

RAMON B. CENIZA, FEDERICO C. CABILAO, JR., NELSON J. ROSAL AND ALEJANDRO R. ALINSUG, PETITIONERS, VS. COMMISSION ON ELECTIONS, COMMISSION ON AUDIT, AND NATIONAL TREASURER, RESPO...

G.R. No. 52304. January 28, 1980

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for prohibition and mandamus with a prayer for a writ of preliminary injunction.

On December 22, 1979, the Interim Batasan Pambansa enacted Batas Blg. 51 providing for local elections on January 30, 1980. Section 3 of the statute provides:

"SEC. 3. Cities. - There shall be in each city such elective local officials as provided in their respective charters, including the city mayor, the city vice-mayor, and the elective members of the sangguniang panglungsod, all of whom shall be elected by the qualified voters in the city. In addition thereto, there shall be appointive sangguniang panglungsod members consisting of the president of the city association of barangay councils, the president of the city federation of the kabataang barangay, and one representative each from the agricultural and industrial labor sectors who shall be appointed by the President (Prime Minister) whenever, as determined by the sangguniang panglungsod, said sectors are of sufficient number in the city to warrant representation.

Until cities are reclassified into highly urbanized and component cities in accordance with the standards established in the Local Government Code as provided for in Article XI, Section 4(1) of the Constitution, any city now existing with an annual regular income derived from infrastructure and general funds of not less than forty million pesos (P40,000,000.00) at the time of the approval of this Act shall be classified as a highly urbanized city. All other cities shall be considered components of the provinces where they are geographically located.

The City of Baguio, because of its special functions as the summer capital of the Philippines, shall be classified as a highly urbanized city irrespective of its income.

The registered voters of a component city may be entitled to vote in the election of the officials of the province of which that city is a component, if its charter so provides. However, voters registered in a highly urbanized city, as hereinabove defined, shall not participate nor vote in the election of the officials of the province in which the highly urbanized city is geographically located."

To implement this Act, the Commission on Elections (COMELEC, for short) adopted Resolution No. 1421, which reads as follows:

"WHEREAS, Batas Pambansa Blg. 51 in calling for the election of the provincial governor, provincial vice-governor and members of the Sangguniang Panlalawigan in each province classified the chartered cities of the Philippines into "highly urbanized" and "component" cities based on the annual regular income of each

city, and provided that "the registered voter of a component city may be entitled to vote in the election of the officials of the province of which that city is a component, if its charter provides", but that "voters registered in a highly urbanized city, shall not participate nor vote in the election of the officials of the province in which the highly urbanized city is geographically located";

"WHEREAS, inasmuch as the charters of the different cities vary with respect to the right of their registered voters to vote for the provincial officials of the provinces where they are located, there is need to study the various charters of the cities and determine what cities shall, and shall not vote for provincial officials pursuant to Batas Pambansa Blg. 51;

"WHEREAS, the voters in the cities should be accordingly informed if they are going to vote for provincial officials or not, for their proper guidance;

"NOW, THEREFORE, the Commission on Elections, by virtue of the powers conferred upon it by the Constitution, the 1978 Election Code and Batas Pambansa Blg. 52 (51) RESOLVED, as it hereby RESOLVES, that the qualified voters in each city shall or shall not be entitled to vote for the provincial officials of the province where they are geographically located, to wit:

A. Cities not entitled to participate in the election of provincial officials

1. Baguio 11. Mandaue
2. Bais 12. Manila
3. Canlaon 13. Naga
4. Caloocan 14. Ormoc
5. Cebu 15. Oroquieta
6. Cotabato 16. Ozamis
7. Dagupan 17. Pasay
8. Davao 18. Quezon
9. General Santos 19. San Carlos (Pangasinan)
10. Iloilo 20. Zamboanga"

Because the City of Cebu has an income of P51,603,147.64, it is classified as a highly urbanized city and the voters thereof cannot take part in the election of the elective provincial officials of the province of Cebu, although the Charter of Cebu City^[1] allows the qualified voters of the city to vote in the election of the provincial officials of the Province of Cebu.

The City of Mandaue, not having an annual regular income of not less than P40 million, is classified as a component city. But the registered voters of the city cannot vote for the provincial elective officials because its Charter^[2] expressly provides that the registered voters of the city cannot participate in the election of the provincial officials of the Province of Cebu, except to be a candidate therefor.

The petitioners filed the instant suit as taxpayers and registered voters in the Cities of Cebu and Mandaue. They are members of a civic and non-partisan group known as D-O-E-R-S (an acronym for "DEMOCRACY OR EXTINCTION: RESOLVED TO SUCCEED), which counts lawyers among its members, and extends free legal assistance to citizens regardless of economic and social status in meritorious cases involving violation of civil liberties and basic human rights. They vigorously assail Section 3 of Batas Pambansa Blg. 51, which uses the

annual income of a given city as the basis for classification of whether or not a particular city is a highly urbanized city whose voters may not participate in the election of provincial officials of the province where the city is geographically located; and Republic Act No. 5519, otherwise known as the Charter of Mandaue City, which went into effect without the benefit of ratification by the residents of Mandaue in a plebiscite or referendum. They pray that upon filing of the instant petition, a restraining order be issued "temporarily prohibiting the holding of election for Provincial Governor and other elective provincial officials in the province where the 18 cities listed by the respondent COMELEC are located, particularly Cebu City and Mandaue City, and temporarily prohibiting the National Treasurer to release public funds and the COA to pass in audit said funds in connection with and for the purpose of holding local elections in said provinces; and after hearing, to make the injunction permanent declaring unconstitutional and therefore void Section 3 of Batas Blg. 885 as well as Section 96, Art. XVIII of the Charter of Mandaue, otherwise known as RA 5519," and should the stopping of the provincial elections in the provinces concerned be not possible, the respondent COMELEC be directed "to allow the qualified registered voters in the cities listed by said respondent, particularly Cebu City and Mandaue City, to participate in the election of, and vote for, the Provincial Governor and other elective provincial officials and preparing the corresponding official ballots for this purpose which shall provide spaces therein for Provincial Governor and other elective provincial officials of the provinces concerned, particularly the Province of Cebu."

The petitioners contend that "Section 3 of Batas Blg. 885[3] insofar as it classifies cities including Cebu City as highly urbanized as the only basis for not allowing its electorate to vote for the provincial officials is inherently and palpably unconstitutional in that such classification is not based on substantial distinctions germane to the purpose of the law which in effect provides for and regulates the exercise of the right of suffrage, and therefore such unreasonable classification amounts to a denial of equal protection."

We find no merit in the petition. The thrust of the 1973 Constitution is towards the fullest autonomy of local government units. In the Declaration of Principles and State Policies, it is stated that "The State shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities." [4] To this end, the Constitution directs the National Assembly to "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 governments 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," [5] and empowered local government units "to create its own sources of revenue and to levy taxes, subject to limitations as may be provided by law." [6] Art. XI, Section 4(1) of the said Constitution places highly urbanized cities outside the supervisory power of the province where they are geographically located. This is as it should be because of the complex and varied problems in a highly urbanized city due to a bigger population and greater economic activity which require greater autonomy.

Corollary to independence however, is the concomitant loss of the right to participate in provincial affairs, more particularly the selection of elective provincial officials since these provincial officials have ceased to exercise any governmental jurisdiction and authority over said city. Thus, in the case of *Teves vs. Commission on Election* [7] this Court, in holding that the re-registered voters of the City of Dumaguete cannot vote for the provincial officials of Negros Oriental because the charter of the city does not expressly allow the voters in the city to do so, ruled:

"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."

The classification of cities into highly urbanized cities and component cities on the basis of their regular annual income is based upon substantial distinction. The revenue of a city would show whether or not it is capable of existence and development as a relatively independent social, economic, and political unit. It would also show whether the city has sufficient economic or industrial activity as to warrant its independence from the province where it is geographically situated. Cities with smaller income need the continued support of the provincial government thus justifying the continued participation of the voters in the election of provincial officials in some instances.

The petitioners also contend that the voters in Mandaue City are denied equal protection of the law since the voters in other component cities are allowed to vote for provincial officials. The contention is without merit. The practice of allowing voters in one component city to vote for provincial officials and denying the same privilege to voters in another component city is a matter of legislative discretion which violates neither the Constitution nor the voter's right of suffrage. In the case of *Teves vs. Commission on Elections*[8] the Court said:

"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 province 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 equal protection of the law contemplates equality in the enjoyment of similar rights and privileges granted by law. It would have been discriminatory and a denial of the equal protection of the law if the statute prohibited an individual or group of voters in the city from voting for provincial officials while granting it to another individual or group of voters in the same city.

Neither can it be considered an infringement upon the petitioners' rights of suffrage since the Constitution confers no right to a voter in a city to vote for the provincial officials of the province where the city is located. Their right is limited to the right to vote for elective city officials in local elections which the questioned statutes neither withdraw nor restrict.

The petitioners further claim that to prohibit the voters in a city from voting for elective provincial officials would impose a substantial requirement on the exercise of suffrage and would violate the sanctity of the ballot, contrary

to the provisions of Art. VI, Section 1 of the Constitution. The prohibition contemplated in the Constitution, however, has reference to such requirements, as the Virginia poll tax, invalidated in *Harper vs. Virginia Board of Elections*,^[9] or the New York requirement that to be eligible to vote in a school district, one must be a parent of a child enrolled in a local public school, nullified in *Kramer vs. Union Free School Dist.*, 395 U.S. 621, which impose burdens on the right of suffrage without achieving permissible state objectives. In this particular case, no such burdens are imposed upon the voters of the cities of Cebu and Mandaue. They are free to exercise their rights without any other requirement, save that of being registered voters in the cities where they reside and the sanctity of their ballot is maintained.

It is also contended that the prohibition would subvert the principle of republicanism as it would deprive a citizen his right to participate in the conduct of the affairs of the government unit through the exercise of his right of suffrage. It has been pointed out, however, that the provincial government has no governmental supervision over highly urbanized cities. These cities are independent of the province in the administration of their affairs. Such being the case, it is but just and proper to limit the selection and election of the provincial officials to the voters of the province whose interests are vitally affected and exclude therefrom the voters of highly urbanized cities.

Petitioners assail the charter of the City of Mandaue as unconstitutional for not having been ratified by the residents of the city in a plebiscite. This contention is untenable. The Constitutional requirement that the creation, division, merger, abolition, or alteration of the boundary of a province, city, municipality, or barrio should be subject to the approval by the majority of the votes cast in a plebiscite in the governmental unit or units affected^[10] is a new requirement that came into being only with the 1973 Constitution. It is prospective^[11] in character and therefore cannot affect the creation of the City of Mandaue which came into existence on June 21, 1969.

Finally, the petitioners claim that political and gerrymandering motives were behind the passage of Batas Blg. 51 and Section 96 of the Charter of Mandaue City. They contend that the Province of Cebu is politically and historically known as an opposition bailiwick and of the total 952,716 registered voters in the province, 234,582 are from Cebu City and 44,358 come from Mandaue City, so that 278,940 electors, or close to one-third (1/3) of the entire province of Cebu would be barred from voting for the provincial officials of the province of Cebu. Such charge has no factual and legal basis. "Gerrymandering" is a "term employed to describe an apportionment of representative districts so contrived as to give an unfair advantage to the party in power."^[12] The questioned statutes in this particular case do not apportion representative districts. The said representative districts remain the same. Nor has it been shown that there is an unfair advantage in favor of the candidates of the party in power. As the Solicitor General pointed out, it may even be that the majority of the city voters are supporters of the administration candidates, so that the enactment of the questioned statutes will work to their disadvantage.

WHEREFORE, the petition should be, as it is hereby dismissed. Costs against the petitioners.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Antonio, Aquino, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., takes no part.

[1] Commonwealth Act No. 58, as revised by Rep. Act No. 3857.

[2] Rep. Act No. 5519, Sec. 96.

[3] Should be Batas Blg. 51.

[4] Art. II, Sec. 10, 1973 Constitution.

[5] Art. II, Sec. 2, Id.

[6] Art. XI, Sec. 5.

[7] 90 Phil. 370.

[8] Supra.

[9] 383 U.S. 663.

[10] Art. XI, Sec. 3 of the 1973 Constitution.

[11] Magtoto vs. Manguera, L-37201-02, March 3, 1975 and other cases, 63 SCRA 4.

[12] 18 Am. Jur. 194.

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