

## EN BANC

[ G.R. No. 177597, July 16, 2008 ]

**BAI SANDRA S. A. SEMA, PETITIONER, VS. COMMISSION ON ELECTIONS AND DIDAGEN P. DILANGALEN, RESPONDENTS.**

[G.R. No. 178628]

**PERFECTO F. MARQUEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

These consolidated petitions<sup>[1]</sup> seek to annul Resolution No. 7902, dated 10 May 2007, of the Commission on Elections (COMELEC) treating Cotabato City as part of the legislative district of the Province of Shariff Kabunsuan.<sup>[2]</sup>

#### The Facts

The Ordinance appended to the 1987 Constitution apportioned two legislative districts for the Province of Maguindanao. The first legislative district consists of Cotabato City and eight municipalities.<sup>[3]</sup> Maguindanao forms part of the Autonomous Region in Muslim Mindanao (ARMM), created under its Organic Act, Republic Act No. 6734 (RA 6734), as amended by Republic Act No. 9054 (RA 9054).<sup>[4]</sup> Although under the Ordinance, Cotabato City forms part of Maguindanao's first legislative district, it is not part of the ARMM but of Region XII, having voted against its inclusion in the ARMM in the plebiscite held in November 1989.

On 28 August 2006, the ARMM's legislature, the ARMM Regional Assembly, exercising its power to create provinces under Section 19, Article VI of RA 9054,<sup>[5]</sup> enacted Muslim Mindanao Autonomy Act No. 201 (MMA Act 201) creating the Province of Shariff Kabunsuan composed of the eight municipalities in the first district of Maguindanao. MMA Act 201 provides:

Section 1. The Municipalities of Barira, Buldon, Datu Odin Sinsuat, Kabuntalan, Matanog, Parang, Sultan Kudarat, Sultan Mastura, and Upi are hereby separated from the Province of Maguindanao and constituted into a distinct and independent province, which is hereby created, to be known as the Province of Shariff Kabunsuan.

x x x x

Sec. 5. The corporate existence of this province shall commence upon

the appointment by the Regional Governor or election of the governor and majority of the regular members of the Sangguniang Panlalawigan.

The incumbent elective provincial officials of the Province of Maguindanao shall continue to serve their unexpired terms in the province that they will choose or where they are residents: Provided, that where an elective position in both provinces becomes vacant as a consequence of the creation of the Province of Shariff Kabunsuan, all incumbent elective provincial officials shall have preference for appointment to a higher elective vacant position and for the time being be appointed by the Regional Governor, and shall hold office until their successors shall have been elected and qualified in the next local elections; Provided, further, that they shall continue to receive the salaries they are receiving at the time of the approval of this Act until the new readjustment of salaries in accordance with law. Provided, furthermore, that there shall be no diminution in the number of the members of the Sangguniang Panlalawigan of the mother province.

Except as may be provided by national law, the existing legislative district, which includes Cotabato as a part thereof, shall remain.

Later, three new municipalities<sup>[6]</sup> were carved out of the original nine municipalities constituting Shariff Kabunsuan, bringing its total number of municipalities to 11. Thus, what was left of Maguindanao were the municipalities constituting its second legislative district. Cotabato City, although part of Maguindanao's first legislative district, is not part of the Province of Maguindanao.

The voters of Maguindanao ratified Shariff Kabunsuan's creation in a plebiscite held on 29 October 2006.

On 6 February 2007, the Sangguniang Panlungsod of Cotabato City passed Resolution No. 3999 requesting the COMELEC to "clarify the status of Cotabato City in view of the conversion of the First District of Maguindanao into a regular province" under MMA Act 201.

In answer to Cotabato City's query, the COMELEC issued Resolution No. 07-0407 on 6 March 2007 "maintaining the status quo with Cotabato City as part of Shariff Kabunsuan in the First Legislative District of Maguindanao." Resolution No. 07-0407, which adopted the recommendation of the COMELEC's Law Department under a Memorandum dated 27 February 2007,<sup>[7]</sup> provides in pertinent parts:

Considering the foregoing, the Commission RESOLVED, as it hereby resolves, to adopt the recommendation of the Law Department that **pending the enactment of the appropriate law by Congress**, to maintain the status quo with Cotabato City as part of Shariff Kabunsuan in the First Legislative District of Maguindanao. (Emphasis supplied)

However, in preparation for the 14 May 2007 elections, the COMELEC promulgated on 29 March 2007 Resolution No. 7845 stating that Maguindanao's first legislative district is composed only of Cotabato City because of the enactment of MMA Act 201.<sup>[8]</sup>

On 10 May 2007, the COMELEC issued Resolution No. 7902, subject of these petitions, amending Resolution No. 07-0407 by renaming the legislative district in question as "Shariff Kabunsuan Province with Cotabato City (formerly First District of Maguindanao with Cotabato City)."<sup>[9]</sup>

In G.R. No. 177597, Sema, who was a candidate in the 14 May 2007 elections for Representative of "Shariff Kabunsuan with Cotabato City," prayed for the nullification of COMELEC Resolution No. 7902 and the exclusion from canvassing of the votes cast in Cotabato City for that office. Sema contended that Shariff Kabunsuan is entitled to one representative in Congress under Section 5 (3), Article VI of the Constitution<sup>[10]</sup> and Section 3 of the Ordinance appended to the Constitution.<sup>[11]</sup> Thus, Sema asserted that the COMELEC acted without or in excess of its jurisdiction in issuing Resolution No. 7902 which maintained the status quo in Maguindanao's first legislative district despite the COMELEC's earlier directive in Resolution No. 7845 designating Cotabato City as the lone component of Maguindanao's reapportioned first legislative district.<sup>[12]</sup> Sema further claimed that in issuing Resolution No. 7902, the COMELEC usurped Congress' power to create or reapportion legislative districts.

In its Comment, the COMELEC, through the Office of the Solicitor General (OSG), chose not to reach the merits of the case and merely contended that (1) Sema wrongly availed of the writ of certiorari to nullify COMELEC Resolution No. 7902 because the COMELEC issued the same in the exercise of its administrative, not quasi-judicial, power and (2) Sema's prayer for the writ of prohibition in G.R. No. 177597 became moot with the proclamation of respondent Didagen P. Dilangalen (respondent Dilangalen) on 1 June 2007 as representative of the legislative district of Shariff Kabunsuan Province with Cotabato City.

In his Comment, respondent Dilangalen countered that Sema is estopped from questioning COMELEC Resolution No. 7902 because in her certificate of candidacy filed on 29 March 2007, Sema indicated that she was seeking election as representative of "Shariff Kabunsuan including Cotabato City." Respondent Dilangalen added that COMELEC Resolution No. 7902 is constitutional because it did not apportion a legislative district for Shariff Kabunsuan or reapportion the legislative districts in Maguindanao but merely renamed Maguindanao's first legislative district. Respondent Dilangalen further claimed that the COMELEC could not reapportion Maguindanao's first legislative district to make Cotabato City its sole component unit as the power to reapportion legislative districts lies exclusively with Congress, not to mention that Cotabato City does not meet the minimum population requirement under Section 5 (3), Article VI of the Constitution for the creation of a legislative district within a city.<sup>[13]</sup>

Sema filed a Consolidated Reply controverting the matters raised in respondents' Comments and reiterating her claim that the COMELEC acted *ultra vires* in issuing Resolution No. 7902.

In the Resolution of 4 September 2007, the Court required the parties in G.R. No. 177597 to comment on the issue of whether a province created by the ARMM Regional Assembly under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province. The parties submitted their

compliance as follows:

(1) Sema answered the issue in the affirmative on the following grounds: (a) the Court in *Felwa v. Salas*<sup>[14]</sup> stated that "when a province is created by statute, the corresponding representative district comes into existence neither by authority of that statute — which cannot provide otherwise — nor by apportionment, but by operation of the Constitution, without a reapportionment"; (b) Section 462 of Republic Act No. 7160 (RA 7160) "affirms" the apportionment of a legislative district incident to the creation of a province; and (c) Section 5 (3), Article VI of the Constitution and Section 3 of the Ordinance appended to the Constitution mandate the apportionment of a legislative district in newly created provinces.

(2) The COMELEC, again represented by the OSG, apparently abandoned its earlier stance on the propriety of issuing Resolution Nos. 07-0407 and 7902 and joined causes with Sema, contending that Section 5 (3), Article VI of the Constitution is "self-executing." Thus, every new province created by the ARMM Regional Assembly is *ipso facto* entitled to one representative in the House of Representatives even in the absence of a national law; and

(3) Respondent Dilangalen answered the issue in the negative on the following grounds: (a) the "province" contemplated in Section 5 (3), Article VI of the Constitution is one that is created by an act of Congress taking into account the provisions in RA 7160 on the creation of provinces; (b) Section 3, Article IV of RA 9054 withheld from the ARMM Regional Assembly the power to enact measures relating to national elections, which encompasses the apportionment of legislative districts for members of the House of Representatives; (c) recognizing a legislative district in every province the ARMM Regional Assembly creates will lead to the disproportionate representation of the ARMM in the House of Representatives as the Regional Assembly can create provinces without regard to the requirements in Section 461 of RA 7160; and (d) Cotabato City, which has a population of less than 250,000, is not entitled to a representative in the House of Representatives.

On 27 November 2007, the Court heard the parties in G.R. No. 177597 in oral arguments on the following issues: (1) whether Section 19, Article VI of RA 9054, delegating to the ARMM Regional Assembly the power to create provinces, is constitutional; and (2) if in the affirmative, whether a province created under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province.<sup>[15]</sup>

In compliance with the Resolution dated 27 November 2007, the parties in G.R. No. 177597 filed their respective Memoranda on the issues raised in the oral arguments.<sup>[16]</sup> On the question of the constitutionality of Section 19, Article VI of RA 9054, the parties in G.R. No. 177597 adopted the following positions:

(1) Sema contended that Section 19, Article VI of RA 9054 is constitutional (a) as a valid delegation by Congress to the ARMM of the power to create provinces under Section 20 (9), Article X of the Constitution granting to the autonomous regions, through their organic acts, legislative powers over "other matters as may be authorized by law for the promotion of the general welfare of the people of the region" and (b) as an amendment to Section 6 of RA 7160.<sup>[17]</sup> However, Sema

concedes that, if taken literally, the grant in Section 19, Article VI of RA 9054 to the ARMM Regional Assembly of the power to "prescribe standards lower than those mandated" in RA 7160 in the creation of provinces contravenes Section 10, Article X of the Constitution.<sup>[18]</sup> Thus, Sema proposed that Section 19 "should be construed as prohibiting the Regional Assembly from prescribing standards x x x that do not comply with the minimum criteria" under RA 7160.<sup>[19]</sup>

(2) Respondent Dilangalen contended that Section 19, Article VI of RA 9054 is unconstitutional on the following grounds: (a) the power to create provinces was not among those granted to the autonomous regions under Section 20, Article X of the Constitution and (b) the grant under Section 19, Article VI of RA 9054 to the ARMM Regional Assembly of the power to prescribe standards lower than those mandated in Section 461 of RA 7160 on the creation of provinces contravenes Section 10, Article X of the Constitution and the Equal Protection Clause; and

(3) The COMELEC, through the OSG, joined causes with respondent Dilangalen (thus effectively abandoning the position the COMELEC adopted in its Compliance with the Resolution of 4 September 2007) and contended that Section 19, Article VI of RA 9054 is unconstitutional because (a) it contravenes Section 10 and Section 6,<sup>[20]</sup> Article X of the Constitution and (b) the power to create provinces was withheld from the autonomous regions under Section 20, Article X of the Constitution.

On the question of whether a province created under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province, Sema and respondent Dilangalen reiterated in their Memoranda the positions they adopted in their Compliance with the Resolution of 4 September 2007. The COMELEC deemed it unnecessary to submit its position on this issue considering its stance that Section 19, Article VI of RA 9054 is unconstitutional.

The pendency of the petition in G.R. No. 178628 was disclosed during the oral arguments on 27 November 2007. Thus, in the Resolution of 19 February 2008, the Court ordered G.R. No. 178628 consolidated with G.R. No. 177597. The petition in G.R. No. 178628 echoed Sema's contention that the COMELEC acted *ultra vires* in issuing Resolution No. 7902 depriving the voters of Cotabato City of a representative in the House of Representatives. In its Comment to the petition in G.R. No. 178628, the COMELEC, through the OSG, maintained the validity of COMELEC Resolution No. 7902 as a temporary measure pending the enactment by Congress of the "appropriate law."

### **The Issues**

The petitions raise the following issues:

I. In G.R. No. 177597:

(A) Preliminarily -

(1) whether the writs of Certiorari, Prohibition, and Mandamus are proper to test the constitutionality of COMELEC Resolution No. 7902; and