

JOSE PRO. TEVES, ET AL., PETITIONERS, VS. COMISSION ON ELECTIONS, RESPONDENT.

G. R. No. L-5150. November 08, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

Upon request of the City Attorney of Dumaguete City, the Commission on Elections rendered, on August 24, 1951, an opinion holding that the qualified voters of said city cannot vote for the provincial governor and members of the provincial board of Negros Oriental. In the present special civil action for mandamus, a group of qualified and registered voters of Dumaguete City, petitioners, allege that the Commission on Elections, respondent, in pursuance of its opinion, has refused and will continue to refuse to provide necessary paraphernalia for the residents of said city to vote in the election to be held on November 13, 1951, for the provincial governor and members of the provincial board of Negros Oriental, and accordingly pray that the Comission on Elections be ordered to provide said paraphernalia.

Petitioners' contention is that, as the charter of Dumaguete City is silent as to the right of its qualified voters to participate in the election of provincial officials of Negros Oriental, and as said voters are residents of the province, they are clearly entitled to vote for said provincial officials.

The charters of other recently formed cities are articulate on the matter. Thus, in the cases of Bacolod, Cabanatuan, Legaspi, Naga, and Ormoc, their charters expressly prohibit the residents therein from voting for provincial officials of the provinces to which said cities formerly belonged. Upon the other hand, the charters of Cagayan de Oro, Butuan, Cavite, Iloilo, Calbayog, Lipa, San Pablo, and Dagupan contain provisions extending to their residents the privilege to take part in the election of the provincial officials of the provinces in which said cities were previously included.

The question that presents itself has reference to the effect of the omission in the charter of Dumaguete City of an express provision on the right of its residents to vote for provincial officials of Negros Oriental, in the light of the legislative practice that, when desired, the right is either recognized or withdrawn expressly. We are inclined to overrule petitioners' position.

The creation of Dumaguete City has made it a political entity separate from and independent of the province of Negros Oriental. The purpose of an election is to enable the electorate to choose the men that will run their government, whether national, provincial, municipal or city. If so, no useful end will be served by allowing—in the absence of express legislative preference—the voters of a city to participate in the election of the officials of the province which has ceased to have any governmental jurisdiction and authority over said city.

To confirm our view that the City of Dumaguete has been segregated from the province of Oriental Negros for purposes of provincial elections, we should point to the penultimate section of the charter providing that "until otherwise provided by law, the City of Dumaguete shall continue as part of the first representative district of the Province of Oriental Negros." This is an express exception to the general effect of separation—an exception that

serves to reiterate or even establish the rule. In other words, the Congress meant that the inhabitants of the city may not vote for provincial officials, but may vote for their representative in Congress.

On September 2, 1947, the Commission on Elections already held that, as the charter of the City of Davao is silent on the point, its electors cannot vote for any provincial official of the province of Davao. Since the charter of Dumaguete City was approved in 1948, it is logical to suppose that the Congress, familiar with said ruling, was merely confirming or giving it effect by omitting an express provision in said charter.

Having come to the conclusion that the voters of Dumaguete City have no right to take part in the election of the provincial officials of Negros Oriental, we have to rule that the respondent Commission on Elections has no corresponding duty which may be enforced by mandamus

The petition is therefore dismissed, without pronouncement as to costs. So ordered.

Pablo, Bengzon, Reyes, Jugo, and Bautista Angelo, JJ., concur.

DISSENTING

FERIA, J.,

The Commission on Elections has refused and will continue to refuse to provide the necessary pamphlets for the residents of the City of Dumaguete to vote in the election to be held on November 13, 1951, for Provincial Governor and Members of the provincial board of Negros Oriental, on the ground that they do not have the right to vote for said provincial officers. Hence, this action for mandamus.

In the first place, I am of the opinion that the Commission on Elections has no power or jurisdiction to decide that the qualified voters of said city, who have been voting for said officers in the past, cannot continue voting for them in the next election to be held on November 13, on the ground that the charter of the City of Dumaguete approved on July 15, 1948, does not contain any express provision either denying or granting them to vote for said officers. Sec. 2, Art. X, of the Constitution expressly provides that the Commission on Elections "shall decide, save those involving the right to vote, all administrative questions, affecting election, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials." The right to vote is a judicial question involving the constitutional right of suffrage granted by Section 1, Article V, of the Constitution, and it is not merely an administrative question affecting election.

The Charters of the Cities of Bacolod, Legaspi, Naga, Cabanatuan and Ormoc contain provisions denying expressly the residents therein the right to vote for provincial officials of the provinces within whose territory they are located. But the Charters of the Cities of Cagayan de Oro, Butuan, Cavite, Calbayog, Lipa, San Pablo, Dagupan, Roxas City, Basilan, Illigan and Vigan expressly grant the residents therein the right to take part in the election of the provincial officials of the provinces in which they are included. And there are cities like Osamis, Davao and Dumaguete and Pasay City, the charters of which are silent as to whether or not the residents of said cities may vote for the provincial officers of the respective provinces to which they belong.

In view of the fact that there is no express prohibition or permission for the qualified voters residents in the City of Dumaguete to vote for the provincial governor and members of the Provincial Board of Negros Oriental, I am of the opinion that they are entitled to continue voting for them in the election on November 13, 1951. The fact that the former Municipality of Dumaguete was converted into a city did not make the City of Dumaguete separate and independent completely from the Province of Negros Oriental, as shown by the provision of Section

39 of Republic Act No. 327, the Charter of Dumaguete, which provides that the City of Dumaguete shall continue as part of the First Representative District of the Province of Oriental Negros. This provision does not say or mean to say that the residents of Dumaguete can not vote for provincial officials of Negros Oriental, but they may vote for the representatives of the Province. It means that they may continue voting for the representative of the First District and not for the representative of the Second District, "and as the two districts are representative districts of the Province of Oriental Negros, the resident qualified voters therein may also vote for provincial officials of said province, because the city is part of the first representative district of the Province of Oriental Negros (Section 2071, Revised Adm. Code.)

The above provision is not "an express exception to the general effect of separation" of the city from the province, as contended by the majority, but in conformity with the constitutional provision (Section 7, Article VI of the Constitution) that "No person shall be a member of the House of Representative unless he be a natural-born citizen of the Philippines and, at the time of his election is * * * a resident of the province in which he is chosen." To construe that the City of Dumaguete is not part of the Province of Negros Oriental, would be to deprive the residents of said city of their right to be elected a member of the House of Representative or Provincial Governor or Member of the Provincial Board of Negros Oriental, because they are not residents of the province.

It is argued that, as the Commission on Elections already held September 2, 1947, that the residents of the City of Davao could not vote for provincial official of the province of Davao because the charter of said city was silent on the point, it is logical to suppose that the Congress is familiar with said ruling and was merely confirming or giving it effect by omitting an express provision in the Charter of Dumaguete City." This reasoning is illogical for it is predicated on a false premise for the following reasons: First, the Commission on Elections has no jurisdiction or power to decide on the right of a person to vote. Secondly, the ruling of said Commission does not constitute a precedent, because it was subject to review by the Supreme Court; and the Supreme Court has not affirmed it. And lastly, if Congress had followed that ruling, Congress would not have expressly denied the residents of the cities of Naga, Legaspi and Cabanatuan the right to vote for the provincial officers in their respective provinces, in the city charters of Naga and Legaspi, approved on June 18, 1948, and of Cabanatuan, approved on June 16, 1950.

The majority concludes that "The creation of Dumaguete City has made it a political entity separate from and independent of the province of Negros Oriental. The purpose of an election is to enable the electorate to choose the men that will run their government, whether national, provincial, municipal or city. If so, no useful end will be served by allowing—in the absence of express legislative preference—the voters of a city to participate in the election of the officials of the province which has ceased to have any governmental Jurisdiction and authority over said city." This conclusion is not correct.

The essential constituents of the modern state are: people, territory, government and sovereignty. The term government should not be confused with state or political subdivision thereof such as provinces, cities and municipalities, for government is the agency through which the mandate of the state, province, city or municipality are expressed and enforced. As defined by this Court in *U. S. vs. Dorr*, 2 Phil. 332, 339, "government is an institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state". Thus section 2 of the Revised Administrative Code provides; " 'The Government of the Republic of the Philippines' is a term which refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government."

The creation by charter of the city of Dumaguete out of the municipality of the same name through which as well as through provincial, municipal and other form of local government, the functions of government are exercised throughout the Philippines, did not completely make the territory and the people or inhabitants of said city separate and independent from the province of Negros Oriental of which that former municipality was a party, for there is no express provision in its charter to that effect or from which it may be inferred; in the same way that a formation or creation by charter of a provincial government out of a portion of the Philippines, does not separate it from the Philippines as a state. The conversion of a municipality into a city by charter does not substantially change the social or political status of its people or inhabitants, but rather the form of local government established therein.

The only effect of the conversion of a municipality into a chartered city is, unless otherwise expressly provided in the law, to exempt the city officers thereof from the supervisory authority exercised of the provincial governor over municipal officers as provided for in Section 2188 of the Revised Administrative Code; to eliminate the right of the head of any office dissatisfied with the appropriation ordinance approved by the city council to appeal to the Provincial Governor as in the case of a municipality (Section 2297 of the Revised Administrative Code) to suppress the power of the Provincial Board to pass on the legality of resolutions, ordinances or order passed by city councils which the Provincial Board had over those passed by municipal councils (Section 2223, Revised Administrative Code).

But the rights and obligations of the Provincial Board provided in the Revised Administrative Code to exercise governmental duties or functions for the benefit and welfare of the inhabitants of the province and all its inhabitants, including those of cities, municipalities and other local form of government, within the province continue in force. They are, among others; to construct and maintain provincial roads, highways and bridges, wharves and piers (Sec. 2106 [f], 2113, Rev. Adm. Code); to establish parks, playgrounds, artesian wells or systems for the supply of water, and drainage and sewerage system (Sec. 2113 (c) Rev. Adm. Code); to subsidize or acquire, operate and maintain means of water transportation within the province, or between the province and neighboring provinces or Islands; to dredge rivers and provide facilities for communication and transportation by river, as well as to establish and operate telephone system, within the territory of the province, (2113 (c), Rev. Adm. Code); to provide suitable offices for Courts of First Instance at the expense of the province (Section 2102, 2103, Rev. Adm. Code); to maintain a special fund to be known as the provincial school fund available exclusively for the maintenance of provincial schools (Section 2113-1/2 Rev. Adm. Code); to make provision for the payment of the tuitions of resident pupils of the province who may wish to enter a school of another province or the City of Manila, for courses not given in their home province, (Sec. 2126, Rev. Adm. Code); to appropriate money for the maintenance of one or two students residents of the province in the University of the Philippines or any governmental educational institute to enable them to follow a professional career (Section 2126, Rev. Adm. Code); and to appropriate money for purposes not specified by law having in view the general welfare of the province and its inhabitants (Section 2106 (a) Rev. Adm. Code).

To hold that the residents of Dumaguete City are not residents of the Province of Negros Oriental, and therefore not entitled to have the benefit of the above specified governmental functions of the Provincial Government of said province, would be, not only to deprive them of the right to vote and be voted for the positions of Provincial Governor and Members of the Provincial Board, but also to exclude them from the benefits derived from said functions of government, which may be exercised by the Provincial Government and can not be carried out by the city, either because the city has no power to do so, or can not exercise them by reason of their nature such as the establishment of water supply and telephone system connoting the city with other political subdivisions of the province. therefore, I vote for granting the mandamus applied for.

Tuason, J., concurs in this opinion.

DISSENTING

PADILLA, J.,

I concur in the opinion of Mr. Justice Feria, and wish to add that the fact that in enacting the charter of the City of Dumaguete, the Congress did not prohibit the city qualified electors to vote for elective provincial officials, unlike in other city charters where there is a permission in some and prohibition in others, gives rise to the presumption that it intended to preserve the status of such electors.

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