

## EN BANC

[ G.R. No. 197146, December 06, 2016 ]

**HON. MICHAEL L. RAMA, IN HIS CAPACITY AS MAYOR OF CEBU CITY, METROPOLITAN CEBU WATER DISTRICT (MCWD), REPRESENTED BY ITS GENERAL MANAGER, ARMANDO PAREDES; THE BOARD OF DIRECTORS OF MCWD, REPRESENTED BY ITS CHAIR, ELIGIO A. PACANA; JOEL MARI S. YU, IN HIS CAPACITY AS MEMBER OF THE MCWD BOARD; AND THE HONORABLE TOMAS R. OSMEÑA, IN HIS CAPACITY AS CONGRESSIONAL REPRESENTATIVE OF THE SOUTH DISTRICT, CEBU CITY, PETITIONERS, VS. HON. GILBERT P. MOISES, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 18, CEBU CITY; AND HON. GWENDOLYN F. GARCIA, IN HER CAPACITY AS GOVERNOR OF THE PROVINCE OF CEBU, RESPONDENTS.**

### DECISION

**BERSAMIN, J.:**

A law enacted prior to the 1987 Constitution, like a presidential decree, is presumed to be valid and constitutional on the theory that it was carefully studied by the Legislative and Executive Departments prior to its enactment, and determined to be in accord with the Fundamental Law. However, the presumption of validity and constitutionality is overturned and the law should be struck down once it becomes inconsistent with the present Constitution and the later laws.

#### Antecedents

On May 25, 1973, President Ferdinand E. Marcos issued Presidential Decree No. 198 (*Provincial Water Utilities Act of 1973*). By virtue of P. D. No. 198, Cebu City formed the Metro Cebu Water District (MCWD) in 1974. Thereafter, the Cities of Mandaue, Lapu-Lapu and Talisay, and the Municipalities of Liloan, Compostela, Consolacion, and Cordova turned over their waterworks systems and services to the MCWD. Since then, the MCWD has distributed water and sold water services to said cities and municipalities. From 1974 to 2002, the Cebu City Mayor appointed all the members of the MCWD Board of Directors in accordance with Section 3 (b) of P. D. No. 198, to wit:

**Section 3. Definitions.** - As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any of its variants.

(a) *Act.* This is the Provincial Water Utilities Act of 1973.

(b) *Appointing authority.* The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. **In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary**

**of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located.** If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists. (bold underscoring supplied for emphasis)

In July 2002, Cebu Provincial Governor Pablo L. Garcia wrote to the MCWD to assert his authority and intention to appoint the members of the MCWD Board of Directors.<sup>[1]</sup> He stated in his letter that since 1996, the active water service connections in Cebu City had been below 75% of the total active water service connection of the MCWD; that no other city or municipality under the MCWD had reached the required percentage of 75%; and that, accordingly, he, as the Provincial Governor of Cebu, was the appointing authority for the members of the MCWD Board of Directors pursuant to Section 3 (b) of P. D. No. 198.

Later on, the MCWD commenced in the Regional Trial Court in Cebu City (RTC) its action for declaratory relief seeking to declare Section 3(b) of P.D. No. 198 unconstitutional; or, should the provision be declared valid, it should be interpreted to mean that the authority to appoint the members of the MCWD Board of Directors belonged solely to the Cebu City Mayor.<sup>[2]</sup>

The RTC (Branch 7) dismissed the action for declaratory relief without any finding and declaration as to the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities reach 75% of the total water service connections in the areas under the MCWD.<sup>[3]</sup>

In the meanwhile, the terms of two members of the MCWD Board of Directors ended, resulting in two vacancies. To avoid a vacuum and in the exigency of the service, Provincial Governor Gwendolyn F. Garcia and Cebu City Mayor Tomas R. Osmeña jointly appointed Atty. Adelino Sitoy and Leo Pacaña to fill the vacancies.<sup>[4]</sup> However, the position of Atty. Sitoy was deemed vacated upon his election as the Municipal Mayor of Cordova, Cebu in the 2007 elections.

Consequently, Governor Garcia commenced an action for declaratory relief to seek the interpretation of Section 3 (b) of P.D. No. 198 on the proper appointing authority for the members of the MCWD Board of Directors.<sup>[5]</sup>

It appears that on February 7, 2008, the Cebu Provincial Legal Office, upon being informed that Mayor Osmeña would be appointing Joel Mari S. Yu to replace Atty. Sitoy as a member of the MCWD Board of Directors, formally advised in writing Cynthia A. Barrit, the MCWD Board Secretary, to defer the submission of the list of nominees to any appointing authority until the RTC rendered its final ruling on the issue of the proper appointing authority.<sup>[6]</sup> On February 22, 2008, however, Mayor Osmeña appointed Yu as a member of the MCWD Board of Directors.<sup>[7]</sup> Accordingly, on May 20, 2008, the RTC dismissed the action for declaratory relief on the ground that declaratory relief became improper once there was a breach or violation of the provision.<sup>[8]</sup>

On June 13, 2008, Governor Garcia filed a complaint to declare the nullity of the appointment of Yu as a member of the MCWD Board of Directors (docketed as Civil Case

No. CEB-34459), alleging that the appointment by Mayor Osmeña was illegal; that under Section 3(b) of P.D. No. 198, it was she as the Provincial Governor of Cebu who was vested with the authority to appoint members of the MCWD Board of Directors because the total active water service connections of Cebu City and of the other cities and municipalities were below 75% of the total water service connections in the area of the MCWD.<sup>[9]</sup> She impleaded Mayor Osmeña, the MCWD, and Yu as defendants.

In his answer, Mayor Osmeña contended that the authority to appoint the members of the MCWD Board of Directors solely belonged to him; that since the creation of the MCWD in 1974, it was the Cebu City Mayor who had been appointing the members of the MCWD Board of Directors; that the Province of Cebu had not invested or participated in the creation of the MCWD; and that Cebu City, being a highly urbanized city (HUC), was independent from the Province of Cebu under the provisions on local autonomy of the 1987 Constitution.<sup>[10]</sup>

The RTC (Branch 18), to which the case was raffled, required the parties to submit their memorandum.

In their joint memorandum, Osmeña and Yu posited that the Province of Cebu did not participate in the organization of the MCWD; that the words and sentences of Section 3(b) of P.D. No. 198 should not be read and understood or interpreted literally; and that the case should be dismissed because: (1) Section 3(b) of P.D. No. 198 was unconstitutional for being arbitrary and unreasonable; (2) Governor Garcia had no authority to appoint any members of the MCWD Board of Directors; and (3) that the Mayor of the city or municipality having the majority of water connections within the area under the MCWD had the power to appoint the members of the MCWD Board of Directors.<sup>[11]</sup>

On November 16, 2010, the RTC rendered the assailed judgment declaring the appointment of Yu as illegal and void,<sup>[12]</sup> holding as follows:

The questioned provision, paragraph (b) of Section 3 of P.O. 198 is clear enough that it needs no interpretation. It expressly states in unequivocal terms the appointing authority in the water district's board of directors --- *if more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located.*

It has not been belied by defendants that the active water service connections of Cebu City in the Metropolitan Cebu Water District (MCWD), at 61.28%, have gone below the required 75% required by law for the city mayor to have the authority to appoint members of the board of directors of the water district. Lacking such percentage requisite, the appointing power is now vested with the governor of the Province of Cebu. While it may be true that the governor had not participated in organizing MCWD and neither did the Province of Cebu invest in establishing waterworks in the component local governments, the law, however, does not impose any condition or restriction in transferring the power to the governor to appoint members of the board of directors when the percentage falls below 75%. Thus, there is no doubt that when any of the water district's participating city or municipality could not obtain 75% of the active water service connections, the governor shall

appoint the members of the board of directors of the water district, whether it is a participant or not, in its organization.

As to the constitutionality of the questioned provision, the Court finds that Sec. 3 of P.O. 198 does not violate the Constitution or the Local Government Code. Vesting the authority in the governor to appoint a member of the board of directors of a water district is not intruding into the affairs of the highly urbanized cities and component cities which comprise the district, and neither is it a threat to their autonomy. It does not interfere with their powers and functions and neither can it be considered an exercise of the provincial government's supervisory powers. At most, it is simply giving the authority to appoint the head of the government unit (the governor) where all the members of the water district are geographically located, and only when none of these cities and municipalities has the required 75% of the active water service connections. Nevertheless, the issue is not whether the governor took any part in organizing the water district or has contributed to its formation, but that by law, she has been made the appointing authority even if she has no participation or involvement in the cooperative effort of the members of the water district. This may not be the most expedient and appropriate solution, but still, it is not illegal. As to why this is so is a question only our lawmakers could answer.

*All presumptions are indulged in favor of constitutionality, one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional, that if any reasonable basis may be conceived which supports the statute, it will be upheld and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy or expediency of a statute, and that a liberal interpretation of the constitution in favour of the constitutionality of legislation should be adopted.*

Notably, among the admissions found in the Answer for defendants Yu and MCWD states: "x x x with respect to the two (2) vacancies in the Board of MCWD and that joint appointment was made by the plaintiff and defendant Mayor Osmeña to Atty. Adelino Sitoy and Mr. Eligio Pacana." The Court surmises from this statement that as early as the previous appointments (of Mr. Pacana and Atty. Sitoy) defendants have already recognized the appointing authority of the governor for members of the MCWD board of directors, considering Cebu City's failure to reach the 75% benchmark on active water service connections.

In sum, the Court has not been able to find any constitutional infirmity in the questioned provision (Sec. 3) of Presidential Decree No. 198. *The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, there must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.* Those who seek to declare the law, or parts thereof unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.

Based on the grounds raised by defendants to challenge the constitutionality of Section 3 of P.D. 198, the Court finds that defendants have failed to overcome the presumption of constitutionality of the law. As to whether the

questioned section constitutes a wise legislation, considering the issues being raised by petitioners, is for Congress to determine.

WHEREFORE, Judgment is hereby rendered in favour of plaintiff and against defendants, finding the appointment of defendant Joel Mari S. Yu as member of the Metropolitan Cebu Water District (MCWD) as illegal, null and void.<sup>[13]</sup>

Mayor Osmeña and Yu jointly moved for reconsideration,<sup>[14]</sup> but the RTC denied their motion.<sup>[15]</sup>

### **Issues**

Hence, the petitioners have instituted this special civil action for *certiorari*,<sup>[16]</sup> contending that:

#### **I.**

**THE RESPONDENT COURT ABDICATED ITS CONSTITUTIONAL DUTY IN REFUSING TO DELVE ON THE ISSUE OF CONSTITUTIONALITY.**

#### **II.**

**THE JUDGMENT IS VOID ON ITS FACE BECAUSE OF CLEAR CONSTITUTIONAL VIOLATIONS APPARENT BY A MERE READING OF THE DECREE.**

#### **III.**

**THE JUDGMENT VIOLATES DUE PROCESS AND THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.**<sup>[17]</sup>

### **Ruling of the Court**

The petition for *certiorari* is granted.

#### **1.**

##### **Preliminary Matter:**

##### **Yu's expiration of term did not render case moot and academic**

We note that respondent Yu's term as a member of the MCWD Board of Directors expired on December 31, 2012.<sup>[18]</sup> However, this fact does not justify the dismissal of the petition on the ground of its being rendered moot and academic. The case should still be decided, despite the intervening developments that could have rendered the case moot and academic, because public interest is involved, and because the issue is capable of repetition yet evading review.<sup>[19]</sup>

For sure, the appointment by the proper official of the individuals to manage the system of water distribution and service for the consumers residing in the concerned cities and municipalities involves the interest of their populations and the general public affected by the services of the MCWD as a public utility. Moreover, the question on the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities have at least 75% of the water consumers will not be