EN BANC

[G.R. No. 180050, May 12, 2010]

RODOLFO G. NAVARRO, VICTOR F. BERNAL, AND RENE O. MEDINA, PETITIONERS, VS. EXECUTIVE SECRETARY EDUARDO ERMITA, REPRESENTING THE PRESIDENT OF THE PHILIPPINES; SENATE OF THE PHILIPPINES, REPRESENTED BY THE SENATE PRESIDENT; HOUSE OF REPRESENTATIVES, REPRESENTED BY THE HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, REPRESENTING THE MOTHER PROVINCE OF SURIGAO DEL NORTE; GOVERNOR GERALDINE ECLEO VILLAROMAN, REPRESENTING THE NEW PROVINCE OF DINAGAT ISLANDS, RESPONDENTS.

RESOLUTION

PERALTA, J.:

Before us are two Motions for Reconsideration of the Decision dated February 10, 2010 — one filed by the Office of the Solicitor General (OSG) in behalf of public respondents, and the other filed by respondent Governor Geraldine Ecleo Villaroman, representing the Province of Dinagat Islands. The dispositive portion of the Decision reads:

> **WHEREFORE**, the petition is **GRANTED**. Republic Act No. 9355, otherwise known as *An Act Creating the Province of Dinagat Islands*, is hereby declared unconstitutional. The proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared **NULL** and **VOID**. The provision in Article 9 (2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared **NULL** and **VOID**.

The arguments of the movants are similar. The grounds for reconsideration of Governor Villaroman can be subsumed under the grounds for reconsideration of the OSG, which are as follows:

I.

> The Province of Dinagat Islands was created in accordance with the provisions of the 1987 Constitution and the Local Government Code of 1991. Article 9 of the Implementing Rules and Regulations is merely interpretative of Section 461 of the Local Government Code.

II.

The power to create a local government unit is vested with the Legislature. The acts of the Legislature and Executive in enacting into law RA 9355 should be respected as petitioners failed to overcome the presumption of validity or constitutionality.

III.

Recent and prevailing jurisprudence considers the operative fact doctrine as a reason for upholding the validity and constitutionality of laws involving the creation of a new local government unit as in the instant case.

As regards the first ground, the movants reiterate the same arguments in their respective Comments that aside from the undisputed compliance with the income requirement, Republic Act (R.A.) No. 9355, creating the Province of Dinagat Islands, has also complied with the population and land area requirements.

The arguments are unmeritorious and have already been passed upon by the Court in its Decision, ruling that R.A. No. 9355 is unconstitutional, since it failed to comply with either the territorial or population requirement contained in Section 461 of R.A. No. 7160, otherwise known as the *Local Government Code of 1991*.

When the Dinagat Islands was proclaimed a new province on December 3, 2006, it had an *official* population of only **106,951** based on the 2000 Census of Population conducted by the National Statistics Office (NSO), which population is short of the statutory requirement of 250,000 inhabitants.

Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in 2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code.[1] Moreover, respondents failed to prove that with the population count of 371,000, the population of the original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province.[2]

Less than a year after the proclamation of the new province, the NSO conducted the **2007** Census of Population. The NSO certified that as of August 1, 2007, Dinagat Islands had a total population of only **120,813**,[3] which was still below the minimum requirement of 250,000 inhabitants.

Based on the foregoing, R.A. No. 9355 failed to comply with the population requirement of 250,000 inhabitants as certified by the NSO.

Moreover, the land area of the province failed to comply with the statutory requirement of 2,000 square kilometers. R.A. No. 9355 specifically states that the Province of Dinagat Islands contains an approximate land area of 802.12 square kilometers. This was not disputed by the respondent Governor of the Province of Dinagat Islands in her Comment. She and the other respondents instead asserted that the province, which is composed of more than one island, is exempted from the

land area requirement based on the provision in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), specifically paragraph 2 of Article 9 which states that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." The certificate of compliance issued by the Lands Management Bureau was also based on the exemption under paragraph 2, Article 9 of the IRR.

However, the Court held that paragraph 2 of Article 9 of the IRR is null and void, because the exemption is not found in Section 461 of the Local Government Code. [4] There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[5]

The movants now argue that the correct interpretation of Section 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio Eduardo B. Nachura.

In his Dissenting Opinion, Justice Nachura agrees that R.A. No. 9355 failed to comply with the population requirement. However, he contends that the Province of Dinagat Islands did not fail to comply with the territorial requirement because it is composed of a group of islands; hence, it is exempt from compliance not only with the territorial contiguity requirement, but also with the 2,000-square-kilometer land area criterion in Section 461 of the Local Government Code, which is reproduced for easy reference:

> SEC. 461. *Requisites for Creation*. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (P20,000,000.00) based on 1991 constant prices and either of the following requisites:
>
> > (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or
> >
> > (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:
> >
> > *Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.
> >
> > (b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.
> >
> > (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.[6]

Justice Nachura contends that the stipulation in paragraph (b) qualifies not merely the word "contiguous" in paragraph (a) (i) in the same provision, but rather the entirety of paragraph (a) (i) that reads:

> (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau[.][7]

He argues that the whole paragraph on contiguity and land area in paragraph (a) (i) above is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, he contends that if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 square kilometers. He asserts that this is because as the law is worded, contiguity and land area are not two distinct and separate requirements, but they qualify each other. An exemption from one of the two component requirements in paragraph (a) (i) allegedly necessitates an exemption from the other component requirement, because the non-attendance of one results in the absence of a reason for the other component requirement to effect a qualification.

Similarly, the OSG contends that when paragraph (b) of Section 461 of the Local Government Code provides that the "territory need not be contiguous if it comprises two (2) or more islands," it necessarily dispenses the 2,000-sq.-km. land area requirement, lest such exemption would not make sense. The OSG argues that in stating that a "territory need not be contiguous if it comprises two (2) or more islands," the law could not have meant to define the obvious. The land mass of two or more islands will never be contiguous as it is covered by bodies of water. It is then but logical that the territory of a proposed province that is composed of one or more islands need not be contiguous or be at least 2,000 sq. kms.

The Court is not persuaded.

Section 7, Chapter 2 (entitled *General Powers and Attributes of Local Government Units*) of the Local Government Code provides:

> SEC. 7. *Creation and Conversion*. — As a general rule, the creation of a local government unit or its conversion from one level to another level **shall be based on verifiable indicators of viability and projected capacity to provide services**, **to wit**:
>
> (a) **Income**. — It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
>
> (b) **Population**. — It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

> (c) **Land area**. — **It must be contiguous**, unless it comprises two (2) or more islands, or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; **and sufficient to provide for such basic services and facilities to meet the requirements of its populace**.
>
> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[8]

It must be emphasized that Section 7 above, which provides for the general rule in the creation of a local government unit, states in paragraph (c) thereof that the land area must be contiguous **and** sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Therefore, there are two requirements for land area: (1) the land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of the Local Government Code .

Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of "**a contiguous territory of at least two thousand (2,000) square kilometers**."

Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000 square kilometers are distinct and separate requirements for land

area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus:

> (b) **The territory need not be contiguous if it comprises two (2) or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province**.[9]

Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province.

Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands, or when the territory of a province is separated by a chartered city or cities, such province need