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[G.R. No. 176951, August 24, 2010]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON, RESPONDENTS.

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, PETITIONERS-IN-INTERVENTION.

[G.R. NO. 177499]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; AND MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL, RESPONDENTS. CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS,

CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, PETITIONERS-IN-INTERVENTION.

[G.R. NO. 178056]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS, CITY OF ILOILO REPRESENTED BY MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO, AND JERRY P. TREÑAS IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; AND MUNICIPALITY OF EL SALVADOR, MISAMIS ORIENTAL, RESPONDENTS. CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, AND CITY OF TAGUM, PETITIONERS-IN-INTERVENTION.

R E S O L U T I O N

CARPIO, J.:

For resolution are (1) the *ad cautelam* motion for reconsideration and (2) motion to annul the Decision of 21 December 2009 filed by petitioners League of Cities of the Philippines, et al. and (3) the *ad cautelam* motion for reconsideration filed by petitioners-in-intervention Batangas City, Santiago City, Legazpi City, Iriga City, Cadiz City, and Oroquieta City.

On 18 November 2008, the Supreme Court *En Banc,* by a majority vote, struck down the subject 16 Cityhood Laws for violating Section 10, Article X of the 1987 Constitution and the equal protection clause. On 31 March 2009, the Supreme Court *En Banc*, again by a majority vote, denied the respondents' first motion for reconsideration. On 28 April 2009, the Supreme Court *En Banc*, by a *split* vote, denied the respondents' second motion for reconsideration. Accordingly, the 18 November 2008 Decision became final and executory and was recorded, in due course, in the Book of Entries of Judgments on 21 May 2009.

However, after the finality of the 18 November 2008 Decision and without any exceptional and compelling reason, the Court *En Banc* unprecedentedly reversed the 18 November 2008 Decision by upholding the constitutionality of the Cityhood Laws in the Decision of 21 December 2009.

Upon reexamination, the Court finds the motions for reconsideration meritorious and accordingly reinstates the 18 November 2008 Decision declaring the 16 Cityhood Laws unconstitutional.

A. Violation of Section 10, Article X of the Constitution

Section 10, Article X of the 1987 Constitution provides:

> No province, city, municipality, or barangay shall 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 approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code.[1] The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

The clear intent of the Constitution is to insure that the creation of cities and other political units must follow **the same uniform, non-discriminatory criteria found solely in the Local Government Code**. Any derogation or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution.

RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from P20 million to P100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the P100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement.

In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

RA 9009 is not a law different from the Local Government Code. Section 1 of RA 9009 pertinently provides: "**Section 450 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended** to read as follows: x x x." RA 9009 amended Section 450 of the Local Government Code. **RA 9009, by amending Section 450 of the Local Government Code, embodies**

the new and prevailing Section 450 of the Local Government Code. Considering the Legislature's primary intent to curtail "the mad rush of municipalities wanting to be converted into cities," RA 9009 increased the income requirement for the creation of cities. To repeat, RA 9009 is not a law different from the Local Government Code, as it expressly amended Section 450 of the Local Government Code.

The language of RA 9009 is plain, simple, and clear. Nothing is unintelligible or ambiguous; not a single word or phrase admits of two or more meanings. RA 9009 amended Section 450 of the Local Government Code of 1991 by increasing the income requirement for the creation of cities. There are no exemptions from this income requirement. Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law. Moreover, where the law does not make an exemption, the Court should not create one.[2]

B. Operative Fact Doctrine

Under the operative fact doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional.

However, the minority's novel theory, invoking the operative fact doctrine, is that the enactment of the Cityhood Laws and the functioning of the 16 municipalities as new cities with new sets of officials and employees **operate to contitutionalize the unconstitutional Cityhood Laws.** This novel theory misapplies the operative fact doctrine and sets a gravely dangerous precedent.

Under the minority's novel theory, an unconstitutional law, if already implemented prior to its declaration of unconstitutionality by the Court, can no longer be revoked and its implementation must be continued despite being unconstitutional. This view will open the floodgates to the wanton enactment of unconstitutional laws and a mad rush for their immediate implementation before the Court can declare them unconstitutional. This view is an open invitation to serially violate the Constitution, and be quick about it, lest the violation be stopped by the Court.

The operative fact doctrine is a rule of equity. As such, it must be applied as **an exception to the general rule that an unconstitutional law produces no effects.** It can never be invoked to validate as constitutional an unconstitutional act. In *Planters Products, Inc. v. Fertiphil Corporation*,[3] the Court stated:

> **The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection.** It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:

> ART. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.
>
> When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.
>
> **The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.**
>
> The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it. (Emphasis supplied)

The operative fact doctrine never validates or constitutionalizes an unconstitutional law. Under the operative fact doctrine, the unconstitutional law remains unconstitutional, but the **effects** of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself.

Thus, applying the operative fact doctrine to the present case, the Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the Cityhood Laws **prior to the declaration of their nullity**, such as the payment of salaries and supplies by the "new cities" or their issuance of licenses or execution of contracts, may be recognized as valid and effective. This does not mean that the Cityhood Laws are valid for they remain void. Only the effects of the implementation of these unconstitutional laws are left undisturbed as a matter of equity and fair play to innocent people who may have relied on the presumed validity of the Cityhood Laws prior to the Court's declaration of their unconstitutionality.

C. Equal Protection Clause

As the Court held in the 18 November 2008 Decision, there is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality.** Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. **In short, the classification criterion – mere**