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EN BANC

[G.R. No. 176951, February 15, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON, RESPONDENTS.

[G.R. NO. 177499]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; AND MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL, RESPONDENTS.

[G.R. NO. 178056]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; MUNICIPALITY OF EL SALVADOR, PROVINCE OF MISAMIS ORIENTAL; MUNICIPALITY OF NAGA, CEBU; AND DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

R E S O L U T I O N

BERSAMIN, J.:

For consideration of this Court are the following pleadings:

1. Motion for Reconsideration of the "Resolution" dated August 24, 2010 dated and filed on September 14, 2010 by respondents Municipality of Baybay, et al.; and
2. Opposition [To the "Motion for Reconsideration of the `Resolution' dated August 24, 2010"].

Meanwhile, respondents also filed on September 20, 2010 a Motion to Set "Motion for Reconsideration of the `Resolution' dated August 24, 2010" for Hearing. This motion was, however, already denied by the Court *En Banc.*

A brief background --

These cases were initiated by the consolidated petitions for prohibition filed by the League of Cities of the Philippines (LCP), City of Iloilo, City of Calbayog, and Jerry P. Treñas, assailing the constitutionality of the sixteen (16) laws,[1] each converting the municipality covered thereby into a component city (Cityhood Laws), and seeking to enjoin the Commission on Elections (COMELEC) from conducting plebiscites pursuant to the subject laws.

In the Decision dated November 18, 2008, the Court *En Banc*, by a 6-5 vote,[2] granted the petitions and struck down the Cityhood Laws as unconstitutional for violating Sections 10 and 6, Article X, and the equal protection clause.

In the Resolution dated March 31, 2009, the Court *En Banc*, by a 7-5 vote,[3] denied the first motion for reconsideration.

On April 28, 2009, the Court *En Banc* issued a Resolution, with a vote of 6-6,[4] which denied the second motion for reconsideration for being a prohibited pleading.

In its June 2, 2009 Resolution, the Court *En Banc* clarified its April 28, 2009 Resolution in this wise--

> As a rule, a second motion for reconsideration is a prohibited pleading pursuant to Section 2, Rule 52 of the Rules of Civil Procedure which provides that: "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Thus, a decision becomes final and executory after 15 days from receipt of the denial of the first motion for reconsideration.
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> However, when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading.
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> In the present case, the Court voted on the second motion for reconsideration filed by respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus, the second motion

> for reconsideration was no longer a prohibited pleading. However, for lack of the required number of votes to overturn the 18 November 2008 Decision and 31 March 2009 Resolution, the Court denied the second motion for reconsideration in its 28 April 2009 Resolution.[5]

Then, in another Decision dated December 21, 2009, the Court *En Banc*, by a vote of 6-4,[6] declared the Cityhood Laws as constitutional.

On August 24, 2010, the Court *En Banc*, through a Resolution, by a vote of 7-6,[7] resolved the *Ad Cautelam* Motion for Reconsideration and Motion to Annul the Decision of December 21, 2009, both filed by petitioners, and the *Ad Cautelam* Motion for Reconsideration filed by petitioners-in-intervention Batangas City, Santiago City, Legazpi City, Iriga City, Cadiz City, and Oroquieta City, reinstating the November 18, 2008 Decision. Hence, the aforementioned pleadings.

Considering these circumstances where the Court *En Banc* has twice changed its position on the constitutionality of the 16 Cityhood Laws, and especially taking note of the novelty of the issues involved in these cases, the Motion for Reconsideration of the "Resolution" dated August 24, 2010 deserves favorable action by this Court on the basis of the following cogent points:

1.

The 16 Cityhood Bills do not violate Article X, Section 10 of the Constitution.

Article X, Section 10 provides--

> Section 10. 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.

The tenor of the *ponencias* of the November 18, 2008 Decision and the August 24, 2010 Resolution is that the exemption clauses in the 16 Cityhood Laws are unconstitutional because they are not written in the Local Government Code of 1991 (LGC), particularly Section 450 thereof, as amended by Republic Act (R.A.) No. 9009, which took effect on June 30, 2001, *viz.*--

> Section 450. *Requisites for Creation.* -a) A municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated annual income, as certified by the Department of Finance, of at least **One Hundred Million Pesos (P100,000,000.00) for at least two (2) consecutive years** based on 2000 constant prices, and if it has either of the following requisites:
>
> x x x x

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income. (Emphasis supplied)

Prior to the amendment, Section 450 of the LGC required only an average annual income, as certified by the Department of Finance, of at least P20,000,000.00 for the last two (2) consecutive years, based on 1991 constant prices.

Before Senate Bill No. 2157, now R.A. No. 9009, was introduced by Senator Aquilino Pimentel, there were 57 bills filed for conversion of 57 municipalities into component cities. During the 11th Congress (June 1998-June 2001), 33 of these bills were enacted into law, while 24 remained as pending bills. Among these 24 were the 16 municipalities that were converted into component cities through the Cityhood Laws.

The rationale for the enactment of R.A. No. 9009 can be gleaned from the sponsorship speech of Senator Pimentel on Senate Bill No. 2157, to wit--

Senator Pimentel. Mr. President, I would have wanted this bill to be included in the whole set of proposed amendments that we have introduced to precisely amend the Local Government Code. However, it is a fact that there is a **mad rush of municipalities wanting to be converted into cities.** Whereas in 1991, when the Local Government was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion to the same status. **At the rate we are going, I am apprehensive that before long this nation will be a nation of all cities and no municipalities.**

It is for that reason, Mr. President, that we are proposing among other things, that the financial requirement, which, under the Local Government Code, is fixed at P20 million, be raised to P100 million to enable a municipality to have the right to be converted into a city, and the P100 million should be sourced from locally generated funds.

What has been happening, Mr. President, is, the municipalities aspiring to become cities say that they qualify in terms of financial requirements by incorporating the Internal Revenue share of the taxes of the nation on to their regularly generated revenue. Under that requirement, it looks clear to me that practically all municipalities in this country would qualify to become cities.

It is precisely for that reason, therefore, that we are seeking the approval of this Chamber to amend, particularly Section 450 of Republic Act No. 7160, the requisite for the average annual income of a municipality to be converted into a city or cluster of *barangays* which seek to be converted into a city, raising that revenue requirement from P20 million to P100 million for the last two consecutive years based on 2000 constant prices. [8]

While R.A. No. 9009 was being deliberated upon, Congress was well aware of the pendency of conversion bills of several municipalities, including those covered by the Cityhood Laws, desiring to become component cities which qualified under the P20 million income requirement of the old Section 450 of the LGC. The interpellation of Senate President Franklin Drilon of Senator Pimentel is revealing, thus--

> THE PRESIDENT. The Chair would like to ask for some clarificatory point.
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> SENATOR PIMENTEL. Yes, Mr. President.
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> THE PRESIDENT. This is just on the point of the **pending bills in the Senate which propose the conversion of a number of municipalities into cities and which qualify under the present standard.**
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> We would like to know the view of the sponsor: **Assuming that this bill becomes a law, will the Chamber apply the standard as proposed in this bill to those bills which are pending for consideration?**
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> SENATOR PIMENTEL. Mr. President, **it might not be fair to make this bill, on the assumption that it is approved, retroact to the bills that are pending in the Senate conversion from municipalities to cities.**
>
> THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber, assuming that this bill becomes a law tomorrow, that it will apply to those bills which are already approved by the House under the old version of the Local Government Code and are now pending in the Senate? The Chair does not know if we can craft a language which will limit the application to those which are not yet in the Senate. Or is that a policy that the Chamber will adopt?
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> SENATOR PIMENTEL. Mr. President, personally, **I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.**
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> THE PRESIDENT. **So the understanding is that those bills which are already pending in the Chamber will not be affected.**
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> SENATOR PIMENTEL. **These will not be affected, Mr. President.**
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> THE PRESIDENT. Thank you Mr. Chairman.[9]

Clearly, based on the above exchange, Congress intended that those with pending cityhood bills during the 11th Congress would not be covered by the new and higher income requirement of P100 million imposed by R.A. No. 9009. When the LGC was