

EN BANC

[G.R. No. 180050, April 12, 2011]

RODOLFO G. NAVARRO, VICTOR F. BERNAL, AND RENE O. MEDINA, PETITIONERS, VS. EXECUTIVE SECRETARY EDUARDO ERMITA, REPRESENTING THE PRESIDENT OF THE PHILIPPINES; SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT; HOUSE OF REPRESENTATIVES, REPRESENTED BY THE HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, REPRESENTING THE MOTHER PROVINCE OF SURIGAO DEL NORTE; GOVERNOR GERALDINE ECLEO VILLAROMAN, REPRESENTING THE NEW PROVINCE OF DINAGAT ISLANDS, RESPONDENTS,

CONGRESSMAN FRANCISCO T. MATUGAS, HON. SOL T. MATUGAS, HON. ARTURO CARLOS A. EGAY, JR., HON. SIMEON VICENTE G. CASTRENCE, HON. MAMERTO D. GALANIDA, HON. MARGARITO M. LONGOS, AND HON. CESAR M. BAGUNDOL, INTERVENORS.

RESOLUTION

NACHURA, J.:

For consideration of the Court is the Urgent Motion to Recall Entry of Judgment dated October 20, 2010 filed by Movant-Intervenors^[1] dated and filed on October 29, 2010, praying that the Court (a) recall the entry of judgment, and (b) resolve their motion for reconsideration of the July 20, 2010 Resolution.

To provide a clear perspective of the instant motion, we present hereunder a brief background of the relevant antecedents--

On October 2, 2006, the President of the Republic approved into law Republic Act (R.A.) No. 9355 (An Act Creating the Province of Dinagat Islands).^[2] On December 3, 2006, the Commission on Elections (COMELEC) conducted the mandatory plebiscite for the ratification of the creation of the province under the Local Government Code (LGC).^[3] The plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.^[4] With the approval of the people from both the mother province of Surigao del

Norte and the Province of Dinagat Islands (Dinagat), the President appointed the interim set of provincial officials who took their oath of office on January 26, 2007. Later, during the May 14, 2007 synchronized elections, the Dinagatnons elected their new set of provincial officials who assumed office on July 1, 2007.^[5]

On November 10, 2006, petitioners Rodolfo G. Navarro, Victor F. Bernal and Rene O. Medina, former political leaders of Surigao del Norte, filed before this Court a

petition for *certiorari* and prohibition (G.R. No. 175158) challenging the constitutionality of R.A. No. 9355.^[6] The Court dismissed the petition on technical grounds. Their motion for reconsideration was also denied.^[7]

Undaunted, petitioners, as taxpayers and residents of the Province of Surigao del Norte, filed another petition for *certiorari*^[8] seeking to nullify R.A. No. 9355 for being unconstitutional. They alleged that the creation of Dinagat as a new province, if uncorrected, would perpetuate an illegal act of Congress, and would unjustly deprive the people of Surigao del Norte of a large chunk of the provincial territory, Internal Revenue Allocation (IRA), and rich resources from the area. They pointed out that when the law was passed, Dinagat had a land area of 802.12 square kilometers only and a population of only 106,951, failing to comply with Section 10, Article X of the Constitution and of Section 461 of the LGC, on both counts, *viz.* -

Constitution, Article X - Local Government

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 the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

LGC, Title IV, Chapter I

Section 461. ***Requisites for Creation.*** - (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (P20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) **a continuous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or**

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.**

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

On February 10, 2010, the Court rendered its Decision^[9] granting the petition.^[10]

The Decision declared R.A. No. 9355 unconstitutional for failure to comply with the requirements on population and land area in the creation of a province under the LGC. Consequently, it declared the proclamation of Dinagat and the election of its officials as null and void. The Decision likewise declared as null and void the provision on Article 9(2) of the Rules and Regulations Implementing the LGC (LGC-IRR), stating that, "[t]he land

area requirement shall not apply where the proposed province is composed of one (1) or more islands" for being beyond the ambit of Article 461 of the LGC, inasmuch as such exemption is not expressly provided in the law.^[11]

The Republic, represented by the Office of the Solicitor General, and Dinagat filed their respective motions for reconsideration of the Decision. In its Resolution^[12] dated May 12, 2010,^[13] the Court denied the said motions.^[14]

Unperturbed, the Republic and Dinagat both filed their respective motions for leave of court to admit their second motions for reconsideration, accompanied by their second motions for reconsideration. These motions were eventually "noted without action" by this Court in its June 29, 2010 Resolution.^[15]

Meanwhile, the movants-intervenors filed on June 18, 2010 a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. They alleged that the COMELEC issued Resolution No. 8790, relevant to this case, which provides--

RESOLUTION NO. 8790

WHEREAS, Dinagat Islands, consisting of seven (7) municipalities, were previously components of the First Legislative District of the Province of Surigao del Norte. In December 2006 pursuant to Republic Act No. 9355, the Province of Dinagat Island[s] was created and its creation was ratified on 02 December 2006 in the Plebiscite for this purpose;

WHEREAS, as a province, Dinagat Islands was, for purposes of the May 10, 2010 National and Local Elections, allocated one (1) seat for Governor, one (1) seat for Vice Governor, one (1) for congressional seat, and ten (10) Sangguniang Panlalawigan seats pursuant to Resolution No. 8670 dated 16 September 2009;

WHEREAS, the Supreme Court in G.R. No. 180050 entitled "Rodolfo Navarro, et al., vs. Executive Secretary Eduardo Ermita, as representative of the President of the Philippines, et al." rendered a Decision, dated 10 February 2010, declaring Republic Act No. 9355 unconstitutional for failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code in relation to Sec. 10, Art. X, of the 1987 Constitution;

WHEREAS, respondents intend to file Motion[s] for Reconsideration on the above decision of the Supreme Court;

WHEREAS, the electoral data relative to the: (1) position for Member, House of Representatives representing the lone congressional district of Dinagat Islands, (2) names of the candidates for the aforementioned position, (3) position for Governor, Dinagat Islands, (4) names of the candidates for the said position, (5) position of the Vice Governor, (6) the names of the candidates for the said position, (7) positions for the ten (10) Sangguniang Panlalawigan Members and, [8] all the names of the candidates for Sangguniang Panlalawigan Members, have already been configured into the system and can no longer be revised within the remaining period before the elections on May 10, 2010.

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in *Navarro vs. Ermita* is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

- a. If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two (2) separate provinces;
- b. If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

But because of the current system configuration, the ballots for the Province of Dinagat Islands will, for the positions of Member, House of Representatives, Governor, Vice Governor and Members, Sangguniang Panlalawigan, bear only the names of the candidates for the said positions.

Conversely, the ballots for the First Legislative District of Surigao del Norte, will, for the position of Governor, Vice Governor, Member, House of Representatives, First District of Surigao del Norte and Members, Sangguniang Panlalawigan, show only candidates for the said position. Likewise, the whole Province of Surigao del Norte, will, for the position of Governor and Vice Governor, bear only the names of the candidates for the said position[s].

Consequently, the voters of the Province of Dinagat Islands will not be able to vote for the candidates of Members, Sangguniang Panlalawigan, and Member, House [of] Representatives, First Legislative District, Surigao del Norte, and candidates for Governor and Vice Governor for Surigao del Norte. Meanwhile, voters of the First Legislative District of Surigao del Norte, will not be able to vote for Members, Sangguniang Panlalawigan and Member, House of Representatives, Dinagat Islands. Also, the voters of the whole Province of Surigao del Norte, will not be able to vote for the Governor and Vice Governor, Dinagat Islands. Given this situation, the Commission will postpone the elections for Governor, Vice Governor, Member, House of Representatives, First Legislative

District, Surigao del Norte, and Members, Sangguniang Panlalawigan, First Legislative District, Surigao del Norte, because the election will result in [a] failure to elect, since, in actuality, there are no candidates for Governor, Vice Governor, Members, Sangguniang Panlalawigan, First Legislative District, and Member, House of Representatives, First Legislative District (with Dinagat Islands) of Surigao del Norte.

- c. If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

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SO ORDERED.

They further alleged that, because they are the duly elected officials of Surigao del Norte whose positions will be affected by the nullification of the election results in the event that the May 12, 2010 Resolution is not reversed, they have a legal interest in the instant case and would be directly affected by the declaration of nullity of R.A. No. 9355. Simply put, movants-intervenors' election to their respective offices would necessarily be annulled since Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte and a special election will have to be conducted for governor, vice governor, and House of Representatives member and Sangguniang Panlalawigan member for the First Legislative District of Surigao del Norte. Moreover, as residents of Surigao del Norte and as public servants representing the interests of their constituents, they have a clear and strong interest in the outcome of this case inasmuch as the reversion of Dinagat as part of the First Legislative District of Surigao del Norte will affect the latter province such that: (1) the whole administrative set-up of the province will have to be restructured; (2) the services of many employees will have to be terminated; (3) contracts will have to be invalidated; and (4) projects and other developments will have to be discontinued. In addition, they claim that their rights cannot be adequately pursued and protected in any other proceeding since their rights would be foreclosed if the May 12, 2010 Resolution would attain finality.

In their motion for reconsideration of the May 12, 2010 Resolution, movants-intervenors raised three (3) main arguments to challenge the above Resolution, namely: (1) that the passage of R.A. No. 9355 operates as an act of Congress amending Section 461 of the LGC; (2) that the exemption from territorial contiguity, when the intended province consists of two or more islands, includes the exemption from the application of the minimum land area requirement; and (3) that the Operative Fact Doctrine is applicable in the instant case.

In the Resolution dated July 20, 2010,^[16] the Court denied the Motion for Leave to