

ENRIQUE T. GARCIA, ET AL., PETITIONERS, VS. COMMISSION ON ELECTIONS AND LUCILA PAYUMO, ET. AL., RESPONDENTS.*G.R. No. 111511. October 05, 1993*

Ponente: PUNO, J.

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The EDSA revolution of 1986 restored the reality that the people's might is not a myth. The 1987 Constitution then included people power as an article of faith and Congress was mandated to pass laws for its effective exercise. The Local Government Code of 1991 was enacted providing for two (2) modes of initiating the recall from office of local elective officials who appear to have lost the confidence of the electorate. One of these modes is recall through the initiative of a preparatory recall assembly. In the case at bench, petitioners assail this mode of initiatory recall as unconstitutional. The challenge cannot succeed.

We shall first unfurl the facts.

Petitioner Enrique T. Garcia was elected governor of the province of Bataan in the May 11, 1992 elections. In the early evening of July 1, 1993, some mayors, vice mayors and members of the Sangguniang Bayan of the twelve (12) municipalities of the province met at the National Power Corporation compound in Bagac, Bataan. At about 12:30 A.M. of the following day, July 2, 1993, they proceeded to the Bagac town plaza where they constituted themselves into a Preparatory Recall Assembly to initiate the recall election of petitioner Garcia. The mayor of Mariveles, Honorable Oscar de los Reyes, and the mayor of Dinalupihan, the Honorable Lucila Payumo, were chosen as Presiding Officer and Secretary of the Assembly, respectively. Thereafter, the Vice-Mayor of Limay, the Honorable Ruben Roque, was recognized and he moved that a resolution be passed for the recall of the petitioner Garcia on the ground of "loss of confidence." [1] The motion was "unanimously seconded." [2] The resolution, states:

RESOLUTION NO. 1

Whereas, the majority of all the members of the Preparatory Recall Assembly in the Province of Bataan have voluntarily constituted themselves for the purpose of the recall of the incumbent provincial governor of the province of Bataan, Honorable Enrique T. Garcia pursuant to the provisions of Section 70, paragraphs (a), (b) and (c) of Republic Act 7160, otherwise known as the Local Government Code of 1991;

Whereas, the total number of all the members of the Preparatory Recall Assembly in the province of Bataan is One Hundred and Forty-Six (146) composed of all mayors, vice-mayors and members of the Sangguniang Bayan of all the 12 towns of the province of Bataan;

Whereas, the majority of all the members of the Preparatory Recall Assembly, after a serious and careful deliberation have decided to adopt this resolution for the recall of the incumbent provincial governor Enrique T. Garcia for loss of confidence;

Now, therefore, be it resolved as it is hereby resolved that having lost confidence on the incumbent provincial

governor of Bataan, Enrique T. Garcia, recall proceedings be immediately initiated against him;

Resolved Further, that copy of this resolution be furnished the Honorable Commission on Elections, Manila and the Provincial Election Supervisor, Balanga, Bataan.

One hundred forty-six (146) names appeared in Resolution No. 1 but only eighty (80) carried the signatures of the members of the PRA. Of the eighty (80) signatures, only seventy-four (74) were found genuine.[3] The PRAC of the province had a membership of one hundred forty-four (144)[4] and its majority was seventy-three (73).

On July 7, 1993, petitioners filed with the respondent COMELEC a petition to deny due course to said Resolution No. 1. Petitioners alleged that the PRAC failed to comply with the "substantive and procedural requirements" laid down in Section 70 of R.A. 7160, otherwise known as the Local Government Code of 1991. In a per curiam Resolution promulgated August 31, 1993, the respondent COMELEC dismissed the petition and scheduled the recall elections for the position of Governor of Bataan on October 11, 1993. Petitioners then filed with Us a petition for certiorari and prohibition with writ of preliminary injunction to annul the said Resolution of the respondent COMELEC on various grounds. They urged that section 70 of R.A. 7160 allowing recall through the initiative of the PRAC is unconstitutional because: (1) the people have the sole and exclusive right to decide whether or not to initiate recall proceedings, and (2) it violated the right of elected local public officials belonging to the political minority to equal protection of law. They also argued that the proceedings followed by the PRAC in passing Resolution No. 1 suffered from numerous defects, the most fatal of which was the deliberate failure to send notices of the meeting to sixty-five (65) members of the assembly. On September 7, 1993, We required the respondents to file their Comments within a non-extendible period of ten (10) days.[5] On September 16, 1993, We set the petition for hearing on September 21, 1993 at 11 A.M. After the hearing, We granted the petition on the narrow ground that the sending of selective notices to members of the PRAC violated the due process protection of the Constitution and fatally flawed the enactment of Resolution No. 1. We ruled:

x x x

"After deliberation, the Court opts not to resolve the alleged constitutional infirmity of sec. 70 of R.A. No. 7160 for its resolution is not unavoidable to decide the merits of the petition. The petition can be decided on the equally fundamental issues of: (1) whether or not all the members of the Preparatory Recall Assembly were notified of its meeting; and (2) assuming lack of notice, whether or not it would vitiate the proceedings of the assembly including its Resolution No. 1.

The failure to give notice to all members of the assembly, especially to the members known to be political allies of petitioner Garcia was admitted by both counsels of the respondents. They did not deny that only those inclined to agree with the resolution of recall were notified as a matter of political strategy and security. They justified these selective notices on the ground that the law does not specifically mandate the giving of notice.

We reject this submission of the respondents. The due process clause of the Constitution requiring notice as an element of fairness is inviolable and should always be considered as part and parcel of every law in case of its silence. The need for notice to all the members of the assembly is also imperative for these members represent the different sectors of the electorate of Bataan. To the extent that they are not notified of the meeting of the assembly, to that extent is the sovereign voice of the people they represent nullified. The resolution to recall should articulate the majority will of the members of the assembly but the majority will can be genuinely determined only after all the members of the assembly have been given a fair opportunity to express the will of their constituents. Needless to stress, the requirement of notice is mandatory for it is indispensable in determining the collective wisdom of the members of the Preparatory Recall Assembly. Its non-observance is fatal to the validity of the resolution to recall petitioner Garcia as Governor of the province of Bataan.

The petition raises other issues that are not only prima impressionis but also of transcendental importance to

the rightful exercise of the sovereign right of the people to recall their elected officials. The Court shall discuss these issues in a more extended decision."

In accord with this Resolution, it appears that on September 22, 1993, the Honorable Mayor of Dinalupihan, Oscar de los Reyes again sent Notice of Session to the members of the PRAC to "convene in session on September 26, 1993 at the town plaza of Balanga, Bataan at 8:30 o'clock in the morning." [6] From news reports, the PRAC convened in session and eighty-seven (87) of its members once more passed a resolution calling for the recall of petitioner Garcia. [7] On September 27, 1993, petitioners filed with Us a Supplemental Petition and Reiteration of Extremely Urgent Motion pressing for a resolution of their contention that section 70 of R.A. 7160 is unconstitutional.

We find the original Petition and the Supplemental Petition assailing the constitutionality of section 70 of R.A. 7160 insofar as it allows a preparatory recall assembly to initiate the recall of local elective officials as bereft of merit.

Every law enjoys the presumption of validity. The presumption rests on the respect due to the wisdom, integrity, and the patriotism of the legislative, by which the law is passed, and the Chief Executive, by whom the law is approved. [8] For upholding the Constitution is not the responsibility of the judiciary alone but also the duty of the legislative and executive. [9] To strike down a law as unconstitutional, there must be a clear and unequivocal showing that what the fundamental law prohibits, the statute permits. [10] The annulment cannot be decreed on a doubtful and arguable implication. The universal rule of legal hermeneutics is that all reasonable doubts should be resolved in favor of the constitutionality of a law. [11]

Recall is a mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be indispensable for the proper administration of public affairs. [12] Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy. [13]

Recall as a mode of removal of elective local officials made its maiden appearance in our 1973 Constitution. [14] It was mandated in section 2 of Article XI entitled Local Government, viz:

SEC. 2. The Batasang Pambansa shall enact a local government code which may not thereafter be amended except by a majority vote of all its Members, defining a more responsive and accountable local government structure with an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, election and removal, term, salaries, powers, functions, and duties of local officials, and all other matters relating to the organization and operation of the local units. However, any change in the existing form of local government shall not take effect until ratified by a majority of the votes cast in a plebiscite called for the purpose. (Underscoring supplied)

The Batasang Pambansa then enacted BP 337 entitled "The Local Government Code of 1983." Section 54 of its Chapter 3 provided only one mode of initiating the recall elections of local elective officials, i.e., by petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned, viz:

Sec. 54. By Whom Exercised; Requisites. - (1) The power of recall shall be exercised by the registered voters of the unit to which the local elective official subject to such recall belongs.

(2) Recall shall be validly initiated only upon petition of at least twenty-five percent of the total number of registered voters in the local government unit concerned based on the election in which the local official sought to be recalled was elected.

Our legal history does not reveal any instance when this power of recall as provided by BP 337 was exercised by our people.

In February 1986, however, our people more than exercised their right of recall for they resorted to revolution and they booted out of office the highest elective officials of the land.

The successful use of people power to remove public officials who have forfeited the trust of the electorate led to its firm institutionalization in the 1987 Constitution. Its Article XIII expressly recognized the Role and Rights of People's Organizations, viz:

Sec. 15. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People's organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

Sec. 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by laws, facilitate the establishment of adequate consultation mechanisms.

Section 3 of its Article X also reiterated the mandate for Congress to enact a local government code which "shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative and referendum....," viz:

Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

In response to this constitutional call, Congress enacted R.A. 7160, otherwise known as the Local Government Code of 1991, which took effect on January 1, 1992. In this Code, Congress provided for a second mode of initiating the recall process through a preparatory recall assembly which in the provincial level is composed of all mayors, vice-mayors and sanggunian members of the municipalities and component cities. We quote the pertinent provisions of R.A. 7160, viz:

CHAPTER 5 - RECALL

Sec. 69. By Whom Exercised. - The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.

Sec. 70. Initiation of the Recall Process. (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

- (1) Provincial level. - all mayors, vice-mayors and sanggunian members of the municipalities and component cities;
- (2) City level. - All punong barangay and sangguniang barangay members in the city;

(3) Legislative District level. - In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where sangguniang panlungsod members are elected by district, all elective barangay officials in the district; and

(4) Municipal level. - All punong barangay and sangguniang barangay members in the municipality.

(c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.

(d) Recall of any elective provincial, city, municipal, or barangay official may be validly initiated upon petition of at least twenty-five (25) percent of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

Sec. 71. Election Recall - Upon the filing of a valid resolution or petition for recall with the appropriate local office of the Comelec, the Commission or its duly authorized representative shall set the date of the election on recall, which shall not be later than thirty (30) days after the filing of the resolution or petition for recall in the case of the barangay, city, or municipal officials, and forty-five (45) days in the case of provincial officials. The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon.

Sec. 72. Effectivity of Recall. - The recall of an elective local official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.

Sec. 73. Prohibition from Resignation. - The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress.

Sec. 74. Limitations on Recall. - (a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular election.

A reading of the legislative history of these recall provisions will reveal that the idea of empowering a preparatory recall assembly to initiate the recall from office of local elective officials originated from the House of Representatives and not the Senate.[15] The legislative records reveal that there were two (2) principal reasons why this alternative mode of initiating the recall process thru an assembly was adopted, viz: (a) to diminish the difficulty of initiating recall thru the direct action of the people; and (b) to cut down on its expenses.[16] Our lawmakers took note of the undesirable fact that the mechanism of initiating recall by direct action of the electorate was utilized only once in the City of Angeles, Pampanga, but even this lone attempt to recall the city mayor failed. Former Congressman Wilfredo Cainglet explained that this initiatory process by direct action of the people was too cumbersome, too expensive and almost impossible to implement.[17] Consequently, our legislators added in the Code a second mode of initiating the recall of local officials, i.e., thru a preparatory recall assembly. They brushed aside the argument that this second mode may cause instability in the local government units due to its imagined ease.

We have belabored the genesis of our recall law for it can light up many of the unilluminated interstices of the law. In resolving constitutional disputes, We should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs. Prescinding from this

proposition, We shall now resolve the contention of petitioners that the alternative mode of allowing a preparatory recall assembly to initiate the process of recall is unconstitutional.

It is first postulated by the petitioners that "the right to recall does not extend merely to the prerogative of the electorate to reconfirm or withdraw their confidence on the official sought to be recalled at a special election. Such prerogative necessarily includes the sole and exclusive right to decide on whether to initiate a recall proceedings or not." [18]

We do not agree. Petitioners cannot point to any specific provision of the Constitution that will sustain this submission. To be sure, there is nothing in the Constitution that will remotely suggest that the people have the "sole and exclusive right to decide on whether to initiate a recall proceeding." The Constitution did not provide for any mode, let alone a single mode, of initiating recall elections. [19] Neither did it prohibit the adoption of multiple modes of initiating recall elections. The mandate given by section 3 of Article X of the Constitution is for Congress to "enact a local government code which shall provide for a more responsive and accountable local government structure through a system of decentralization with effective mechanisms of recall, initiative, and referendum x x x" By this constitutional mandate, Congress was clearly given the power to choose the effective mechanisms of recall as its discernment dictates. The power given was to select which among the means and methods of initiating recall elections are effective to carry out the judgment of the electorate. Congress was not straightjacketed to one particular mechanism of initiating recall elections. What the Constitution simply required is that the mechanisms of recall, whether one or many, to be chosen by Congress should be effective. Using its constitutionally granted discretion, Congress deemed it wise to enact an alternative mode of initiating recall elections to supplement the former mode of initiation by direct action of the people. Congress has made its choice as called for by the Constitution and it is not the prerogative of this Court to supplant this judgment. The choice may be erroneous but even then, the remedy against a bad law is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law. [20]

Petitioners also posit the thesis that in passing Resolution No. 1, the Bataan Preparatory Recall Assembly did not only initiate the process of recall but had de facto recalled petitioner Garcia from office, a power reserved to the people alone. To quote the exact language of the petitioners: "The initiation of a recall through the PRA effectively shortens and ends the term of the incumbent local officials. Precisely, in the case of Gov. Garcia, an election was scheduled by the COMELEC on 11 October 1993 to determine who has the right to assume the unexpired portion of his term of office which should have been until June 1995. Having been relegated to the status of a mere candidate for the same position of governor (by operation of law) he has, therefore, been effectively recalled." [21] In their Extremely Urgent Clarificatory Manifestation, [22] petitioners put the proposition more bluntly by stating that a "PRA resolution of recall is the recall itself."

Again, the contention cannot command our concurrence. Petitioners have misconstrued the nature of the initiatory process of recall by the PRAC. They have embraced the view that initiation by the PRAC is not initiation by the people. This is a misimpression for initiation by the PRAC is also initiation by the people, albeit done indirectly through their representatives. It is not constitutionally impermissible for the people to act through their elected representatives. Nothing less than the paramount task of drafting our Constitution is delegated by the people to their representatives, elected either to act as a constitutional convention or as a congressional constituent assembly. The initiation of a recall process is a lesser act and there is no rhyme or reason why it cannot be entrusted to and exercised by the elected representatives of the people. More far out is petitioners' stance that a PRA resolution of recall is the recall itself. It cannot be seriously doubted that a PRA resolution of recall merely starts the process. It is part of the process but is not the whole process. This ought to be self evident for a PRA

resolution of recall that is not submitted to the COMELEC for validation will not recall its subject official. Likewise, a PRA resolution of recall that is rejected by the people in the election called for the purpose bears no effect whatsoever. The initiatory resolution merely sets the stage for the official concerned to appear before the tribunal of the people so he can justify why he should be allowed to continue in office. Before the people render their sovereign judgment, the official concerned remains in office but his right to continue in office is subject to question. This is clear in section 72 of the Local Government Code which explicitly states that "the recall of an elective local official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall."

We shall next settle the contention of petitioners that the disputed law infracts the equal protection clause of the Constitution. Petitioners asseverate:

5.01.2. It denied petitioners the equal protection of the laws for the local officials constituting the majority party can constitute itself into a PRA and initiate the recall of a duly elected provincial official belonging to the minority party thus rendering ineffectual his election by popular mandate. Relevantly, the assembly could, to the prejudice of the minority (or even partyless) incumbent official, effectively declare a local elective position vacant (and demand the holding of a special election) for purely partisan political ends regardless of the mandate of the electorate. In the case at bar, 64 of the 74 signatories to the recall resolution have been political opponents of petitioner Garcia, not only did they not vote for him but they even campaigned against him in the 1992 elections.

Petitioners' argument does not really assail the law but its possible abuse by the members of the PRAC while exercising their right to initiate recall proceedings. More specifically, the fear is expressed that the members of the PRAC may inject political color in their decision as they may initiate recall proceedings only against their political opponents especially those belonging to the minority. A careful reading of the law, however, will ineluctably show that it does not give an asymmetrical treatment to locally elected officials belonging to the political minority. First to be considered is the politically neutral composition of the preparatory recall assembly. Sec. 70 (b) of the Code provides:

Sec. 70. Initiation of the Recall Process. (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

- (1) Provincial level. - All mayors, vice mayors and sanggunian members of the municipalities and component cities;
- (2) City level. - All punong barangay and sangguniang barangay members in the city;
- (3) Legislative District level. - In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where sangguniang panlungsod members are elected by district, all elective barangay officials in the district; and
- (4) Municipal level. - All punong barangay and sangguniang barangay members in the municipality.

Under the law, all mayors, vice-mayors and sangguniang members of the municipalities and component cities are made members of the preparatory recall assembly at the provincial level. Its membership is not apportioned to political parties. No significance is given to the political affiliation of its members. Secondly, the preparatory recall assembly at the provincial level includes all the elected officials in the province concerned. Considering their number, the greater probability is that no one political party can control its majority. Thirdly, sec. 69 of the

Code provides that the only ground to recall a locally elected public official is loss of confidence of the people. The members of the PRAC are in the PRAC not in representation of their political parties but as representatives of the people. By necessary implication, loss of confidence cannot be premised on mere differences in political party affiliation. Indeed, our Constitution encourages the multi-party system for the existence of opposition parties is indispensable to the growth and nurture of the democratic system. Clearly then, the law as crafted cannot be faulted for discriminating against elected local officials belonging to the minority.

The fear that a preparatory recall assembly may be dominated by a political party and that it may use its power to initiate the recall of officials of opposite political persuasions, especially those belonging to the minority, is not a ground to strike down the law as unconstitutional. To be sure, this argument has long been in disuse for there can be no escape from the reality that all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm per se the grant of power to an individual or entity. To deny power simply because it can be abused by the grantee is to render government powerless and no people need an impotent government. There is no democratic government that can operate on the basis of fear and distrust of its officials, especially those elected by the people themselves. On the contrary, all our laws assume that our officials, whether appointed or elected, will act in good faith and will regularly perform the duties of their office. Such a presumption follows the solemn oath that they took after assumption of office, to faithfully execute all our laws.

Moreover, the law instituted safeguards to assure that the initiation of the recall process by a preparatory recall assembly will not be corrupted by extraneous influences. As explained above, the diverse and distinct composition of the membership of a preparatory recall assembly guarantees that all the sectors of the electorate province shall be heard. It is for this reason that in Our Resolution of September 21, 1993, We held that notice to all the members of the recall assembly is a condition sine qua non to the validity of its proceedings. The law also requires a qualified majority of all the preparatory recall assembly members to convene in session and in a public place. It also requires that the recall resolution by the said majority must be adopted during its session called for the purpose. The underscored words carry distinct legal meanings and purvey some of the parameters limiting the power of the members of a preparatory recall assembly to initiate recall proceedings. Needless to state, compliance with these requirements is necessary, otherwise, there will be no valid resolution of recall which can be given due course by the COMELEC.

Furthermore, it cannot be asserted with certitude that the members of the Bataan preparatory recall assembly voted strictly along narrow political lines. Neither the respondent COMELEC nor this Court made a judicial inquiry as to the reasons that led the members of the said recall assembly to cast a vote of lack of confidence against petitioner Garcia. That inquiry was not undertaken for to do so would require crossing the forbidden borders of the political thicket. Former Senator Aquilino Pimentel, Jr., a major author of the subject law in his book *The Local Government Code of 1991: The Key to National Development*, stressed the same reason why the substantive content of a vote of lack of confidence is beyond any inquiry, thus:

"There is only one ground for the recall of local government officials: loss of confidence. This means that the people may petition or the Preparatory Recall Assembly may resolve to recall any local elective officials without specifying any particular ground except loss of confidence. There is no need for them to bring up any charge of abuse or corruption against the local elective officials who are the subject of any recall petition.

In the case of *Evardone vs. Commission on Elections, et al.*, 204 SCRA 464, 472 (1991), the Court ruled that "loss of confidence" as a ground for recall is a political question. In the words of the Court, "whether or not the electorate of the municipality of Sulat has lost confidence in the incumbent mayor is a political question."

Any assertion therefore that the members of the Bataan preparatory recall assembly voted due to their political aversion to petitioner Garcia is at best a surmise.

Petitioners also contend that the resolution of the members of the preparatory recall assembly subverted the will of the electorate of the province of Bataan who elected petitioner Garcia with a majority of 12,500 votes. Again, the contention proceeds from the erroneous premise that the resolution of recall is the recall itself. It refuses to recognize the reality that the resolution of recall is a mere proposal to the electorate of Bataan to subject petitioner to a new test of faith. The proposal will still be passed upon by the sovereign electorate of Bataan. As this judgment has yet to be expressed, it is premature to conclude that the sovereign will of the electorate of Bataan has been subverted. The electorate of Bataan may or may not recall petitioner Garcia in an appropriate election. If the electorate re-elects petitioner Garcia, then the proposal to recall him made by the preparatory recall assembly is rejected. On the other hand, if the electorate does not re-elect petitioner Garcia, then he has lost the confidence of the people which he once enjoyed. The judgment will write finis to this political controversy. For more than judgments of courts of law, the judgment of the tribunal of the people is final for "sovereignty resides in the people and all government authority emanates from them."

In sum, the petition at bench appears to champion the sovereignty of the people, particularly their direct right to initiate and remove elective local officials thru recall elections. If the petition would succeed, the result will be a return to the previous system of recall elections which Congress found should be improved. The alternative mode of initiating recall proceedings thru a preparatory recall assembly is, however, an innovative attempt by Congress to remove impediments to the effective exercise by the people of their sovereign power to check the performance of their elected officials. The power to determine this mode was specifically given to Congress and is not proscribed by the Constitution.

IN VIEW WHEREOF, the original Petition and the Supplemental Petition assailing the constitutionality of section 70 of R.A. 7160 insofar as it allows a preparatory recall assembly to initiate the recall process are dismissed for lack of merit. This Decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Romero, Nocon, and Bellosillo, JJ., concur.

Griño-Aquino, J., on leave.

Davide, Jr., J., dissents, please see dissenting opinion.

Melo, J., joins J. Davide, in his dissenting opinion.

Quiason, and Vitug, JJ., see concurring opinion.

[1] Minutes of the meeting of the PRAC held on July 2, 1993, p. 1, Annex "C" of petition.

[2] Ibid.

[3] Resolution dated August 31, 1993 of the respondent COMELEC, Annex "H" of the petition, p. 9.

[4] Excluded in the computation of the base figure for the purpose of determining the majority were the sectoral representatives of the Sangguniang Bayan as there were yet no elections for the said positions at that time.

[5] The Comments of the respondents were filed on September 17, 1993.

[6] Annex "A", Extremely Urgent Motion to Require Respondents to Maintain Status Quo.

[7] Manila Bulletin, issue of September 28, 1993, page 1, reported that the second recall resolution was signed by 7 of 12 mayors of Bataan, 9 vice mayors and 61 Sangguniang Bayan members (councilors).

[8] Alba vs. Evangelista, 100 Phil. 683 (1957).

[9] Peralta vs. COMELEC, 82 SCRA 30 (1978).

[10] Morfe vs. Mutuc, 22 SCRA 424 (1968).

[11] Heirs of Ordonia vs. Reyes, 125 SCRA 220 (1983).

[12] 67 CJS 480.

[13] Ibid, p. 682.

[14] Even prior to the 1973 Constitution, however, the National Assembly of the Philippines, under its plenary powers, had enacted legislation which included a mechanism of recalling local government officials. (See Section 8 of Commonwealth Act No. 581, also known as the Festin Act, dated June 8, 1940).

[15] This was confirmed by former Senator Aquilino Pimentel, Jr., who appeared as amicus curiae in the hearing of September 21, 1993. See also Senate Bill No. 155.

[16] The main proponent of this alternative mode was former Congressman Wilfredo Cainglet.

[17] Minutes of the meeting of the Special Committee on Local Government, August 6, 1990.

[18] Petition, p. 12.

[19] The rule is, the termination of the official relations of a public officer depends on the law under which his office was created. For incumbents of positions other than constitutional offices, therefore, the subject of regulating their removal from office ordinarily forms part of the power of the legislature. This legislative power, however, is not absolute, since it may be limited or even completely taken away by the provisions of the Constitution. Thus, where the Constitution prescribes the method of removal and the causes for the same, the methods and grounds so established are exclusive; and it is beyond Congress to prescribe any other means or causes for removal.

[20] Tanada vs. Cuenco, 103 Phil. 1051 (1957)

[21] Supplemental Petition, p. 3

[22] Filed on September 29, 1993.

Garcia vs Commission on Elections : 111511 : October 5, 1993 : J. Davide Jr : En Banc : Separate Opinion 105 6 pt 6 pt 0 3

SEPARATE OPINION

DAVIDE, JR., J.:

The paramount issue in this case is the constitutionality of that part of Section 70 of the Local Government Code of 1991 (R.A. No. 7160) which grants to a body known as the preparatory recall assembly (PRA) the power to initiate recall proceedings.[1] At the provincial level, as in this case, the PRA is composed of all mayors, vice-mayors, and sanggunian members of the municipalities and component cities in the province.

The issue can only be resolved by inquiring into the nature or essence of recall. The system of recall was adopted for the first time in our jurisdiction in the 1973 Constitution. Section 2 of Article XI thereof provided:

"SEC. 2. The Batasang Pambansa shall enact a local government code which may not thereafter be amended

except by a majority vote of all its members, defining a more responsive and accountable local government structure with an effective system of recall, x x x."

This section was incorporated, with some modifications, in the 1987 Constitution to emphasize the thrust on decentralization and to provide for a mechanism of initiative and referendum. Section 3 of Article X thereof provides as follows:

"SEC. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, x x x."

Recall is of American origin. In 1951, the constitutions of twelve (12) States of the American union contained provisions on recall. Oregon was the first to adopt it in 1908, although it had been part of the charter of the city of Los Angeles five years earlier.[2]

Wallace vs. Tripp[3] considers it a fundamental right reserved to the people of the state by the Constitution, and Bernzen vs. City of Boulder[4] declares it, like the power of initiative and referendum, to be a fundamental right of citizens within a representative democracy. For its definition, Wallace quotes Webster's New International Dictionary, 2nd ed., 2075, to wit:

"The right or procedure by which a public official, commonly a legislative or executive official, may be removed from office, before the end of his term of office, by a vote of the people to be taken on the filing of a petition signed by the required number of qualified voters (commonly 25%)."

The principle underlying recall is stated in Dunham vs. Ardery[5] as follows:

"We understand that the principle underlying the recall of public officers means that the people may have an effective and speedy remedy to remove an official who is not giving satisfaction -- one who they do not want to continue in office, regardless of whether or not he is discharging his full duty to the best of his ability and as his conscience dictates. If the policies pursued do not meet the approval of a majority of the people, it is the underlying principle of the recall doctrine to permit them to expeditiously recall the official, without form or ceremony, as provided for in the charter."

Since recall is constitutionally mandated in our jurisdiction, it goes without saying that it is a power reserved to the people to be exercised by the registered voters. It was for this reason that, to implement the power of recall under the 1973 Constitution, Batas Pambansa Blg. 337 (the old Local Government Code) provided in Section 54 thereof as follows:

"SEC. 54. By whom exercised; Requisites. -- (1) The power of recall shall be exercised by the registered voters of the unit to which the local elective official subject to such recall belongs.

(2) Recall shall be validly initiated only upon petition of at least twenty-five percent of the total number of registered voters in the local government unit concerned based on the election in which the local official sought to be recalled was elected."

To implement the 1987 Constitution provision on recall, the Local Government Code of 1991 likewise expressly provides in Section 69 as follows:

"SECTION 69. By whom Exercised. -? The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs."

Indubitably then, the power of recall is exclusively vested in the electorate or, more specifically, in the registered voters of the local government unit concerned. In the United States, from where we patterned our system of recall,

the initiation of the recall proceeding is always done by a certain percentage of the voters. Thus:

"x x x The required percentage ranges from ten in Kansas to thirty in North Dakota, but twenty-five is by far the most common." [6]

In both B.P. Blg. 337 and the Local Government Code of 1991, our Legislature fixed it at twenty-five percent (25%) of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected. [7] It follows then that said power cannot be shared with any other group of persons or officials. Any such sharing would impair or negate the exclusive character of the power. It is indivisible. Its essential, nay indispensable, components are the initiation and the election, both of which are substantive in character. By reason of its exclusive and indivisible character, both components must be exercised by the electorate alone. The reason why the initiation phase can and must be done only by the electorate is not difficult to understand. If it can also be done by another body, such as the PRA in this case, the exclusiveness or indivisibility of the power is necessarily impaired or negated. In such a case, the electorate is bypassed and the resulting recall petition or resolution can by no means be an authentic, free, and voluntary act of the electorate, which characteristics are the indicia of the exercise of a power. The power to initiate, being a component of the power of recall, necessarily includes the power not to initiate. The power to initiate becomes meaningless if another body is authorized to do it for the electorate. Worse, since the second component of the power of recall, i.e., the recall election, does not come into play without the recall petition, it follows that where the petition is not done through the initiative of the electorate because the latter chooses not to exercise its power to recall or finds no reason therefor, that election becomes, as to the electorate, more of a duty and not a power. The electorate would in effect be compelled to participate in a political exercise it neither called for nor decided to have.

Hence, the fullness of the power of recall precludes the delegation of the corresponding authority to initiate it to any entity other than the electorate, especially where the delegation unduly infringes upon and impairs such power as in this case.

I might add that since Congress decided to retain the 25% requirement for the traditional method of initiating recall -- which is the method in full accord and perfect harmony with the true essence of recall -- the provision for an alternative method, i.e., recall resolution by a mere majority of the PRA, is subtly designed to negate, if not altogether defeat, the power of the electorate and to substitute the will of a very small group for the will of the electorate. Admittedly, it is extremely difficult to meet the 25% requirement. On the other hand, it is far too easy, and at times politically convenient and expedient, to get a majority of the members of the PRA to initiate a recall proceeding. The choice then is all too obvious. Indeed, this is the clear message of the admission by former Congressman Wilfredo Cainglet that the 25% requirement rendered the traditional method ineffective thus necessitating the creation of an alternative method. But the alternative method besmirches the sanctity of the recall process. If 25% was found ineffective, then the remedy should have been to reduce it to, say, 15% or 20%.

The conclusion then is inevitable that the provision on the preparatory recall assembly in Section 70 of the Local Government Code of 1991 is unconstitutional because it amounts to an undue delegation of the power of recall.

I vote to GRANT the petition.

[1] During the oral arguments in this case, former Senator Aquilino Pimentel, Jr., appearing as amicus curiae, disclosed that the provision on the preparatory recall assembly was not embodied in the Senate version of the Code but was introduced by the House of Representatives.

[2] The eleven other States are Arizona, California, Colorado, Idaho, Kansas, Louisiana, Michigan, Nevada, North

Dakota, Washington, and Wisconsin. See MACDONALD, A.F., *American State Government and Administration*, 4th ed., 1951, 153.

[3] 358 Mich. 668, 101 N.W. 2d 312.

[4] 186 Colo. 81, 525 P.2d 416.

[5] 43 Okl. 619, 143 P. 331.

[6] MCDONALD, *supra*, 154.

[7] Paragraph 2, Section 54, B.P. Blg. 337 and paragraph (d), Section 70, R.A. No. 7160.

Garcia vs Commission on Elections : 111511 : October 5, 1993 : J. Quiason : En Banc : Concurring Opinion 105
6 pt 6 pt 0 3

CONCURRING OPINION

QUIASON, J.:

Recall is a process for the removal of an official during his term by a vote of a specified number of citizens at an election called for such purpose (*Wallace v. Tripp*, 358 Mich. 668, 101 NW 2d 312).

The process may be provided for in a constitution or in the absence of constitutional empowerment, in ordinary statutes. In the latter case, the legislature enacts a system for recall in the exercise of its general control of the removal of public officer (*In re Bower*, 41 Ill., 777, 242 Ne 2D, 252, *Dunhan v. Ardery*, 43 OKI 619, 142 p. 331).

Recall statutes enacted without express constitutional mandate have been upheld against claims (a) that they are obnoxious to a republican form of government (*Dunhan v. Ardery supra*) or (b) that they constitute a denial of due process or a bill of attainder (*State ex rel Topping v. Houston*, 94 Neb. 445, 643 NW 796, *Roberts v. Brown*, 73 Tenn App. 567, 310 SW 2d. 197).

The procedure in the recall of an official may be prescribed in the constitution itself or in statutory provisions relating to the subject. In passing on the construction of recall statutes, the courts have enforced them according to their terms and have disclaimed all concern as to their wisdom and policy (*State ex rel Clark v. Harris*, 74 Or 573, 144 p. 109).

The 1987 Constitution does not prescribe the procedure in the recall of elective officials.

The intent is clear that the 1987 Constitution leaves it to Congress to provide the recall mechanism without any pre-ordained restrictions. The broad powers of Congress in prescribing the procedure for recall include the determination as to the number of electors needed to initiate the recall, the method of voting of the electors, the time and place of the voting and whether the process includes the election of the successor of the recalled official.

In the Local Government Code of 1991 (R.A. No. 7160), Congress adopted an alternative procedure for initiating the recall and made it as a mere stage of the recall process.

Congress also deigned it wise to give the electorate a chance to participate in the exercise twice: first, in the initiation of the recall; and, secondly, in the election of the person to occupy the office subject of the recall. This is in contrast with the first recall statute in the Philippines, the Festin Law (Com. Act No. 560) where the participation of the electorate ended after the voting for the recall. In the Festin Law, the electorate were denied the opportunity to vote for the retention of the official subject of the recall.

In a sense, the members of the PRA can be considered as constituting a segment of the electorate because they are all registered voters of the province. If they constitute less than one percent of the voters in the province, that miniscule number goes to the policy, not the validity of the law and the remedy to correct such a flaw is left with the legislature, not with the judiciary.

Garcia vs Commission on Elections : 111511 : October 5, 1993 : J. Vitug : En Banc : Concurring Opinion 6 pt 6
pt 0 3

CONCURRING OPINION

VITUG, J.:

I fully concur with the disquisition made by Mr. Justice Reynato S. Puno, and I agree that it is not within the province of the courts to question the wisdom of, let alone supplant, legislative judgments laid down by Congress to the extent of its constitutional authority and mandate.

It may not be amiss, however, to caution against any idea of omnipotence in wielding the "power of recall" conferred to the "Preparatory Recall Assembly." Clearly implicit in any grant of power, like any other right, is an assumption of a correlative duty to exercise it responsibly. When it, therefore, becomes all too evident that there has been an abuse of that authority, appropriate judicial recourse to, and corrective relief by, this Court will not be denied.

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