

CLEMENTINO TORRALBA AND RE L. RUGAY, PETITIONERS, VS. THE MUNICIPALITY OF SIBAGAT, PROVINCE OF AGUSAN DEL SUR AND ITS MUNICIPAL OFFICERS, RESPONDENTS.

G.R. No. L-59180. January 29, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Challenged in the instant Petition, as violative of Section 3, Article XI of the 1973 Constitution, is Batas Pambansa Blg. 56, enacted on 1 February 1980, creating the Municipality of Sibagat, Province of Agusan del Sur. The pertinent provisions of BP 56 read:

"Sec. 1. The barangays of Ilihan, Sinai, Sibagat, El Rio, Afga, Tabontabon, Perez, Magsaysay, Santa Cruz, Santa Maria, San Isidro, Villangit, Del Rosario, Anahauan, Mahayahay, and San Vicente, all in the Municipality of Bayugan, Province of Agusan del Sur, are hereby separated from said municipality to form and constitute an independent Municipality of Sibagat without affecting in any manner the legal existence of the mother Municipality of Bayugan.

"Sec. 2. The boundaries of the new Municipality of Sibagat will be: Beginning at the point of intersection of the Cabadbaran-Old Bayugan and Surigao del Sur boundaries; thence in a southerly direction following the Old Bayugan and Caoadoaran, Old Bayugan and Butuan city, Old Bayugan and Las Nieves boundaries, until it reaches the point of intersection of Old Bayugan, Esperanza and the Municipality of Las Nieves; x x x

"Sec. 3. The seat of government of the newly created municipality shall be in Barangay Sibagat.

"Sec. 4 Except as herein provided, all provisions of laws, now or hereafter applicable to regular municipalities shall be applicable to the new Municipality of Sibagat.

"Sec. 5. After ratification by the majority of the votes cast in a plebiscite to be conducted in the area or areas affected within a period of ninety (90) days after the approval of this Act, the President (Prime Minister) shall appoint the Mayor and other Officials of the new Municipality of Sibagat."

Petitioners are residents and taxpayers of Butuan City, with petitioner, Clementino Torralba, being a member of the Sangguniang Panglunsod of the same City. Respondent municipal officers are the local public officials of the new Municipality.

Section 3, Article XI of the 1973 Constitution, said to have been infringed, is reproduced hereunder:

"Sec. 3. No province, city, municipality, or barrio 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 unit or units affected."

The thrust of petitioners' argument is that under the aforequoted provision, the Local Government Code must first be enacted to determine the criteria for the creation, division, merger, abolition, or substantial alteration of the boundary of any province, city, municipality, or barrio; and that since no Local Government Code had as yet been

enacted as of the date BP 56 was passed, that statute could not have possibly complied with any criteria when respondent Municipality was created, hence, it is null and void.

It is a fact that the Local Government Code came into being only on 10 February 1983 so that when BP 56 was enacted, the Code was not yet in existence. The evidence likewise discloses that a plebiscite had been conducted among the people of the unit/units affected by the creation of the new Municipality, who expressed approval thereof; and that officials of the newly created Municipality had been appointed and had assumed their respective positions as such.

We find no trace of invalidity of BP 56. The absence of the Local Government Code at the time of its enactment did not curtail nor was it intended to cripple legislative competence to create municipal corporations. Section 3, Article XI of the 1973 Constitution does not proscribe nor prohibit the modification of territorial and political subdivisions before the enactment of the Local Government Code. It contains no requirement that the Local Government Code is a condition sine qua non for the creation of a municipality, in much the same way that the creation of a new municipality does not preclude the enactment of a Local Government Code. What the Constitutional provision means is that once said Code is enacted, the creation, modification or dissolution of local government units should conform with the criteria thus laid down. In the interregnum, before the enactment of such Code, the legislative power remains plenary except that the creation of the new local government unit should be approved by the people concerned in a plebiscite called for the purpose.

The creation of the new Municipality of Sibagat conformed to said requisite. A plebiscite was conducted and the people of the unit/units affected endorsed and approved the creation of the new local government unit (parag. 5, Petition; p. 7, Memorandum). In fact, the conduct of said plebiscite is not questioned herein. The officials of the new Municipality have effectively taken their oaths of office and are performing their functions. A de jure entity has thus been created.

It is a long-recognized principle that the power to create a municipal corporation is essentially legislative in nature. In the absence of any constitutional limitations, a legislative body may create any corporation it deems essential for the more efficient administration of government (I McQuillin, *Municipal Corporations*, 3rd ed., 509). The creation of the new Municipality of Sibagat was a valid exercise of legislative power then vested by the 1973 Constitution in the Interim Batasang Pambansa.

We are not unmindful of the case of *Tan vs. COMELEC* (142 SCRA 727 [1986]), striking down as unconstitutional BP Blg. 885 creating a new province in the Island of Negros known as the Province of Negros del Norte, and declaring the plebiscite held in connection therewith as illegal. There are significant differences, however, in the two cases among which may be mentioned the following: in the *Tan* case, the Local Government Code already existed at the time that the challenged statute was enacted on 3 December 1985; not so in the case at bar. Secondly, BP Blg. 885 in the *Tan* case confined the plebiscite to the "proposed new province" to the exclusion of the voters in the remaining areas, in contravention of the Constitutional mandate and of the Local Government Code that the plebiscite should be held "in the unit or units affected". In contrast, BP 56 specifically provides for a plebiscite "in the area or areas affected". In fact, as previously stated, no question is raised herein as to the legality of the plebiscite conducted. Thirdly, in the *Tan* case, even the requisite area for the creation of a new province was not complied with in BP Blg. 885. No such issue in the creation of the new municipality has been raised here. And lastly, "indecent haste" attended the enactment of BP Blg. 885 and the holding of the plebiscite thereafter in the *Tan* case; on the other hand, BP 56 creating the Municipality of Sibagat, was enacted in the normal course of legislation, and the plebiscite was held within the period specified in that law.

WHEREFORE, the Petition is hereby dismissed. No costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, and Bidin, JJ., concur.

Cruz, J., see concurring opinion.

CRUZ, J., concurring:

I concur on the assumption that the required plebiscite although not questioned here nevertheless complied with Article XI, Section 3, of the 1973 Constitution, and was duly held "in the units affected," i.e., not only in the proposed municipality but also in the mother municipality, in line with *Tan v. Commission on Elections* (142 SCRA 727), revisiting *Paredes v. Executive Secretary* (128 SCRA 6) and *Lopez v. Metro Manila Commission* (136 SCRA 633) insofar as these cases held that the plebiscite could be confined only to the political unit proposed to be created.

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