

EN BANC

[G.R. No. 203974, April 22, 2014]

AURELIO M. UMALI, PETITIONER, VS. COMMISSION ON ELECTIONS, JULIUS CESAR V. VERGARA, AND THE CITY GOVERNMENT OF CABANATUAN, RESPONDENTS.

[G.R. NO. 204371]

J.V. BAUTISTA, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

DECISION

VELASCO JR., J.:

Before the Court is the consolidated case for Petition for Certiorari and Prohibition with prayer for injunctive relief, docket as G.R. No. 203974, assailing Minute Resolution No. 12-0797^[1] and Minute Resolution No. 12-0925^[2] dated September 11, 2012 and October 16, 2012, respectively, both promulgated by public respondent Commission on Elections (COMELEC), and Petition for Mandamus, docketed G.R. No. 204371, seeking to compel public respondent to implement the same.

The Facts

On July 11, 2011, the *Sangguniang Panglungsod* of Cabanatuan City passed Resolution No. 183-2011, requesting the President to declare the conversion of Cabanatuan City from a component city of the province of Nueva Ecija into a highly urbanized city (HUC). Acceding to the request, the President issued Presidential Proclamation No. 418, Series of 2012, proclaiming the City of Cabanatuan as an HUC subject to "ratification in a plebiscite by the qualified voters therein, as provided for in Section 453 of the Local Government Code of 1991."

Respondent COMELEC, acting on the proclamation, issued the assailed Minute Resolution No. 12-0797 which reads:

WHEREFORE, the Commission RESOLVED, as it hereby RESOLVES, that for purposes of the plebiscite for the conversion of Cabanatuan City from component city to highly-urbanized city, only those registered residents of Cabanatuan City should participate in the said plebiscite.

The COMELEC based this resolution on Sec. 453 of the Local Government Code of 1991 (LGC), citing conversion cases involving Puerto Princesa City in Palawan, Tacloban City in Southern Leyte, and Lapu-Lapu City in Cebu, where only the residents of the city proposed to be converted were allowed to vote in the

corresponding plebiscite.

In due time, petitioner Aurelio M. Umali, Governor of Nueva Ecija, filed a Verified Motion for Reconsideration, maintaining that the proposed conversion in question will necessarily and directly affect the mother province of Nueva Ecija. His main argument is that Section 453 of the LGC should be interpreted in conjunction with Sec. 10, Art. X of the Constitution. He argues that while the conversion in question does not involve the creation of a new or the dissolution of an existing city, the spirit of the Constitutional provision calls for the people of the local government unit (LGU) directly affected to vote in a plebiscite whenever there is a material change in their rights and responsibilities. The phrase "qualified voters therein" used in Sec. 453 of the LGC should then be interpreted to refer to the qualified voters of the units directly affected by the conversion and not just those in the component city proposed to be upgraded. Petitioner Umali justified his position by enumerating the various adverse effects of the Cabanatuan City's conversion and how it will cause material change not only in the political and economic rights of the city and its residents but also of the province as a whole.

To the Verified Motion for Reconsideration, private respondent Julius Cesar Vergara, city mayor of Cabanatuan, interposed an opposition on the ground that Sec. 10, Art. X does not apply to conversions, which is the meat of the matter. He likewise argues that a specific provision of the LGC, Sec. 453, as couched, allows only the qualified voters of Cabanatuan City to vote in the plebiscite. Lastly, private respondent pointed out that when Santiago City was converted in 1994 from a municipality to an independent component city pursuant to Republic Act No. (RA) 7720, the plebiscite held was limited to the registered voters of the then municipality of Santiago.

Following a hearing conducted on October 4, 2012,^[3] the COMELEC *En Banc* on October 16, 2012, in E.M No. 12-045 (PLEB), by a vote of 5-2^[4] ruled in favor of respondent Vergara through the assailed Minute Resolution 12-0925. The dispositive portion reads:

The Commission, taking into consideration the arguments of counsels including the Reply-memorandum of Oppositor, after due deliberation, RESOLVED, as it hereby RESOLVES, as follows:

- 1) To DENY the Motion for Reconsideration of oppositor Governor Aurelio M. Umali; and
- 2) To SCHEDULE the conduct of Plebiscite for the conversion of Cabanatuan City from component city into highly-urbanized city with registered residents only of Cabanatuan City to participate in said plebiscite.

Let the Deputy Executive Director for Operations implement this resolution.

SO ORDERED.

Hence, the Petition for Certiorari with prayer for injunctive relief, docketed as G.R. No. 203974, on substantially the same arguments earlier taken by petitioner Umali before the poll body. On the other hand, public respondent COMELEC, through the Office of the Solicitor General, maintained in its Comment that Cabanatuan City is merely being converted from a component city into an HUC and that the political unit directly affected by the conversion will only be the city itself. It argues that in this instance, no political unit will be created, merged with another, or will be removed from another LGU, and that no boundaries will be altered. The conversion would merely reinforce the powers and prerogatives already being exercised by the city, with the political unit's probable elevation to that of an HUC as demanded by its compliance with the criteria established under the LGC. Thus, the participation of the voters of the entire province in the plebiscite will not be necessary.

Private respondent will later manifest that it is adopting the Comment of the COMELEC.

Meanwhile, on October 25, 2012, respondent COMELEC promulgated Resolution No. 9543, which adopted a calendar of activities and periods of prohibited acts in connection with the conversion of Cabanatuan City into an HUC. The Resolution set the conduct of the plebiscite on December 1, 2012. Thereafter, a certain Dr. Rodolfo B. Punzalan filed a Petition for Declaratory Relief which was raffled to the Regional Trial Court (RTC), Branch 40 in Palayan City. In the said case, Punzalan prayed that Minute Resolution No. 12-0797 be declared unconstitutional, that the trial court decree that all qualified voters of the province of Nueva Ecija be included in the plebiscite, and that a Temporary Restraining Order (TRO) be issued enjoining public respondent from implementing the questioned resolution. On October 19, 2012, the RTC granted the prayer for a TRO.

On November 6, 2012, public respondent through Minute Resolution No. 12-0989 suspended the preparations for the event in view of the TRO issued by the RTC. On November 27, 2012, the plebiscite was once again rescheduled to give way to the May 13, 2013 national, local and ARMM regional elections as per Resolution No. 9563.

After this development, petitioner J.V. Bautista, on December 3, 2012, filed a case before this Court for Mandamus, docketed as G.R. No. 204371, praying that public respondent be ordered to schedule the plebiscite either on December 15 or 22, 2012. Petitioner Bautista argued that since the TRO issued by the RTC has already expired, the duty of the public respondent to hold the plebiscite has become mandatory and ministerial. Petitioner Bautista also alleged that the delay in holding the plebiscite is inexcusable given the requirement that it should be held within a period of 120 days from the date of the President's declaration.

In its Comment to the Bautista petition, public respondent justified its position by arguing that mandamus will not issue to enforce a right which is in substantial dispute. With all the legal conflicts surrounding the case, it cannot be said that there is a clear showing of petitioner Bautista's entitlement to the relief sought. Respondent COMELEC likewise relied on Sec. 5 of the Omnibus Election Code to justify the postponements, citing incidents of violence that ensued in the locality during the plebiscite period.

After the conclusion of the 2013 elections, public respondent issued Resolution No. 1353 scheduling the plebiscite to January 25, 2014. However, a TRO was issued by this Court on January 15, 2014 in G.R. No. 203974 to suspend the conduct of the plebiscite for Cabanatuan City's conversion. Given the intertwining factual milieu of the two petitions before the Court, both cases were consolidated on March 18, 2014.

The Issue

The bone of contention in the present controversy boils down to whether the qualified registered voters of the entire province of Nueva Ecija or only those in Cabanatuan City can participate in the plebiscite called for the conversion of Cabanatuan City from a component city into an HUC. Resolving the Petition for Certiorari either way will necessarily render the Petition for Mandamus moot and academic for ultimately, the public respondent will be ordered to hold the plebiscite. The only variation will be as regards its participants.

The Court's Ruling

The Petition for Certiorari is meritorious.

Sec. 453 of the LGC should be interpreted in accordance with Sec. 10, Art. X of the Constitution

Petitioner Umali asseverates that Sec. 10, Art. X of the Constitution should be the basis for determining the qualified voters who will participate in the plebiscite to resolve the issue. Sec. 10, Art. X reads:

Section 10, Article X. – No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and **subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.** (emphasis supplied)

Petitioner Umali elucidates that the phrase "political units directly affected" necessarily encompasses not only Cabanatuan City but the entire province of Nueva Ecija. Hence, all the registered voters in the province are qualified to cast their votes in resolving the proposed conversion of Cabanatuan City.

On the other hand, respondents invoke Sec. 453 of the LGC to support their claim that only the City of Cabanatuan should be allowed to take part in the voting. Sec. 453 states:

Section 453. Duty to Declare Highly Urbanized Status. – It shall be the duty of the President to declare a city as highly urbanized within thirty (30) days after it shall have met the minimum requirements prescribed in the immediately preceding Section, upon proper application therefor and ratification **in a plebiscite by the qualified voters therein.** (emphasis supplied)

Respondents take the phrase “registered voters therein” in Sec. 453 as referring only to the registered voters in the city being converted, excluding in the process the voters in the remaining towns and cities of Nueva Ecija.

Before proceeding to unravel the seeming conflict between the two provisions, it is but proper that we ascertain first the relationship between Sec. 10, Art. X of the Constitution and Sec. 453 of the LGC.

First of all, we have to restate the general principle that legislative power cannot be delegated. Nonetheless, the general rule barring delegation is subject to certain exceptions allowed in the Constitution, namely:

(1) Delegation by Congress to the President of the power to fix “tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government” under Section 28(2) of Article VI of the Constitution; and

(2) Delegation of emergency powers by Congress to the President “to exercise powers necessary and proper to carry out a declared national policy” in times of war and other national emergency under Section 23(2) of Article VI of the Constitution.

The power to create, divide, merge, abolish or substantially alter boundaries of provinces, cities, municipalities or *barangays*, which is pertinent in the case at bar, is essentially legislative in nature.^[5] The framers of the Constitution have, however, allowed for the delegation of such power in Sec. 10, Art. X of the Constitution as long as (1) the criteria prescribed in the LGC is met and (2) the creation, division, merger, abolition or the substantial alteration of the boundaries is subject to the approval by a majority vote in a plebiscite.

True enough, Congress delegated such power to the *Sangguniang Panlalawigan* or *Sangguniang Panlungsod* to create *barangays* pursuant to Sec. 6 of the LGC, which provides:

Section 6. **Authority to Create Local Government Units.** - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the **sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction**, subject to such limitations and requirements prescribed in this Code.” (emphasis supplied)

The guidelines for the exercise of this authority have sufficiently been outlined by the various LGC provisions detailing the requirements for the creation of *barangays*^[6], municipalities^[7], cities^[8], and provinces^[9]. Moreover, compliance with the plebiscite requirement under the Constitution has also been directed by the LGC under its Sec. 10, which reads: