

## EN BANC

[ G.R. No. 176970, December 08, 2008 ]

### ROGELIO Z. BAGABUYO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

#### DECISION

##### BRION, J.:

Before us is the petition for *certiorari*, prohibition, and mandamus,<sup>[1]</sup> with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction, filed by Rogelio Bagabuyo (*petitioner*) to prevent the Commission on Elections (COMELEC) from implementing Resolution No. 7837 on the ground that Republic Act No. 9371<sup>[2]</sup> - the law that Resolution No. 7837 implements - is unconstitutional.

##### **BACKGROUND FACTS**

On October 10, 2006, Cagayan de Oro's then Congressman Constantino G. Jaraula filed and sponsored House Bill No. 5859: "An Act Providing for the Apportionment of the Lone Legislative District of the City of Cagayan De Oro."<sup>[3]</sup> This law eventually became Republic Act (R.A.) No. 9371.<sup>[4]</sup> It increased Cagayan de Oro's legislative district from one to two. For the election of May 2007, Cagayan de Oro's voters would be classified as belonging to either the first or the second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight members of the *Sangguniang Panglungsod*.

Section 1 of R.A. No. 9371 apportioned the City's *barangays* as follows:

*Legislative Districts* - The lone legislative district of the City of Cagayan De Oro is hereby apportioned to commence in the next national elections after the effectivity of this Act. Henceforth, barangays Bonbon, Bayabas, Kauswagan, Carmen, Patag, Bulua, Iponan, Baikingon, San Simon, Pagatpat, Canitoan, Balulang, Lumbia, Pagalungan, Tagpangi, Taglimao, Tuburan, Pigsag-an, Tumpagon, Bayanga, Mambuaya, Dansulihon, Tignapoloan and Bisigan shall comprise the first district while barangays Macabalan, Puntod, Consolacion, Camaman-an, Nazareth, Macasandig, Indahag, Lapasan, Gusa, Cugman, FS Catanico, Tablon, Agusan, Puerto, Bugo, and Balubal and all urban barangays from Barangay 1 to Barangay 40 shall comprise the second district.<sup>[5]</sup>

On March 13, 2007, the COMELEC *en Banc* promulgated Resolution No. 7837<sup>[6]</sup>

implementing R.A. No. 9371.

Petitioner Rogelio Bagabuyo filed the present petition against the COMELEC on March 27, 2007.<sup>[7]</sup> On 10 April 2008, the petitioner amended the petition to include the following as respondents: Executive Secretary Eduardo Ermita; the Secretary of the Department of Budget and Management; the Chairman of the Commission on Audit; the Mayor and the members of the *Sangguniang Panglungsod* of Cagayan de Oro City; and its Board of Canvassers.<sup>[8]</sup>

In asking for the nullification of R.A. No. 9371 and Resolution No. 7837 on constitutional grounds, the petitioner argued that the COMELEC cannot implement R.A. No. 9371 without providing for the rules, regulations and guidelines for the conduct of a plebiscite which is indispensable for the division or conversion of a local government unit. He prayed for the issuance of an order directing the respondents to cease and desist from implementing R.A. No. 9371 and COMELEC Resolution No. 7837, and to revert instead to COMELEC Resolution No. 7801 which provided for a single legislative district for Cagayan de Oro.

Since the Court did not grant the petitioner's prayer for a temporary restraining order or writ of preliminary injunction, the May 14 National and Local Elections proceeded according to R.A. No. 9371 and Resolution No. 7837.

The respondent's Comment on the petition, filed through the Office of the Solicitor General, argued that: 1) the petitioner did not respect the hierarchy of courts, as the Regional Trial Court (*RTC*) is vested with concurrent jurisdiction over cases assailing the constitutionality of a statute; 2) R.A. No. 9371 merely increased the representation of Cagayan de Oro City in the House of Representatives and *Sangguniang Panglungsod* pursuant to Section 5, Article VI of the 1987 Constitution; 3) the criteria established under Section 10, Article X of the 1987 Constitution only apply when there is a creation, division, merger, abolition or substantial alteration of boundaries of a province, city, municipality, or *barangay*; in this case, no such creation, division, merger, abolition or alteration of boundaries of a local government unit took place; and 4) R.A. No. 9371 did not bring about any change in Cagayan de Oro's territory, population and income classification; hence, no plebiscite is required.

The petitioner argued in his reply that: 1) pursuant to the Court's ruling in *Del Mar v. PAGCOR*,<sup>[9]</sup> the Court may take cognizance of this petition if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction; 2) Cagayan de Oro City's reapportionment under R.A. No. 9371 falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the Constitution; 3) the creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator - the material change in the political and economic rights of the local government units directly affected, as well as of the people therein; 4) a voter's sovereign power to decide on who should be elected as the entire city's Congressman was arbitrarily reduced by at least one half because the questioned law and resolution only allowed him to vote and be voted for in the district designated by the COMELEC; 5) a voter was also arbitrarily denied his right to elect the Congressman and the members of the city council for the other legislative district, and 6) government funds were illegally disbursed without prior

approval by the sovereign electorate of Cagayan De Oro City.<sup>[10]</sup>

## **THE ISSUES**

The core issues, based on the petition and the parties' memoranda, can be limited to the following contentious points:

- 1) Did the petitioner violate the hierarchy of courts rule; if so, should the instant petition be dismissed on this ground?
- 2) Does R.A. No. 9371 merely provide for the legislative reapportionment of Cagayan de Oro City, or does it involve the division and conversion of a local government unit?
- 3) Does R.A. No. 9371 violate the equality of representation doctrine?

## **OUR RULING**

**Except for the issue of the hierarchy of courts rule, we find the petition totally without merit.**

*The hierarchy of courts principle.*

The Supreme Court has original jurisdiction over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.<sup>[11]</sup> It was pursuant to this original jurisdiction that the petitioner filed the present petition.

While this jurisdiction is shared with the Court of Appeals<sup>[12]</sup> and the RTCs,<sup>[13]</sup> a direct invocation of the Supreme Court's jurisdiction is allowed only when there are special and important reasons therefor, clearly and especially set out in the petition. Reasons of practicality, dictated by an increasingly overcrowded docket and the need to prioritize in favor of matters within our exclusive jurisdiction, justify the existence of this rule otherwise known as the "*principle of hierarchy of courts*." More generally stated, the principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.<sup>[14]</sup>

Among the cases we have considered sufficiently special and important to be exceptions to the rule, are petitions for *certiorari*, prohibition, *mandamus* and *quo warranto* against our nation's lawmakers when the validity of their enactments is assailed.<sup>[15]</sup> The present petition is of this nature; its subject matter and the nature of the issues raised - among them, whether legislative reapportionment involves a division of Cagayan de Oro City as a local government unit - are reasons enough for considering it an exception to the principle of hierarchy of courts. Additionally, the petition assails as well a resolution of the COMELEC *en banc* issued to implement the legislative apportionment that R.A. No. 9371 decrees. As an action against a COMELEC *en banc* resolution, the case falls under Rule 64 of the Rules of Court that in turn requires a review by this Court *via* a Rule 65 petition for *certiorari*.<sup>[16]</sup> For these reasons, we do not see the principle of hierarchy of courts to be a stumbling block in our consideration of the present case.

*The Plebiscite Requirement.*

The petitioner insists that R.A. No. 9371 converts and divides the City of Cagayan de Oro as a local government unit, and does not merely provide for the City's legislative apportionment. This argument essentially proceeds from a misunderstanding of the constitutional concepts of apportionment of legislative districts and division of local government units.

Legislative **apportionment** is defined by Black's Law Dictionary as *the determination of the number of representatives which a State, county or other subdivision may send to a legislative body.*<sup>[17]</sup> It is *the allocation of seats in a legislative body in proportion to the population; the drawing of voting district lines so as to equalize population and voting power among the districts.*<sup>[18]</sup> **Reapportionment**, on the other hand, is *the realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation.*<sup>[19]</sup>

Article VI (entitled Legislative Department) of the 1987 Constitution lays down the rules on legislative apportionment under its Section 5 which provides:

Sec. 5(1). (1) The House of Representatives shall be composed of not more than two hundred fifty members unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional and sectoral parties or organizations.

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(3) Each legislative district shall comprise, as far as practicable, continuous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

Separately from the legislative districts that legal apportionment or reapportionment speaks of, are the local government units (historically and generically referred to as "municipal corporations") that the Constitution itself classified into provinces, cities, municipalities and *barangays*.<sup>[20]</sup> In its strict and proper sense, a municipality has been defined as "a body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purpose of local government thereof."<sup>[21]</sup> The creation, division, merger, abolition or alteration of boundary of local government units, *i.e.*, of provinces, cities, municipalities, and *barangays*, are covered by the

Article on Local Government (Article X). Section 10 of this Article provides:

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 unit directly affected.

Under both Article VI, Section 5, and Article X, Section 10 of the Constitution, the authority to act has been vested in the Legislature. The Legislature undertakes the apportionment and reapportionment of legislative districts,<sup>[22]</sup> and likewise acts on local government units by setting the standards for their creation, division, merger, abolition and alteration of boundaries and by actually creating, dividing, merging, abolishing local government units and altering their boundaries through legislation. Other than this, not much commonality exists between the two provisions since they are inherently different although they interface and relate with one another.

The concern that leaps from the text of Article VI, Section 5 is political representation and the means to make a legislative district sufficiently represented so that the people can be effectively heard. As above stated, the aim of legislative apportionment is "to equalize population and voting power among districts."<sup>[23]</sup> Hence, emphasis is given to the number of people represented; the uniform and progressive ratio to be observed among the representative districts; and accessibility and commonality of interests in terms of each district being, as far as practicable, continuous, compact and adjacent territory. In terms of the people represented, every city with at least 250,000 people and every province (irrespective of population) is entitled to one representative. In this sense, legislative districts, on the one hand, and provinces and cities, on the other, relate and interface with each other. To ensure continued adherence to the required standards of apportionment, Section 5(4) specifically mandates reapportionment as soon as the given standards are met.

In contrast with the equal representation objective of Article VI, Section 5, Article X, Section 10 expressly speaks of how local government units may be "created, divided, merged, abolished, or its boundary substantially altered." Its concern is the commencement, the termination, and the modification of local government units' corporate existence and territorial coverage; and it speaks of two specific standards that must be observed in implementing this concern, namely, the criteria established in the local government code and the approval by a majority of the votes cast in a plebiscite in the political units directly affected. Under the Local Government Code (R.A. No. 7160) passed in 1991, the criteria of income, population and land area are specified as verifiable indicators of viability and capacity to provide services.<sup>[24]</sup> The division or merger of existing units must comply with the same requirements (since a new local government unit will come into being), provided that a division shall not reduce the income, population, or land area of the unit affected to less than the minimum requirement prescribed in the Code.<sup>[25]</sup>

A pronounced distinction between Article VI, Section 5 and, Article X, Section 10 is on the requirement of a plebiscite. The Constitution and the Local Government