision has been rendered. And to repeat, no culpability is intended to attach to anyone of the Court for the happening of this eventuality.

"I really see no impossibility in complying with what the Constitution intends to be an urgently needed remedy to avoid injustice, as earlier stated, under the well-known dictum that 'justice delayed is justice denied', at the same time helping solve the vexing problem of clogged dockets. Why, indeed, can We not just consider the appealed decision as affirmed, as the Constitution so unequivocally ordains, if, by reason of physical impossibility, which would free the Court or any of its members from any fear of guilt or culpability, a decision of the appeal on the merits within the period considered by the Constitution long enough for an appealed case to remain unresolved may not be rendred? Is it because a decision is the correct decision only when We, ourselves, render that decision on the merits when the case is brought to Us on appeal? Who knows but that had there been a court higher than the Supreme Court, the latter's decision may also be reversed or altered? Many a time a judgment of a Court of First Instance was reversed by the Court of Appeals, but when an appeal was taken to the Supreme Court, the decision of the Court of Appeals was reversed and that of the lower court sustained."

Thus, when he drafted and prepared the *ratio decidendi* for the revised resolution of the Court *en banc* dated November 19, 1985 the UNNAMED PONENTE knew (and still knows) fully well that THERE HAS NEVER BEEN ANY DOUBT AT ALL about the manifest intent of the Delegates to the 1971 Constitutional Convention and our people to make Section 11, Article X of the Constitution IMPERATIVE AND MANDATORY in character.

But, apparently devoid of any scruples, the UNNAMED PONENTE has foisted upon the people fake and spurious doubts about the IMPERATIVE AND MANDATORY character of Section 11, Article X of the fundamental law for the revised resolution of the Court *en banc* pertinently states:

> "*To put at rest any doubt* regarding the provision of Section 11 of Article X of the Constitution providing for a maximum period within which a case shall be decided or resolved is mandatory or directory - - - *WE find and so hold that the said provision is merely directory.*" (P. 10) *(Italics Supplied).*

What makes the act culpable is that not only has there never been any doubt at all about the IMPERATIVE AND MANDATORY character of Section 11, Article X of the Constitution with respect to the Supreme Court, but as early as January 22, 1980, the High Court had already ruled that in labor cases (like the *Victorias Case)* all doubts, if any, on the mandatory character of Section 11, Article X of the Constitution with respect to the Supreme Court, should be resolved in favor of labor and the favorable decision appealed from should be declared as deemed affirmed[15] Said the Court:

> "In this connection, We consider it to be within the spirit of Section 11 (2) of Article X of the Constitution of the Philippines that should there be any uncertainty in the mind of the court for more than eighteen months after an appeal is submitted thereof, the decision of the trial court should be affirmed, without even the need of reasoning out such affirmance, as an exception to the general requirement of Section 9 of the same Article that every decision of a court of record should state the facts and the law on which it is based."

Yet, in the *Victorias Case,* the UNNAMED PONENTE, acting in utter disregard of the High Court's afore-quoted ruling in *Proceso Flora vs. Meliton Pajarillaga, supra,* would "put to rest any doubt" in favor of the immensely wealthy VICMICO and against the 40,000 impoverished *"sacada"* families.

The UNNAMED PONENTE of revised resolution of the Court *en banc* dated November 19, 1985 should have refrained from resolving the issue of whether, with respect to the Supreme Court, Section 11, Article X of the Constitution is mandatory or merely directory. For as was said in the impeachment case against Justice Barredo:

> "The afore-quoted constitutional mandate (Section 11, Article X) was intended to control and govern the proceedings of the Supreme Court. For this reason, the Supreme Court has been denied the jurisdiction to decide whether the afore-quoted constitutional provision is mandatory or merely directory. And, precisely, for this very reason, the text thereof was made clear and unequivocal thereby obviating the need for its construction and/or interpretation. To concede that the Supreme Court has jurisdiction to resolve the afore-mentioned issue would vest in the Court the discretion to disregard and nullify the purpose and intendment of the framers thereof." (P. 6, Memorandum For the Complainant dated February 14, 1982)

In deliberately falsifying the manifest intent of both the framers and the people on the imperative and mandatory character of Section 11, Article X of the Constitution, the UNNAMED PONENTE betrayed the High Tribunal because it was only last January 27, 1981 when the Court solemnly declared that:

> "WE need not exaggerate the importance of being absolutely free from any suspicion which may unnecessarily erode the faith and confidence of the people in their government. As the Constitution categorically declared: 'Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people.' (Art. XIII, Sec. 1, Constitution)"[16]

Actually, the so-called issue of the mandatory or directory character of Section 11, Article X of the Constitution is a *bogus* issue cleverly contrived in the *Victorias Case* in a vain attempt to invest with the appearance of legality the patently unconstitutional and unjust tampering of the final and unalterable decision dated August 12, 1975 of the Court of Appeals.

In resolving this "bogus" issue and in firmly declaring, in effect, that the Delegates to the 1971 Constitutional Convention and our people in adopting the Constitution had intended Section 11, Article X thereof to be MERELY DIRECTORY and NOT MANDATORY, the UNAMED *PONENTE* acted with RAW AND BRUTAL POWER.

This is neither "Judicial independence"[17] nor "judicial supremacy"[18].

THIS IS JUDICIAL TYRANNY, PLAIN AND SIMPLE!

This deliberate act by the UNNAMED PONENTE of falsifying the manifest intent of the framers and the people in adopting Section 11, Article X of the Constitution was perpetrated in the *Victorias Case*. Whether by design of Divine Providence or by mere accident of History, I do not know. But this deliberate act has vast implications which go beyond the interest of the 40,000 impoverished *sacada* families. These implications are ominous for the rule of law in this country, and, consequently, for the freedom and liberty of our people. So the public must know.

May I close by saying that I have no wish whatsoever to harm in any way the Judiciary. My most beloved father, for whom I have chosen law as a life career, spent his entire professional life (except for the first three years) in the Judiciary. He died while serving in the Judiciary. To his dying day, he deeply revered the Judiciary. So do I.

Thank you.

FOOTNOTES:

[1] Consolacion Bautista v. Workmen's Compensation Commission, 88 SCRA 121, 128.

[2] Arcadio Capinpin v. Workmen's Compensation Commission, 103 SCRA 270, 277-278.

[3] J.M. Tuason and Co. Inc. v. The Land Tenure Administration, February 18, 1970, 31 SCRA 413, 422. Benigno S. Aquino v. Commission on Elections, 62 SCRA 275, 318-319.

[4] Collection of Delegate Adolfo S. Azcuna, Committees on Judicial Power and Administrative and Specialized Courts, Part I and II; Collection of Delegate Godofredo P. Ramos, Committee on Judicial Power, Part I; Collection of Delegate Antonio R. Tupaz, Committee on Administrative and Specialized Courts, Part I.

[5] Ramon V. Mitra v. Commission on Elections, April 4, 1981, 104 SCRA 59.

[6] The New Philippine Constitution Explained, 1981 Revised Edition, p. 197.

[7] His article on "The Judiciary" contained in the New Constitution edited by Professor Cirilo Roy Montejo, Delegate from Leyte.

[8] The New Constitutions of the Philippines Annotated, pp. 306-307.

[9] The Constitution of the Philippines, Notes and Comments, pp. 228-229.

[10] The New Constitution of the Philippines, with Notes and Comments, First Edition, p. 491.

[11] Committee Report, pp. 7-9, 13.

[12] Ibid, pp. 13 and 14.

[13] Ibid, p. 19

[14] Dionisio Malacora v. Court of Appeals, 117 SCRA 435, 441-449.

[15] Proceso Flora v. Meliton Pajarillaga, 95 SCRA 100, 105.

[16] Article XIII, Section 1, Constitution.

[17] Ramon A. Gonzales v. Juan Ponce Enrile, May 24, 1967, 20 SCRA, 192, 194-185

[18] Jose A. Angara v. Electoral Commission, July 15, 1936, 63 Phil. 139, 158.

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