

**PATRICIO TAN, FELIX FERRER, JUAN M. HAGAD, SERGIO HILADO,
VIRGILIO GASTON, CONCHITA MINAYA, TERESITA ESTACIO,
DESIDERIO DEFERIA, ROMEO GAMBOA, ALBERTO LACSON, FE
HOFILENA, EMILY...**

G.R. No. 73155. July 11, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Prompted by the enactment of Batas Pambansa Blg. 885 - An Act Creating a New Province in the Island of Negros to be known as the Province of Negros del Norte, which took effect on December 3, 1985, Petitioners herein, who are residents of the Province of Negros Occidental, in the various cities and municipalities therein, on December 23, 1985, filed with this Court a case for Prohibition for the purpose of stopping respondents Commission on Elections from conducting the plebiscite which, pursuant to and in implementation of the aforesaid law, was scheduled for January 3, 1986.

Said law provides:

"SECTION 1. The Cities of Silay, Cadiz, and San Carlos and the municipalities of Calatrava, Taboso, Escalante, Sagay, Manapla, Victorias, E.R. Magalona; and Salvador Benedicto, all in the northern portion of the Island of Negros, are hereby separated from the province to be known as the Province of Negros del Norte.

"SEC. 2. The boundaries of the new province shall be the southern limits of the City of Silay, the Municipality of Salvador Benedicto and the City of San Carlos on the south and the territorial limits of the northern portion to the Island of Negros on the west, north and east, comprising a territory of 4,019.95 square kilometers more or less.

"SEC. 3. The seat of government of the new province shall be the City of Cadiz.

"SEC. 4. A plebiscite shall be conducted in the proposed new province which are the areas affected within a period of one hundred and twenty days from the approval of this Act. After the ratification of the creation of the Province of Negros del Norte by a majority of the votes cast in such plebiscite, the President of the Philippines shall appoint the first officials of the province.

"SEC. 5. The Commission on Elections shall conduct and supervise the plebiscite herein provided, the expenses for which shall be charged to local funds.

"SEC. 6. This Act shall take effect upon its approval." (Rollo, pp. 23-24)

Petitioners contend that Batas Pambansa Blg. 885 is unconstitutional and it is not in complete accord with the Local Government Code as in Article XI, Section 3 of our Constitution, it is expressly mandated that ?

"SEC. 3. 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 in a plebiscite in the unit or units affected."

Section 197 of the Local Government Code enumerates the conditions which must exist to provide the legal basis for the creation of a provincial unit and these requisites are:

"SEC. 197. Requisites for Creation. - A province may be created if it has a territory of at least three thousand five hundred square kilometers, a population of at least five hundred thousand persons, an average estimated annual income, as certified by the Ministry of Finance, of not less than ten million pesos for the last three consecutive years, and its creation shall not reduce the population and income of the mother province or provinces at the time of said creation to less than the minimum requirements under this section. The territory need not be contiguous if it comprises two or more islands.

"The average estimated annual income shall include the income allotted for both the general and infrastructural funds, exclusive of trust funds, transfers and nonrecurring income." (Rollo, p. 6)

Due to the constraints brought about by the supervening Christmas holidays during which the Court was in recess and unable to timely consider the petition, a supplemental pleading was filed by petitioners on January 4, 1986, averring therein that the plebiscite sought to be restrained by them was held on January 3, 1986 as scheduled but that there are still serious issues raised in the instant case affecting the legality, constitutionality and validity of such exercise which should properly be passed upon and resolved by this Court.

The plebiscite was confined only to the inhabitants of the territory of Negros del Norte, namely: the Cities of Silay, Cadiz, and San Carlos, and the municipalities of Calatrava, Taboso, Escalante, Sagay, Manapla, Victorias, E.B. Magalona and Don Salvador Benedicto. Because of the exclusions of the voters from the rest of the province of Negros Occidental, petitioners found need to change the prayer of their petition "to the end that the constitutional issues which they have raised in the action will be ventilated and given final resolution." At the same time, they asked that the effects of the plebiscite which they sought to stop be suspended until the Supreme Court shall have rendered its decision on the very fundamental and far-reaching questions that petitioners have brought out.

Acknowledging in their supplemental petition that supervening events rendered moot the prayer in their initial petition that the plebiscite scheduled for January 3, 1986, be enjoined, petitioners plead, nevertheless, that -

"xxx a writ of Prohibition be issued, directed to Respondent Commission on Elections to desist from issuing official proclamation of the results of the plebiscite held on January 3, 1986.

"Finding that the exclusion and non-participation of the voters of the Province of Negros Occidental other than those living within the territory of the new Province of Negros del Norte to be not in accordance with the Constitution, that a writ of Mandamus be issued, directed to the respondent Commission on Elections, to schedule the holding of another plebiscite at which all the qualified voters of the entire Province of Negros Occidental as now existing shall participate, at the same time making pronouncement that the plebiscite held on January 3, 1986 has no legal effect, being a patent legal nullity;

"And that a similar writ of Prohibition be issued, directed to the respondent Provincial Treasurer, to desist from ordering the release of any local funds to answer for expenses incurred in the holding of such plebiscite until ordered by the Court." (Rollo, pp. 19-10).

Petitioners further prayed that the respondent COMELEC hold in abeyance the issuance of any official proclamation of the results of the aforestated plebiscite.

During the pendency of this case, a motion that he be allowed to appear as amicus curiae in this case (dated December 27, 1985 and filed with the Court on January 2, 1986) was submitted by former Senator Ambrosio

Padilla. Said motion was granted in Our resolution of January 2, 1986.

Acting on the petition, as well as on the supplemental petition for prohibition with preliminary injunction with prayer for restraining order, the Court, on January 7, 1986 resolved, without giving due course to the same, to require respondents to comment, not to file a motion to dismiss. Complying with said resolution, public respondents, represented by the Office of the Solicitor General, on January 14, 1986, filed their Comment, arguing therein that the challenged statute - Batas Pambansa 885, should be accorded the presumption of legality. They submit that the said law is not void on its face and that the petition does not show a clear, categorical and undeniable demonstration of the supposed infringement of the Constitution. Respondents state that the powers of the Batasang Pambansa to enact the assailed law is beyond question. They claim that Batas Pambansa Blg. 885 does not infringe the Constitution because the requisites of the Local Government Code have been complied with. Furthermore, they submit that this case has now become moot and academic with the proclamation of the new Province of Negros del Norte.

Respondents argue that the remaining cities and municipalities of the Province of Negros Occidental not included in the area of the new Province of Negros del Norte, do not fall within the meaning and scope of the term "unit or units affected", as referred to in Section 3 of Art. XI of our Constitution. On this reasoning, respondents maintain that Batas Pambansa Blg. 885 does not violate the Constitution, invoking and citing the case of Governor Zosimo Paredes versus the Honorable Executive Secretary to the President, et al. (G.R. No. 55628, March 2, 1984 (128 SCRA 61), particularly the pronouncements therein, hereunder quoted:

"1. Admittedly, this is one of those cases where the discretion of the Court is allowed considerable leeway. There is indeed an element of ambiguity in the use of the ex-expression 'unit or units affected'. It is plausible to assert as petitioners do that when certain Barangays are separated from a parent municipality to form a new one, all the voters therein are affected. It is much more persuasive, however, to contend as respondents do that the acceptable construction is for those voters, who are not from the barangays to be separated, should be excluded in the plebis-cite.

"2. For one thing, it is in accordance with the settled doctrine that between two possible constructions, one avoiding a finding of un-constitutionality and the other yielding such a result, the former is to be preferred. That which will save, not that which will destroy, commends itself for acceptance. After all, the basic presumption all these years is one of validity. xxx

"3. xxx. Adherence to such philosophy compels the conclusion that when there are indications that the inhabitants of several barangays are inclined to separate from a parent muni-cipality they should be allowed to do so. What is more logical than to ascertain their will in a plebiscite called for that purpose. It is they, and they alone, who shall constitute the new unit. New responsibilities will be assumed. New burdens will be imposed. A new municipal corporation will come into existence. Its birth will be a matter of choice - their choice. They should be left alone then to decide for themselves. To allow other voters to participate will not yield a true expression of their will. They may even frustrate it. That certainly will be so if they vote against it for selfish reasons, and they constitute the majority. That is not to abide by the fundamental principle of the Constitution to promote local autonomy, the preference being for smaller units. To rule as this Tribunal does is to follow an accepted principle of constitutional construction, that in ascertaining the meaning of a particular provision that may give rise to doubts, the intent of the framers and of the people may be gleaned from provisions in *pari materia*."

Respondents submit that said ruling in the aforecited case applies equally with force in the case at bar. Respondents also maintain that the requisites under the Local Government Code (P.D. 337) for the creation of the new province of Negros del Norte have all been duly complied with. Respondents discredit petitioners' allegations that the requisite area of 3,500 square kilometers as so prescribed in the Local Government Code for a new

province to be created has not been satisfied. Petitioners insist that the area which would comprise the new province of Negros del Norte, would only be about 2,856.56 square kilometers and which evidently would be lesser than the minimum area prescribed by the governing statute. Respondents, in this regard, point out and stress that Section 2 of Batas Pambansa Blg. 885 creating said new province plainly declares that the territorial boundaries of Negros del Norte comprise an area of 4,019.95 square kilometers, more or less.

As a final argument, respondents insist that instant petition has been rendered moot and academic considering that a plebiscite has been already conducted on January 3, 1986; that as a result thereof, the corresponding certificate of canvass indicated that out of 195,134 total votes cast in said plebiscite, 164,734 were in favor of the creation of Negros del Norte and 30,400 were against it; and because "the affirmative votes cast represented a majority of the total votes cast in said plebiscite, the Chairman of the Board of Canvassers proclaimed the new province which shall be known as "Negros del Norte". Thus, respondents stress the fact that following the proclamation of Negros del Norte province, the appointments of the officials of said province created were announced. On these considerations, respondents urge that this case should be dismissed for having been rendered moot and academic as the creation of the new province is now a "fait accompli".

In resolving this case, it will be useful to note and emphasize the facts which appear to be agreed to by the parties herein or stand unchallenged.

Firstly, there is no disagreement that the Provincial Treasurer of the Province of Negros Occidental has not disbursed, nor was required to disburse any public funds in connection with the plebiscite held on January 3, 1986 as so disclosed in the Comment to the Petition filed by the respondent Provincial Treasurer of Negros Occidental dated January 20, 1986 (Rollo, pp. 36-37). Thus, the prayer of the petitioners that said Provincial Treasurer be directed by this Court to desist from ordering the release of any public funds on account of such plebiscite should no longer deserve further consideration.

Secondly, in Parliamentary Bill No. 3644 which led to the enactment of Batas Pambansa Blg. 885 and the creation of the new Province of Negros del Norte, it expressly declared in Sec. 2 of the aforementioned Parliamentary Bill, the following:

"SEC. 2. The boundaries of the new province shall be the southern Limits of the City of Silay, the Municipality of Salvador Benedicto and the City of San Carlos on the South and the natural boundaries of the northern portion of the Island of Negros on the West, North and East, containing an area of 285,656 hectares more or less." (Underscoring supplied).

However, when said Parliamentary Bill No. 3644 was very quickly enacted into Batas Pambansa Blg. 885, the boundaries of the new Province of Negros del Norte were defined therein and its boundaries then stated to be as follows:

"SECTION 1. - The Cities of Silay, Cadiz, and San Carlos and the municipalities of Calatrava, Toboso, Escalante, Sagay, Manapla, Victorias, E.R. Magalona; and Salvador Benedicto, all in the northern portion of the Island of Negros, are hereby separated from the Province of Negros Occidental and constituted into a new province to be known as the Province of Negros del Norte.

"SEC. 1. The boundaries of the new province shall be the southern limits of the City of Silay, the Municipality of Salvador Benedicto and the City of San Carlos on the south and the territorial limits of the northern portion of the Island of Negros on the West, North and East, comprising a territory of 4,019.95 square kilometers more or less."

Equally accepted by the parties is the fact that under the certification issued by Provincial Treasurer Julian L. Ramirez of the Province of Negros Occidental, dated July 16, 1985, it was there-in certified as follows:

"xxx xxx xxx

"This is to certify that the following cities and municipalities of Negros Occidental have the land area as indicated hereunder based on the Special Report No. 3, Philippines 1980, Population, Land Area and Density: 1970, 1975 and 1980 by the National Census and Statistics Office, Manila.

Land Area

(Sq. Km.)

"1. Silay City

214.8

2. E.B. Magalona

113.3

3. Victorias

133.9

4. Manapla

112.9

5. Cadiz City

516.5

6. Sagay

389.6

7. Escalante

124.0

8. Toboso

123.4

9. Calatrava

504.5

10. San Carlos City

451.3

11. Don Salvador Benedicto.

(not available)

"This certification is issued upon the request of Dr. Patricio Y. Tan for whatever purpose it may serve him.

"SGD.) JULIAN L. RAMIREZ

Provincial Treasurer"

(Exh. "C" of Petition, Rollo, p. 90).

Although in the above certification it is stated that the land area of the relatively new municipality of Don

Salvador Benedicto is not available, it is an uncontradicted fact that the area comprising Don Salvador municipality, one of the component units of the new province, was derived from the City of San Carlos and from the Municipality of Calatrava, Negros Occidental, and added thereto was a portion of about one-fourth the land area of the town of Murcia, Negros Occidental. It is significant to note the uncontroverted submission of petitioners that the total land area of the entire municipality of Murcia, Negros Occidental is only 322.9 square kilometers (Exh. "D", Rollo, p. 91). One-fourth of this total land area of Murcia that was added to the portions derived from the land area of Calatrava, Negros Occidental and San Carlos City (Negros Occidental) would constitute, therefore, only 80.2 square kilometers. This area of 80.2 square kilometers if then added to 2,685.2 square kilometers, representing the total land area of the Cities of Silay, San Carlos and Cadiz and the Municipalities of E.R. Magalona, Victorias, Manapla, Sagay, Escalante, Taboso and Calatrava, will result in approximately an area of only 2,765.4 square kilometers using as basis the Special Report, Philippines 1980, Population, Land Area and Density: 1970, 1975 and 1980 of the National Census and Statistics Office, Manila (see Exhibit "C", Rollo, p. 90).

No controversion has been made by respondent with respect to the allegations of petitioners that the original provision in the draft legislation, Parliamentary Bill No. 3644, reads:

"SEC. 4. A plebiscite shall be conducted in the areas affected within a period of one hundred and twenty days from the approval of this Act. After the ratification of the creation of the Province of Negros del Norte by a majority of the votes cast in such plebiscite, the President shall appoint the first officials of the new province."

However, when Batas Pambansa Blg. 885 was enacted, there was a significant change in the above provision. The statute, as modified, provides that the requisite plebiscite "shall be conducted in the proposed new province which are the areas affected."

It is this legislative determination limiting the plebiscite exclusively to the cities and towns which would comprise the new province that is assailed by the petitioners as violative of the provisions of our Constitution. Petitioners submit that Sec. 3, ART XI thereof, contemplates a plebiscite that would be held in the unit or units affected by the creation of the new province as a result of the consequent division of and substantial alteration of the boundaries of the existing province. In this instance, the voters in the remaining areas of the province of Negros Occidental should have been allowed to participate in the questioned plebiscite.

Considering that the legality of the plebiscite itself is challenged for non-compliance with constitutional requisites, the fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province which petitioners strongly profess to have been illegally born, deserves to be inquired into by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetuation of such wrong. For this Court to yield to the respondents' urging that, as there has been fait accompli, then this Court should passively accept and accede to the prevailing situation is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose is a proposition fraught with mischief. Respondents' submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and with ulterior motives, create, merge, divide and/or alter the boundaries of political subdivisions, either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a fait accompli.

In the light of the facts and circumstances alluded to by petitioners as attending to the unusually rapid creation of the instant province of Negros del Norte after a swiftly scheduled plebiscite, this Tribunal has the duty to repudiate and discourage the commission of acts which run counter to the mandate of our fundamental law, done

by whatever branch of our government. This Court gives notice that it will not look with favor upon those who may be hereafter inclined to ram through all sorts of legislative measures and then implement the same with indecent haste, even if such acts would violate the Constitution and the prevailing statutes of our land. It is illogical to ask that this Tribunal be blind and deaf to protests on the ground that what is already done is done. To such untenable argument the reply would be that, be this so, the Court, nevertheless, still has the duty and right to correct and rectify the wrong brought to its attention.

On the merits of the case.

Aside from the simpler factual issue relative to the land area of the new province of Negros del Norte, the more significant and pivotal issue in the present case revolves around in the interpretation and application in the case at bar of Article XI, Section 3 of the Constitution, which being brief and for convenience, We again quote:

"SEC. 3. 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 in a plebiscite in the unit or units affected."

It can be plainly seen that the aforecited constitutional provision makes it imperative that there be first obtained "the approval of a majority of votes in the plebiscite in the unit or units affected" whenever a province is created, divided or merged and there is substantial alteration of the boundaries. It is thus inescapable to conclude that the boundaries of the existing province of Negros Occidental would necessarily be sub-stancially altered by the division of its existing boundaries in order that there can be created the proposed new province of Negros del Norte. Plain and simple logic will demonstrate than that two political units would be affected. The first would be the parent province of Negros Occidental because its boundaries would be substantially altered. The other affected entity would be composed of those in the area subtracted from the mother province to constitute the proposed province of Negros del Norte.

We find no way to reconcile the holding of a plebiscite that should conform to said constitutional requirement but eliminates the participation of either of these two component political units. No amount of rhetorical flourishes can justify exclusion of the parent province in the plebiscite because of an alleged intent on the part of the authors and implementors of the challenged statute to carry out what is claimed to be a mandate to guarantee and promote autonomy of local government units. The alleged good intentions cannot prevail and overrule the cardinal precept that what our Constitution categorically directs to be done or imposes as a requirement must first be observed, respected and complied with. No one should be allowed to pay homage to a supposed fund-amental policy intended to guarantee and promote autonomy of local government units but at the same time transgress, ignore and dis-regard what the Constitution commands in Article XI Section 3 thereof. Respondents would be no different from one who hurries to pray at the temple but then spits at the idol therein.

We find no merit in the submission of the respondents that the petition should be dismissed because the motive and wisdom in enacting the law may not be challenged by petitioners. The principal point raised by the petitioners is not the wisdom and motive in enacting the law but the infringement of the Constitution which is a proper subject of judicial inquiry.

Petitioners discussion regarding the motives behind the enactment of B.P. Blg. 885 to say the least, are most enlightening and provoking but are factual issues the Court cannot properly pass upon in this case. Mention by petitioners of the unexplained changes or differences in the proposed Parliamentary Bill No. 3644 and the enacted Batas Pambansa Blg. 885; the swift and surreptitious manner of passage and approval of said law; the abrupt scheduling of the plebiscite; the reference to news articles regarding the questionable conduct of the said plebiscite held on January 3, 1986; all serve as interesting reading but are not the decisive matters which should

be reckoned in the resolution of this case.

What the Court considers the only significant submissions lending a little support to respondents' case is their reliance on the rulings and pronouncements made by this Court in the case of Governor Zosimo Paredes versus The Honorable Executive Secretary to the President, et al., G.R. No. 55628, March 2, 1984 (128 SCRA 6). In said case relating to a plebiscite held to ratify the creation of a new municipality from existing barangays, this Court upheld the legality of the plebiscite which was participated in exclusively by the people of the barangay that would constitute the new municipality.

This Court is not unmindful of this solitary case alluded to by respondents. What is, however, highly significant are the prefatory statements therein stating that said case is "one of those cases where the discretion of the Court is allowed considerable leeway" and that "there is indeed an element of ambiguity in the use of the expression "unit or units affected." The ruling rendered in said case was based on a claimed prerogative of the Court then to exercise its discretion on the matter. It did not resolve the question of how the pertinent provision of the Constitution should be correctly interpreted.

The ruling in the aforesaid case of Paredes vs. The Honorable Executive Secretary, et al. (supra) should not be taken as a doctrinal or compelling precedent when it is acknowledged therein that "it is plausible to assert, as petitioners do, that when certain Barangays are separated from a parent municipality to form a new one, all the voters therein are affected."

It is relevant and most proper to mention that in the aforesaid case of Paredes vs. Executive Secretary, invoked by respondents, We find very lucidly expressed the strong dissenting view of Justice Vicente Abad Santos, a distinguished member of this Court, as he therein voiced his opinion, which We hereunder quote:

"2. xxx when the Constitution speaks of "the unit or units affected" it means all of the people of the municipality if the municipality is to be divided such as in the case at bar or all of the people of two or more municipalities if there be a merger. I see no ambiguity in the Constitutional provision."

This dissenting opinion of Justice Vicente Abad Santos is the forerunner of the ruling which We now consider applicable to the case at bar. In the analogous case of Emilio C. Lopez, Jr., versus the Honorable Commission on Elections, L-56012, May 31, 1985, 136 SCRA, this dissent was reiterated by Justice Abad Santos as he therein assailed as suffering from a constitutional infirmity a referendum which did not include all the people of Bulacan and Rizal, when such referendum was intended to ascertain if the people of said provinces were willing to give up some of their towns to Metropolitan Manila. His dissenting opinion served as a useful guideline in the instant case.

Opportunity to re-examine the views formerly held in said cases is now afforded the present Court. The reasons in the mentioned cases invoked by respondents herein were formerly considered acceptable because of the views then taken that local autonomy would be better promoted. However, even this consideration no longer retains persuasive value.

The environmental facts in the case before Us readily disclose that the subject matter under consideration is of greater magnitude with concomitant multifarious complicated problems. In the earlier case, what was involved was a division of a barangay which is the smallest political unit in the Local Government Code. Understandably, few and lesser problems are involved. In the case at bar, creation of a new province relates to the largest political unit contemplated in Section 3, Art. XI of the Constitution. To form the new province of Negros del Norte no less than three cities and eight municipalities will be subtracted from the parent province of Negros Occidental. This will result in the removal of approximately 2,768.4 square kilometers from the land area of an existing province whose boundaries will be consequently substantially altered. It becomes easy to realize that the

consequent effects of the division of the parent province necessarily will affect all the people living in the separate areas of Negros Occidental and the proposed province of Negros del Norte. The economy of the parent province as well as that of the new province will be inevitably affected, either for the better or for the worse. Whatever be the case, either or both of these political groups will be affected and they are, therefore, the unit or units referred to in Section 3 of Article XI of the Constitution which must be included in the plebiscite contemplated therein.

It is a well accepted rule that "in ascertaining the meaning of a particular provision that may give rise to doubts, the intent of the framers and of the people, may be gleaned from the provisions in *pari materia*." Parliamentary Bill No. 3644 which proposed the creation of the new province of Negros del Norte recites in Sec. 4 thereof that "the plebiscite shall be conducted in the areas affected within a period of one hundred and twenty days from the approval of this Act." As this draft legislation speaks of "areas", what was contemplated evidently are plurality of areas to participate in the plebiscite. Logically, those to be included in such plebiscite would be the people living in the area of the proposed new province and those living in the parent province. This assumption will be consistent with the requirements set forth in the Constitution.

We fail to find any legal basis for the unexplained change made when Parliamentary Bill No. 3644 was enacted into Batas Pambansa Blg. 885 so that it is now provided in said enabling law that the plebiscite "shall be conducted in the proposed new province which are the areas affected." We are not disposed to agree that by mere legislative fiat the unit or units affected referred in the fundamental law can be diminished or restricted by the Batasang Pambansa to cities and municipalities comprising the new province, thereby ignoring the evident reality that there are other people necessarily affected.

In the mind of the Court, the change made by those responsible for the enactment of Batas Pambansa Blg. 885 betrays their own mis-givings. They must have entertained apprehensions that by holding the plebiscite only in the areas of the new proposed province, this tactic will be tainted with illegality. In anticipation of a possible strong challenge to the legality of such a plebiscite there was, therefore, deliberately added in the enacted statute a self-serving phrase that the new province constitutes the area affected. Such additional statement serves no useful purpose for the same is misleading, erroneous and far from truth. The remaining portion of the parent province is as much an area affected. The substantial alteration of the boundaries of the parent province, not to mention the other adverse economic effects it might suffer, eloquently argue the points raised by the petitioners.

Petitioners have averred without contradiction that after the creation of Negros del Norte, the province of Negros Occidental would be deprived of the long established Cities of Silay, Cadiz, and San Carlos, as well as the municipality of Victorias. No controversion has been made regarding petitioners' assertion that the areas of the Province of Negros Occidental will be diminished by about 285,656 hectares and it will lose seven of the fifteen sugar mills which contribute to the economy of the whole province. In the language of petitioners, "to create Negros del Norte, the existing territory and political subdivision known as Negros Occidental has to be partitioned and dismembered. What was involved was no 'birth' but 'amputation.'" We agree with the petitioners that in the case of Negros what was involved was a division, a separation; and consequently, as Sec. 3 of Article XI of the Constitution anticipates, a substantial alteration of boundary.

As contended by petitioners, -

"Indeed, the terms 'created', 'divided', 'merged', 'abolished' as used in the constitutional provision do not contemplate distinct situation isolated from the mutually exclusive to each other. A province maybe created where an existing province is divided or two provinces merged. Such cases necessarily will involve existing unit or units abolished and definitely the boundary being substantially altered.

"It would thus be inaccurate to state that where an existing political unit is divided or its boundary substantially

altered, as the Constitution provides, only some and not all the voters in the whole unit which suffers dismemberment or substantial alteration of its boundary are affected. Rather, the contrary is true."

It is also Our considered view that even hypothetically assuming that the merits of this case can depend on the mere discretion that this Court may exercise, nevertheless, it is the petitioners' case that deserve to be favored.

It is now time for this Court to set aside the equivocations and the indecisive pronouncements in the adverted case of *Paredes vs. the Honorable Executive Secretary, et al.* (supra). For the reasons already here expressed, We now state that the ruling in the two mentioned cases sanctioning the exclusion of the voters belonging to an existing political unit from which the new political unit will be derived, from participating in the plebiscite conducted for the purpose of determining the formation of another new political unit, is hereby abandoned.

In their supplemental petition, dated January 4, 1986, it is prayed for by petitioners that a writ of mandamus be issued, directing the respondent Commission on Elections, to schedule the holding of another plebiscite at which all the qualified voters of the entire province of Negros Occidental as now existing shall participate and that this Court make a pronouncement that the plebiscite held on January 3, 1986 has no legal effect for being a patent nullity.

The Court is prepared to declare the said plebiscite held on January 3, 1986 as null and void and violative of the provisions of Sec. 3, Article XI of the Constitution. The Court is not, however, disposed to direct the conduct of a new plebiscite, because We find no legal basis to do so. With constitutional infirmity attaching to the subject *Batas Pambansa Blg. 885* and also because the creation of the new province of Negros del Norte is not in accordance with the criteria established in the Local Government Code, the factual and legal basis for the creation of such new province which should justify the holding of another plebiscite does not exist.

Whatever claim it has to validity and whatever recognition has been gained by the new province of Negros del Norte because of the appointment of the officials thereof, must now be erased. That Negros del Norte is but a legal fiction should be announced. Its existence should be put to an end as quickly as possible if only to settle the complications currently attending to its creation. As has been manifested, the parent province of Negros del Norte has been impleaded as the defendant in a suit filed by the new Province of Negros del Norte, before the Regional Trial Court of Negros (del Norte), docketed as Civil Case No. 169-C, for the immediate allocation, distribution and transfer of funds by the parent province to the new province, in an amount claimed to be at least P10,000,000.00.

The final nail that puts to rest whatever pretension there is to the legality of the province of Negros del Norte is the significant fact that this created province does not even satisfy the area requirement prescribed in Section 197 of the Local Government Code, as earlier discussed.

It is of course claimed by the respondents in their Comment to the exhibits submitted by them petitioners (Exhs. C and D, Rollo, pp. 19 and 91), that the new province has a territory of 4,019.95 square kilometers, more or less. This assertion is made to negate the proofs submitted, disclosing that the land area of the new province cannot be more than 3,500 square kilometers because its land area would, at most, be only about 2,856 square kilometers taking into account government statistics relative to the total area of the cities and municipalities constituting Negros del Norte. Respondents insist that when Section 197 of the Local Government Code speaks of the territory of the province to be created and requires that such territory be at least 3,500 square kilometers, what is contemplated is not only the land area but also the land and water over which the said province has jurisdiction and control. It is even the submission of the respondents that in this regard the marginal sea within the three mile limit should be considered in determining the extent of the territory of the new province. Such an interpretation is strained, incorrect, and fallacious.

The last sentence of the first paragraph of Section 197 is most revealing. As so stated therein the "territory need not be contiguous if it comprises two or more islands." The use of the word territory in this particular provision of the Local Government Code and in the very last sentence thereof, clearly reflects that "territory" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control.

Said sentence states that the "territory need not be contiguous". Contiguous means (a) in physical contact; (b) touching along all or most of one side; (c) near, next, or adjacent (Webster's New World Dictionary, 1972 Ed., p. 307). "Contiguous", when employed as an adjective, as in the above sentence, is only used when it describes physical contact, or a touching of sides of two solid masses of matter. The meaning of particular terms in a statute may be ascertained by reference to words associated with or related to them in the statute (*Animal Rescue League vs. Assessors*, 138 A.L.R., p. 110). Therefore, in the context of the sentence above, what need not be "contiguous" is the "territory" - - the physical mass of land area. There would arise no need for the legislators to use the word contiguous if they had intended that the term "ter-ritory" embrace not only land area but also territorial waters. It can be safely concluded that the word territory in the first paragraph of Section 197 is meant to be synonymous with "land area" only. The words and phrases used in a statute should be given the meaning intended by the legislature (82 C.J.S., p. 636). The sense in which the words are used furnished the rule of construction (*In re Winton Lumber Co.*, 63 p. 2d., p. 664).

The distinction between "territory" and "land area" which respondents make is an artificial or strained construction of the disputed provision whereby the words of the statute are arrested from their plain and obvious meaning and made to bear an entirely different meaning to justify an absurd or unjust result. The plain meaning in the language in a statute is the safest guide to follow in construing the statute. A construction based on a forced or artificial meaning of its words and out of harmony of the statutory scheme is not to be favored (*Helvering vs. Hutchings*, 85 L. Ed., p. 909).

It would be rather preposterous to maintain that a province with a small land area but which has a long, narrow, extended coast line, (such as La Union province) can be said to have a larger territory than a land-locked province (such as Ifugao or Benguet) whose land area manifestly exceeds the province first mentioned.

Allegations have been made that the enactment of the questioned state was marred by "dirty tricks", in the introduction and passing of Parliamentary Bill No. 3644 "in secret haste" pursuant to sinister designs to achieve "pure and simple gerrymandering"; "that recent happenings more than amply demonstrate that far from guaranteeing its autonomy it (Negros del Norte) has become the fiefdom of a local strongman" (Rollo, p. 43; parenthesis supplied).

It is not for this Court to affirm or reject such matters not only because the merits of this case can be resolved without need of ascertaining the real motives and wisdom in the making of the questioned law. No proper challenge on those grounds can also be made by petitioners in this proceeding. Neither may this Court venture to guess the motives or wisdom in the exercise of legislative powers. Repudiation of improper or unwise actions taken by tools of a political machinery rests ultimately, as recent events have shown, on the electorate and the power of a vigilant people.

Petitioners herein deserve and should receive the gratitude of the people of the Province of Negros Occidental and even by our Nation. Commendable is the patriotism displayed by them in daring to institute this case in order to preserve the continued existence of their historic province. They were inspired undoubtedly by their faithful commitment to our Constitution which they wish to be respected and obeyed. Despite the setbacks and the hardships which petitioners aver confronted them, they valiantly and unfalteringly pursued a worthy cause. A happy destiny for our Nation is assured as long as among our people there would be exemplary citizens such as

the petitioners herein.

WHEREFORE, Batas Pambansa Blg. 885 is hereby declared unconstitutional. The proclamation of the new province of Negros del Norte, as well as the appointment of the officials thereof are also declared null and void.

SO ORDERED.

Abad Santos, Feria, Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, and Paras, JJ., concur.

Teehankee, C.J., files a separate opinion congratulating his brethren for the Court's unanimous decision striking down a manifestly unconstitutional Act and illegal plebiscite and restoring the territorial integrity of the once premier province of Negros Occidental.

Melencio-Herrera, J., in the result.

SEPARATE OPINION

TEEHANKEE, C.J.:

I congratulate my brethren for the unanimous decision we issue today striking down an Act approved in "deep secrecy and inordinate haste" apparently on the last day of session of the 'Batasang Pambansa on December 3, 1985 and signed on the same day by the then President of the authoritarian regime. The Act provided for the partitioning of the province of Negros Occidental and would substantially alter its boundaries by lopping off the progressive cities of Silay, Cadiz and San Carlos and municipality of Victorias with seven other municipalities to constitute the proposed new province of Negros del Norte. Negros Occidental would thereby lose 4,019.95 square kilometers in area and seven of fifteen sugar mills which contribute to the economic progress and welfare of the whole province.

The discredited Commission on Elections of the time played its customary subservient role by setting the plebiscite with equal "indecent haste" for January 3, 1986, notwithstanding that the Act itself provided for an ample period of 120 days from its approval within which to inform the people of the proposed dismemberment and allow them to freely express and discuss the momentous issue and cast their vote intelligently. This was learned by petitioners through an item in the printed media one day before they filed the present rush petition on December 23, 1985 to seek a restraining order to stop the plebiscite, even as no printed copies of the Act as finally enacted and approved were available to them and the Act had not been published, as required by law, for its effectivity. As petitioners ruefully state: "it was in vain hope" for everything had apparently been timed for the Christmas holidays; the Court was in Christmas recess and "there was no chance to have their plea for a restraining order acted upon speedily enough." In fact, it was only on January 7, 1986 that the Court took cognizance of the petition and required respondents' comment.

The scenario, as petitioners urgently asserted, was "to have the creation of the new Province a fait accompli by the time elections are held on February 7, 1986. The transparent purpose is unmistakably so that the new Governor and other officials shall by then have been installed in office, ready to function for purposes of the election for President and Vice-President." Thus, the petitioners re-reported after the event: "With indecent haste, the plebiscite was held; Negros del Norte was set up and proclaimed by President Marcos as in existence; a new set of government officials headed by Governor Armando Gustilo was appointed; and, by the time the elections were held on February 7, 1986, the political machinery was in place to deliver the 'solid North' to ex-President Marcos. The rest is history. What happened in Negros del Norte during the elections -- the unashamed use of naked power and resources -- contributed in no small way to arousing 'people's power' and steel the ordinary citizen to perform

deeds of courage and patriotism that makes one proud to be a Filipino today." (Record, pp. 9, 41)

The challenged Act is manifestly void and unconstitutional. Consequently, all the implementing acts complained of, viz, the plebis-cite, the proclamation of a new province of Negros del Norte and the appointment of its officials are equally void. The limited holding of the plebiscite only in the areas of the proposed new province (as provided by Section 4 of the Act) to the exclusion of the voters of the re-maining areas of the integral province of Negros Occidental (namely, the three cities of Bacolod, Bago and La Carlota and the Municipalities of La Castellana, Isabela, Moises Padilla, Pontevedra, Hinigaran, Himamaylan, Kabankalan, Murcia, Valladolid, San Enrique, Ilog, Cauayan, Hinoba-an and Sipalay and Candoni), grossly contravenes and disregards the mandate of Article XI, section 3 of the then pre-vailing 1973 Constitution that no province may be created or divided or its boundary substantially altered without "the approval of a majority of the votes in a plebiscite in the unit or units affected." It is plain that all the cities and municipalities of the province of Negros Occidental, not merely those of the proposed new province, comprise the units affected. It follows that the voters of the whole and entire province of Negros Occidental have to participate and give their approval in the plebiscite, because the whole province is affected by its proposed division and substantial alteration of its boundary. To limit the plebiscite to only the voters of the areas to be partitioned and seceded from the province is as absurd and illogical as allowing only the secessionists to vote for the secession that they demand against the wishes of the majority and to nullify the basic principle of majority rule.

The argument of *fait accompli*, viz, that the railroaded plebiscite of January 3, 1986 was held and can no longer be enjoined and that the new province of Negros del Norte has been constituted, begs the issue of invalidity of the challenged Act. This Court has always held that it "does not look with favor upon parties 'racing to beat an injunction or restraining order' which they have reason to believe might be forthcoming from the Court by virtue of the filing and pendency of the appropriate petition therefor. Where the restraining order or preliminary injunction are found to have been properly issued, as in the case at bar, mandatory writs shall be issued by the Court to restore matters to the status quo ante." (*Banzon v. Cruz*, 45 SCRA 475, 506 [1972]). Where, as in this case, there was somehow a failure to properly issue the restraining order stopping the holding of the illegal plebiscite, the Court will issue the mandatory writ or judgment to restore matters to the status quo ante and restore the territorial integrity of the province of Negros Occidental by declaring the unconsti-tutionality of the challenged Act and nullifying the invalid proclamation of the proposed new province of Negros del Norte and the equally invalid appointment of its officials.

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