

**SIMPLICIO C. GRIÑO, ARTURO GADIAN, THE LABAN NG
DEMOKRATIKONG PILIPINO, EVELYN C. JIZ AND PERLA ZULUETA,
PETITIONERS, VS. COMMISSION ON ELECTIONS, ILOILO
PROVINCIAL BOARD OF CAN...**

G.R. No. 105120. September 04, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails the act of respondent Commission on Elections (Comelec) of disallowing the voters of the sub-province of Guimaras, to vote for the governor, vice-governor of the province of Iloilo and the members of the Sangguniang Panlalawigan in the second district of the province, in the recently conducted May 11, 1992 local and national elections.

This petition was filed by the Laban ng Demokratikong Pilipino (LDP), a duly registered and accredited political party, through its Iloilo Provincial Chairman, co-petitioner, Simplicio Griño. Griño was also the official candidate of the party for the position of governor of Iloilo. The other co-petitioner, Arturo Gadian, claimed to be a registered voter of the municipality of Buenavista, sub-province of Guimaras, Iloilo.

The sub-province of Guimaras is composed of three municipalities, namely, Buenavista, Jordan and Nueva Valencia, with a combined voting population of fifty thousand (50,000), more or less. These three municipalities also constitute a part of the second district of Iloilo, with the municipalities of Pavia, Leganes, Sta. Barbara, New Lucena, Zarraga, Alimodian, Leon and San Miguel composing the remaining municipalities constituting the entire second district. In the previous elections, the voters from the municipalities comprising the sub-province of Guimaras were allowed to vote for the provincial officials of the entire province of Iloilo.

On January 1, 1992, the 1991 Local Government Code came into effect (Sec. 536, R.A. 7160). Section 462 thereof called for the conversion of existing sub-provinces into regular provinces upon approval by a majority of the votes cast in a plebiscite to be held in the areas directly affected by such conversion. Said section likewise directed the holding of the said plebiscite simultaneously with the national elections following the effectivity of R.A. 7160.

The first national elections conducted after the effectivity of R.A. 7160 was the recently concluded May 11, 1992 elections which was also held simultaneously with the local elections. Pursuant to Section 462 of R.A. 7160, the Comelec conducted a plebiscite for the conversion of Guimaras into a regular province simultaneously with the May 11, 1992 elections.

On April 15, 1992, the Comelec issued Resolution No. 2410 providing for the rules and regulations governing the plebiscite to decide the question on the conversion of the sub-province of Guimaras into a regular province. Section 3 thereof provided that all registered voters of Iloilo, except Iloilo City, and in the sub-province of Guimaras, who are qualified to vote for the provincial officials thereof in the May 11, 1992 elections, were

qualified to vote in the plebiscite. The ballots used for the three (3) municipalities of the sub-province of Guimaras and the entire province of Iloilo were provided with appropriate spaces at the bottom for this question:

PLEBISCITE QUESTION

Do you vote for the approval of the conversion of the sub-province pursuant to Section 462 of Republic Act No. 7160?

Yes No

It was however, observed by the herein petitioners, that the ballots distributed by the Comelec for use in the three (3) municipalities of Guimaras did not contain any space or provision for the election of the governor, vice-governor and the members of the Sangguniang Panlalawigan representing the second district of Iloilo, of which the sub-province of Guimaras was a part.

On May 13, 1992, or two (2) days after the election was conducted, herein petitioners filed the instant petition for certiorari. Petitioners alleged in substance that respondent Comelec acted without jurisdiction and with grave abuse of discretion when it disallowed the voters of the sub-province of Guimaras from voting for the governor and vice governor of Iloilo and the members of the Sangguniang Panlalawigan representing the second district of Iloilo. Petitioners further alleged that when R.A. 7160 was passed providing specifically for the creation of existing sub-provinces into a full-fledged province, it did not specifically provide that the voters of the sub-province shall no longer be allowed to vote for the provincial officials who, in case of a vote against its conversion into a regular province, would continue to represent said sub-province. Furthermore, respondent Commission on Elections failed to inform the candidates and the voters of such disenfranchisement.

On May 14, 1992, We issued a temporary restraining order enjoining the Commission on Elections and the Provincial Board of Canvassers of Iloilo City to cease and desist from canvassing and proclaiming the results of the election for the office of the governor, vice-governor and members of the Sangguniang Panlalawigan of Iloilo. We also ordered the public respondents to file their comments.

On May 28, 1992, public respondents filed their comment through the Office of the Solicitor General. On June 9, 1992, the petitioners filed their reply to public respondent's comment.

On June 17, 1992, We lifted the temporary restraining order.

On June 22, 1992, Perla S. Zulueta, who claimed to be the official candidate of the Nacionalista Party for the office of the governor of the Province of Iloilo and who allegedly ranked number two behind the front-runner Arthur Defensor, filed a motion for leave to intervene and for admission of her petition in intervention which was attached to the motion. Zulueta alleged the same allegations as those presented in the main petition and claimed that she has an interest in the matter of the main petition because the same is crucial and determinative of whether or not she would win for the office of governor. We admit herein the said petition for intervention and resolve the issue she raised therein in this decision considering that it is the same issue raised in the main petition.

Still another motion for intervention dated June 25, 1992 was filed by Rodolfo Legaspi and Richard Garin, Juanito Acanto and Alberto Javellana, Grace Fernandez and Pablito Araneta, and Nerio Salcedo and Antonio Teodeco, candidates for members of the Sangguniang Panlalawigan representing the first, third, fourth and fifth districts of Iloilo, respectively. Apparently, unaware of the lifting of the restraining order, they alleged in their motion that they were unduly prejudiced by the temporary restraining order issued by this Court on May 14, 1992 because the issue presented in the main petition had no direct effect on them or their election and they prayed for

the lifting of the said restraining order.

On July 9, 1992, We issued a resolution denying the motion for intervention filed by Legaspi, Garin, Acanto, Javellana, Fernandez, Araneta, Salcedo and Tedoco because We had previously lifted the temporary restraining order and considering that they were not directly affected by the principal issue in the main petition (p. 126, Rollo) which involved only the positions of governor, vice-governor and members of the Sangguniang Panlalawigan of the second district of Iloilo.

On July 8, 1992, the petitioners filed another motion to admit Amended Petition with the Amended Petition attached thereto. The original petition was amended to include as petitioners, Evelyn C. Jiz, another candidate for member of the Sangguniang Panlalawigan of the second district of Iloilo.

The pertinent provision affecting the principal issue in this case is Section 462 of the 1991 Local Government Code (R.A. 7160). It provides in full:

"SEC. 462. Existing Subprovinces. -- Existing sub-provinces are hereby converted into regular provinces upon approval by a majority of the votes cast in a plebiscite to be held in the said sub-provinces and the original provinces directly affected. The plebiscite shall be conducted by the Comelec simultaneously with the national elections following the effectivity of this Code.

"The new legislative districts created as a result of such conversion shall continue to be represented in Congress by the duly elected representatives of the original districts out of which said new provinces or districts were created until their own representatives shall have been elected in the next regular congressional elections and qualified.

"The incumbent elected officials of the said sub-provinces converted into regular provinces shall continue to hold office until June 30, 1992. Any vacancy occurring in the offices occupied by said incumbent elected officials, or resulting from expiration of their terms of office in case of a negative vote in the plebiscite results, shall be filled by appointment by the President. The appointee shall hold office until their successors shall have been elected in the regular local elections following the plebiscite mentioned herein and qualified. After effectivity of such conversion, the President shall fill up the position of governor of the newly created province through appointment if none has yet been appointed to the same as hereinbefore provided, and shall also appoint a vice-governor and the other members of the sangguniang panlalawigan, all of whom shall likewise hold office until their successors shall have been elected in the next regular local elections and qualified.

"All qualified appointive officials and employees in the career service of the said sub-provinces at the time of their conversion into regular provinces shall continue in office in accordance with the civil service law, rules and regulations."

We have carefully examined this section of the 1991 Local Government Code and We observed its incompleteness and inadequacy to govern all or any eventuality. It should be remembered that the law should take into consideration the decision of the populace to be affected by a change in its political set-up. As it is worded, Section 462 completely addresses an eventuality where the people of both the original district and the people of the new district to be created agree to the proposed creation of the latter. The law provides that, "After the effectivity of such conversion, the President shall fill up the position of governor of the newly created province through appointment, if none has yet been appointed to the same (as hereinafter provided), and shall also appoint a vice-governor and the other members of the sangguniang panlalawigan. . ."

But suppose the proposed conversion of a sub-province is rejected by those affected by such conversion, what does the law say? The law states only the following in case of a negative vote: "The incumbent elected officials of said sub-provinces converted into regular provinces shall continue to hold office until June 30, 1992. Any vacancy

occurring in the offices occupied by said incumbent elected officials, or resulting from expiration of their terms of office in case a negative vote in the plebiscite results, shall be filled by appointment by the President. The appointee shall hold office until their successors shall have been elected in the regular local elections following the plebiscite mentioned herein and qualified. x x x." Whatever incumbent elective positions exist under the present set-up, it appears that in case of a negative vote, these sub-provincial positions shall be filled by appointment of the President. The makers of the law however, failed to foresee that in the event the negative vote prevails naturally, the sub-province shall continue to be a part of the original province and continue to be represented by the provincial officials of the original province. The law is silent on whether the voters of the sub-province proposed to be converted into a regular province shall no longer be allowed to vote for the provincial officials in the election held simultaneously with the plebiscite. If the voters of Guimaras were allowed to vote for the provincial officials of Iloilo and the "Yes" vote in the plebiscite prevailed, these votes shall not be considered. If however, the "No" vote prevailed and the voters of Guimaras were allowed to vote for the provincial officials of Iloilo, their votes shall be taken into consideration. The Commission on Elections, being the agency directed to conduct the plebiscite decided not to let the voters of Guimaras vote for the provincial officials. The Commission was under mistaken presumption that under Section 462 of the 1991 Local Government Code, whether or not the conversion of Guimaras into a regular province is ratified by the people in a plebiscite, the President will fill up the positions of provincial officials through appointment until their successors shall have been elected and qualified. The law however is clear that in case of a negative vote, the elected officials of the sub-province only shall be appointed by the President. The law did not provide that the President shall also appoint provincial officials of the sub-province because, by a negative vote, the people of the sub-province of Guimaras shall continue to be represented by the provincial officials of the province of Iloilo elected at large by registered voters of Iloilo province including the sub-province of Guimaras.

However, it would serve no useful purpose if We undo all that the Commission on Elections had done in that plebiscite. It is more relevant to deal with the facts actually obtaining in the instant case. In the recently conducted plebiscite, the voters of the sub-province of Iloilo overwhelmingly voted for the approval of the conversion of Guimaras into a regular province. The total "Yes" votes was 283,224 as against 42,524 "No" votes (p. 34, Rollo). In this event, the President shall appoint, as in fact he already did appoint according to newspaper reports, the governor for the newly created province of Guimaras, and he shall also appoint a vice-governor and the member of the sangguniang panlalawigan in accordance with the third paragraph of Section 462 of R.A. 6170. The then sub-province of Guimaras is now a regular province, politically independent from the province of Iloilo. There is no more legal basis for the calling of a special election for the municipalities of Buenavista, Jordan and Nueva Valencia for the purpose of electing the governor and vice-governor of Iloilo and the members of the Sangguniang Panlalawigan of the second district thereof.

ACCORDINGLY, the petition is DISMISSED for being moot and academic.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, and Nocon JJ., concur.

Bellosillo, J., in the result.

Griño-Aquino, J., no part, petitioner is my brother.

Melo, and Campos, Jr., JJ., did not take part.

Feliciano, J., on official leave.

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