

HON. ROY A. PADILLA, JR., IN HIS CAPACITY AS GOVERNOR OF THE PROVINCE OF CAMARINES NORTE, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 103328. October 19, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

Pursuant to Republic Act 7155, the Commission on Elections promulgated on November 13, 1991, Resolution No. 2312 which reads as follows:

“WHEREAS, Republic Act No. 7155 approved on September 6, 1991 creates the Municipality of Tulay-Na?Lupa in the Province of Camarines Norte to be composed of Barangays Tulay-Na-Lupa, Lugui, San Antonio, Mabilo I, Napaod, Benit, Bayan-Bayan, Matanlang, Pag-Asa, Maot, and Calabasa, all in the Municipality of Labo, same province.

WHEREAS, under Section 10, Article X of the 1987 Constitution[1] the creation of a municipality shall be subject to approval by a majority of votes cast in a plebiscite in the political units directly affected, and pursuant to Section 134 of the Local Government Code (Batas Pambansa Blg. 337)[2] said plebiscite shall be conducted by the Commission on Elections;

WHEREAS, Section 6 of said Republic Act No. 7155 provides that the expenses in holding the plebiscite shall be taken out of the Contingent Fund under the current fiscal year appropriations;

NOW, THEREFORE, BE IT RESOLVED, as the Commission hereby resolves, to promulgated (sic) the following guidelines to govern the conduct of said plebiscite:

1. The plebiscite shall be held on December 15, 1991, in the areas or units affected, namely the barangays comprising the proposed Municipality of Tulay-Na-Lupa and the remaining areas of the mother Municipality of Labo, Camarines Norte (Tan vs. COMELEC, G.R. No. 73155, July 11, 1986).

xxx xxx xxx”

In the plebiscite held on December 15, 1991 throughout the Municipality of Labo, only 2,890 votes favored its creation while 3,439 voters voted against the creation of the Municipality of Tulay-Na-Lupa. Consequently, the day after the political exercise, the Plebiscite Board of Canvassers declared the rejection and disapproval of the independent Municipality of Tulay-Na-Lupa by a majority of votes.[3]

Thus, in this special civil action of certiorari, petitioner as Governor of Camarines Norte, seeks to set aside the plebiscite conducted on December 15, 1991 throughout the Municipality of Labo and prays that a new plebiscite be undertaken as provided by RA 7155. It is the contention of petitioner that the plebiscite was a complete failure and that the results obtained were invalid and illegal because the plebiscite, as mandated by COMELEC Resolution No. 2312 should have been conducted only in the political unit or units affected, i.e. the 12 barangays comprising the new Municipality of Tulay-Na-Lupa namely Tulay-Na-Lupa, Lugui, San Antonio, Mabilo I,

Napaod, Benit, Bayan-Bayan, Matanlang, Pag-Asa, Maot, and Calabasa. Petitioner stresses that the plebiscite should not have included the remaining area of the mother unit of the Municipality of Labo, Camarines Norte.[4]

In support of his stand, petitioner argues that with the approval and ratification of the 1987 Constitution, particularly Article X, Section 10, the ruling set forth in *Tan v. COMELEC*[5] relied upon by respondent COMELEC is now *pas*se, thus reinstating the case of *Paredes v. Executive Secretary*[6] which held that where a local unit is to be segregated from a parent unit, only the voters of the unit to be segregated should be included in the plebiscite.[7]

Accordingly, the issue in this case is whether or not respondent COMELEC committed grave abuse of discretion in promulgating Resolution No. 2312 and, consequently, whether or not the plebiscite conducted in the areas comprising the proposed Municipality of Tulay-Na-Lupa and the remaining areas of the mother Municipality of Labo is valid.

We rule that respondent COMELEC did not commit grave abuse in promulgating Resolution No. 2312 and that the plebiscite, which rejected the creation of the proposed Municipality of Tulay-Na-Lupa, is valid.

Petitioner's contention that our ruling in *Tan v. COMELEC* has been superseded with the ratification of the 1987 Constitution, thus reinstating our earlier ruling in *Paredes v. COMELEC* is untenable. Petitioner opines that since *Tan v. COMELEC* was based on Section 3 of Article XI of the 1973 Constitution[8] our ruling in said case is no longer applicable under Section 10 of Article X of the 1987 Constitution, especially since the latter provision deleted the words "unit or."

We do not agree. The deletion of the phrase "unit or" in Section 10, Article X of the 1987 Constitution from its precursor, Section 3 of Article XI of the 1973 Constitution has not affected our ruling in *Tan v. COMELEC* as explained by then CONCOM Commissioner, now my distinguished colleague, Associate Justice Hilario Davide, during the debates in the 1986 Constitutional Commission, to wit:

Mr. Maambong. While we have already approved the deletion of "unit or," I would like to inform the Committee that under the formulation in the present Local Government Code, the words used are actually "political unit or units." However, I do not know the implication of the use of these words. Maybe there will be no substantial difference, but I just want to inform the Committee about this.

Mr. Nollado. Can we not adhere to the original "unit or units"? will there be no objection on the part of the two Gentlemen from the floor?

Mr. Davide. I would object. I precisely asked for the deletion of the words "unit or" because in the plebiscite to be conducted, it must involve all the units affected. If it is the creation of a barangay, the municipality itself must participate in the plebiscite because it is affected. It would mean a loss of a territory.[9] (Underscoring supplied)

It stands to reason that when the law states that the plebiscite shall be conducted "in the political units directly affected," it means that residents of the political entity who would be economically dislocated by the separation of a portion thereof have a right to vote in said plebiscite. Evidently, what is contemplated by the phrase "political units directly affected," is the plurality of political units which would participate in the plebiscite.[10] Logically, those to be included in such political areas are the inhabitants of the 12 barangays of the proposed Municipality of Tulay-Na-Lupa as well as those living in the parent Municipality of Labo, Camarines Norte. Thus, we conclude that respondent COMELEC did not commit grave abuse of discretion in promulgating Resolution No. 2312.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

Padilla, J., on leave.

[1] Article X Sec. 10 of the 1987 Constitution 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 units directly affected."

[2] Sec. 134 of Batas Pambansa 337 provides: "Manner of Creation - A Municipality may be created, named, and its boundaries defined, altered or modified only by an Act of the Batasang Pambansa, subject to the approval by a majority of the votes cast in a plebiscite to be held in the unit or units affected. Except as may otherwise be provided in said Act, the plebiscite shall be conducted by the Commission on Elections, within one hundred twenty days from the date of its effectivity."

[3] Annex C, Rollo p. 15.

[4] Rollo, pp. 3-4.

[5] G.R. No. 73155, July 11, 1986, 142 SCRA 727.

[6] G.R. No. 55628, March 2, 1984, 128 SCRA 6.

[7] Rollo, p. 36.

[8] "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." Underscoring ours.

[9] Volume 3, Record of the Constitutional Commission, p. 486.

[10] Tan v. COMELEC, supra at Footnote No. 4.

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