

EN BANC

[G.R. No. 180050, February 10, 2010]

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.

DECISION

PERALTA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify Republic Act (R.A.) No. 9355, otherwise known as *An Act Creating the Province of Dinagat Islands*, for being unconstitutional.

Petitioners Rodolfo G. Navarro, Victor F. Bernal, and Rene O. Medina aver that they are taxpayers and residents of the Province of Surigao del Norte. They have served the Province of Surigao del Norte once as Vice- Governor and members of the Provincial Board, respectively. They claim to have previously filed a similar petition, which was dismissed on technical grounds.^[1] They allege that the creation of the Dinagat Islands as a new province, if uncorrected, perpetuates an illegal act of Congress, and unjustly deprives the people of Surigao del Norte of a large chunk of its territory, Internal Revenue Allocation and rich resources from the area.

The facts are as follows:

The mother province of Surigao del Norte was created and established under R.A. No. 2786 on June 19, 1960. The province is composed of three main groups of islands: (1) the Mainland and Surigao City; (2) Siargao Island and Bucas Grande; and (3) Dinagat Island, which is composed of seven municipalities, namely, Basilisa, Cagdianao, Dinagat, Libjo, Loreto, San Jose, and Tubajon.

Based on the official 2000 Census of Population and Housing conducted by the National Statistics Office (NSO),^[2] the population of the Province of Surigao del Norte as of May 1, 2000 was 481,416, broken down as follows:

Mainland	281,111
Surigao City	118,534
Siargao Island & Bucas	93,354

Under Section 461 of R.A. No. 7610, otherwise known as *The Local Government Code*, a province may be created if it has an average annual income of not less than P20 million based on 1991 constant prices as certified by the Department of Finance, and a population of not less than 250,000 inhabitants as certified by the NSO, or a contiguous territory of at least 2,000 square kilometers as certified by the Lands Management Bureau. The territory need not be contiguous if it comprises two or more islands or is separated by a chartered city or cities, which do not contribute to the income of the province.

On April 3, 2002, the Office of the President, through its Deputy Executive Secretary for Legal Affairs, advised the *Sangguniang Panlalawigan* of the Province of Surigao del Norte of the deficient population in the proposed Province of Dinagat Islands.^[3]

In July 2003, the Provincial Government of Surigao del Norte conducted a special census, with the assistance of an NSO District Census Coordinator, in the Dinagat Islands to determine its actual population in support of the house bill creating the Province of Dinagat Islands. The special census yielded a population count of 371,576 inhabitants in the proposed province. The NSO, however, did not certify the result of the special census. On July 30, 2003, Surigao del Norte Provincial Governor Robert Lyndon S. Barbers issued Proclamation No. 01, which declared as official, for all purposes, the 2003 Special Census in Dinagat Islands showing a population of 371,576.^[4]

The Bureau of Local Government Finance certified that the average annual income of the proposed Province of Dinagat Islands for calendar year 2002 to 2003 based on the 1991 constant prices was P82,696,433.23. The land area of the proposed province is 802.12 square kilometers.

On August 14, 2006 and August 28, 2006, the Senate and the House of Representatives, respectively, passed the bill creating the Province of Dinagat Islands. It was approved and enacted into law as R.A. No. 9355 on October 2, 2006 by President Gloria Macapagal-Arroyo.

On December 2, 2006, a plebiscite was held in the mother Province of Surigao del Norte to determine whether the local government units directly affected approved of the creation of the Province of Dinagat Islands into a distinct and independent province comprising the municipalities of Basilisa, Cagdianao, Dinagat, Libjo (Albor), Loreto, San Jose, and Tubajon. The result of the plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.^[5]

On December 3, 2006, the Plebiscite Provincial Board of Canvassers proclaimed that the creation of Dinagat Islands into a separate and distinct province was ratified and approved by the majority of the votes cast in the plebiscite.^[6]

On January 26, 2007, a new set of provincial officials took their oath of office following their appointment by President Gloria Macapagal-Arroyo. Another set of provincial officials was elected during the synchronized national and local elections

held on May 14, 2007. On July 1, 2007, the elected provincial officials took their oath of office; hence, the Province of Dinagat Islands began its corporate existence.
[7]

Petitioners contended that the creation of the Province of Dinagat Islands under R.A. No. 9355 is not valid because it failed to comply with either the population or land area requirement prescribed by the Local Government Code.

Petitioners prayed that R.A. No. 9355 be declared unconstitutional, and that all subsequent appointments and elections to the new vacant positions in the newly created Province of Dinagat Islands be declared null and void. They also prayed for the return of the municipalities of the Province of Dinagat Islands and the return of the former districts to the mother Province of Surigao del Norte.

Petitioners raised the following issues:

I

WHETHER OR NOT REPUBLIC ACT NO. 9355, CREATING THE NEW PROVINCE OF DINAGAT ISLANDS, COMPLIED WITH THE CONSTITUTION AND STATUTORY REQUIREMENTS UNDER SECTION 461 OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

II

WHETHER OR NOT THE CREATION OF DINAGAT AS A NEW PROVINCE BY THE RESPONDENTS IS AN ACT OF GERRYMANDERING.

III

WHETHER OR NOT THE RESULT OF THE PLEBISCITE IS CREDIBLE AND TRULY REFLECTS THE MANDATE OF THE PEOPLE.
[8]

In her Memorandum, respondent Governor Geraldine B. Ecleo-Villaroman of the Province of Dinagat Islands raises procedural issues. She contends that petitioners do not have the legal standing to question the constitutionality of the creation of the Province of Dinagat, since they have not been directly injured by its creation and are without substantial interest over the matter in controversy. Moreover, she alleges that the petition is moot and academic because the existence of the Province of Dinagat Islands has already commenced; hence, the petition should be dismissed.

The contention is without merit.

In *Coconut Oil Refiners Association, Inc. v. Torres*,^[9] the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the same vein, with respect to other alleged procedural flaws, even assuming the existence of such defects, the Court, in the exercise of its discretion, brushes aside

these technicalities and takes cognizance of the petition considering its importance and in keeping with the duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution.^[10]

Further, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution.^[11] The courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.^[12]

The main issue is whether or not R.A. No. 9355 violates Section 10, Article X of the Constitution.

Petitioners contend that the proposed Province of Dinagat Islands is not qualified to become a province because it failed to comply with the land area or the population requirement, despite its compliance with the income requirement. It has a total land area of only 802.12 square kilometers, which falls short of the statutory requirement of at least 2,000 square kilometers. Moreover, based on the NSO 2000 Census of Population, the total population of the proposed Province of Dinagat Islands is only 106,951, while the statutory requirement is a population of at least 250,000 inhabitants.

Petitioners allege that in enacting R.A. No. 9355 into law, the House of Representatives and the Senate erroneously relied on paragraph 2 of Article 9 of the Rules and Regulations Implementing the Local Government Code of 1991, which states that "*[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands.*"^[13] The preceding italicized provision contained in the Implementing Rules and Regulations is not expressly or impliedly stated as an exemption to the land area requirement in Section 461 of the Local Government Code. Petitioners assert that when the Implementing Rules and Regulations conflict with the law that they seek to implement, the law prevails.

On the other hand, respondents contend in their respective Memoranda that the Province of Dinagat Islands met the legal standard for its creation.

First, the Bureau of Local Government Finance certified that the average annual income of the proposed Province of Dinagat Islands for the years 2002 to 2003 based on the 1991 constant prices was P82,696,433.25.

Second, the Lands Management Bureau certified that though the land area of the Province of Dinagat Islands is 802.12 square kilometers, it is composed of one or more islands; thus, it is exempt from the required land area of 2,000 square kilometers under paragraph 2 of Article 9 of the Rules and Regulations Implementing the Local Government Code.

Third, in the special census conducted by the Provincial Government of Surigao del Norte, with the assistance of a District Census Coordinator of the NSO, the number of inhabitants in the Province of Dinagat Islands as of 2003, or almost three years before the enactment of R.A. No. 9355 in 2006, was 371,576, which is more than the minimum requirement of 250,000 inhabitants.

In his Memorandum, respondent Governor Ace S. Barbers contends that although

the result of the special census conducted by the Provincial Government of Surigao del Norte on December 2, 2003 was never certified by the NSO, it is credible since it was conducted with the aid of a representative of the NSO. He alleged that the lack of certification by the NSO was cured by the presence of NSO officials, who testified during the deliberations on House Bill No. 884 creating the Province of Dinagat Islands, and who questioned neither the conduct of the special census nor the validity of the result.

The Ruling of the Court

The petition is granted.

The constitutional provision on the creation of a province in Section 10, Article X of the Constitution states:

SEC. 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."^[14]

Pursuant to the Constitution, the Local Government Code of 1991 prescribed the criteria for the creation of a province, thus:

SEC. 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 **contiguous 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.^[15]

As a clarification of the territorial requirement, the Local Government Code requires