

THE UNCONSTITUTIONAL COMMISSION

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In the past twelve years, several decisions of the Supreme Court, particularly in the field of political law, have drawn criticisms. The decision of the Supreme Court on May 31, 1985 in the consolidated cases of *Lopez v. Commission on Elections*, G.R. No. 56022 and *Lopez, et al. vs. Metropolitan Manila Commission* G.R. No. 56124 upholding the validity of the creation of the Metropolitan Manila Commission looms as one its controversial rulings in political law.

I. THE BACKGROUND OF THE CASES

On December 31, 1974, Mr. Ferdinand E. Marcos issued Proclamation No. 1366, which empowered the Commission on Elections to recommend questions to be resolved and determined by the barangay in the referendum on January 30, 1975.

On January 7, 1975, Mr. Ferdinand E. Marcos issued Presidential Decree No. 637, which formulates the questions to be submitted in the referendum on January 30, 1975.

The referendum was postponed to February 27, 1975.

On January 17, 1975, Mr. Ferdinand E. Marcos issued Presidential Decree No. 637-A, which amended Presidential Decree No. 637. Section 1 of Presidential Decree No. 637-A directed that the following questions be submitted in the referendum in February 27, 1975 among the barangays in the Cities of Manila, Quezon, Pasay and Caloocan, the Municipality of Valenzuela in the Province of Bulacan, and the Municipalities of Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Muntinlupa, Navotas, Parañaque, Pasig, Pateros, San Juan del Monte, and Taguig in the Province of Rizal.

"1. Do you want the present Mayor-Council form of government now existing in the cities and municipalities of Greater Manila to continue?"

"2. If you do not want the Mayor-Council type to continue, do you favor the President exercising his powers to restructure the local governments in Greater Manila (four cities and 13 municipalities) into an integrated system like a Manager or Commission form under such terms and conditions as he may determine?"

In the referendum on February 27, 1975, the residents of the four cities and thirteen municipalities mentioned in Presidential Decree No. 637-A were

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supposed to have authorized Mr. Ferdinand E. Marcos to restructure their local governments into a commission form of government under such terms and conditions as he may determine.

On November 7, 1975, Mr. Ferdinand E. Marcos issued Presidential Decree No. 824, which created the Metropolitan Manila Commission.

On December 29, 1977, Mr. Ferdinand E. Marcos promulgated Presidential Decree No. 1274-A, which amended Presidential Decree No. 824 and abolished the city councils and municipal councils in the four cities and thirteen municipalities in comprising Metropolitan Manila.

On January 29, 1981, Mr. Gemiliano C. Lopez, Jr. filed a petition for Mandamus in the Supreme Court to compel the Commission on Elections to hold an election of the councilors of the city councils and municipal councils in the cities and municipalities in Greater Manila on the ground that their abolition is unconstitutional.

On February 6, 1981, Messrs. Gemiliano C. Lopez, Jr. and Reynaldo B. Aralar filed a petition for prohibition in the Supreme Court to prohibit the Metropolitan Manila Commission from performing its functions on the ground that its creation is unconstitutional.

II. THE RATIO DECIDENDI

The reasons on which the Supreme Court based its decision totter.

A. The Validity of the Referendum.

Section 3, Article XI of the Constitution which is presently in force provides:

"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 cast in a plebiscite in the unit or units affected.*" (Italics supplied)

Messrs. Gemiliano C. Lopez, Jr. and Reynaldo B. Aralar based their attack on the creation of the Metropolitan Manila Commission on the ground that the referendum on February 27, 1975 did not include the other municipalities in the Provinces of Bulacan and Rizal, although they were adversely affected by the removal from the Provinces of Bulacan and Rizal of the thirteen municipalities which were incorporated in Metropolitan Manila.

In rejecting this contention, the Supreme Court fell back on its earlier pronouncement in the case of *Paredes vs. Executive Secretary*, 128 SCRA 6, 11-12:

"Adherence to such a philosophy (the promotion of autonomy) compels the conclusion that when there are indications that the inhabitants of several barangays are inclined to separate from a parent municipality 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 the local autonomy, the preference being for smaller units." (Parenthetical expression supplied.)

Mr. Justice Vicente Abad Santos dissented, saying:

"2. I believe that when the Constitution speaks of 'the unit or units affected' it means *all* of the people of the municipal 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.¹

In the decision in *Lopez vs. Commission on Elections*, G.R. No. 56022 and *Lopez, et al. vs. Manila Metropolitan Commission*, G.R. No. 56124, Mr. Justice Vicente Abad Santos repeated his dissent.

Be that as it may, the fact remains that when a referendum was held on February 27, 1985, the residents did not know what final form the Metropolitan Manila Commission would take. At that time, Mr. Ferdinand E. Marcos had not yet issued Presidential Decree No. 824. The residents of Greater Manila were asked to ratify a change of government before the new form of government had been specifically outlined. What happened was that the procedure was done in the reverse. There can be no valid ratification where there is no specific proposal to be ratified. Ratification presupposes and requires full knowledge.²

If the reasoning of the Supreme Court were to be followed to its logical conclusion, a plebiscite can be held asking the people to ratify a proposed constitutional amendment even before the amendment has been drafted.

The Supreme Court has held that the people cannot be asked to ratify an isolated proposed constitutional amendment when the rest of the constitution has not yet been drafted, because the people have no frame of reference on which to base their judgment.³ With more reason, the residents of Greater Manila cannot be deemed to have ratified the creation of the Metropolitan Manila Commission when not a single provision of Presidential Decree No. 824 had been drafted during the referendum on February 27, 1975.

Besides, the creation of the Metropolitan Manila Commission violates Section 10, Article II and Sections 1, 4 and 5, Article XI of the Constitution presently in force. The residents of Greater Manila cannot ratify anything which will violate such provisions. To repeal the provisions violated by the creation of the Metropolitan Manila Commission, a plebiscite involving all the Filipino voters must be held. In *Tolentino vs. Commission on Elections*, G.R. No. L-34150, November 4, 1971, the Supreme Court held:

"Importantly, before discussing the arguments of the parties, it is well to emphasize that respondents and intervenors impliedly, if not expressly, admit now that the provisions of Section 1 Article XV of the Constitution, dealing with the procedure or manner of amending the fundamental law are binding upon the Convention and the other department of the government. It must be added that, as well pointed out by petitioner in his answer to the motions for reconsideration, *they are no less binding upon the people.*"

B. The Mandamus Case.

The decision in the cases of *Lopez vs. Commission on Elections*, G.R. No. 56022 and *Lopez, et al. vs. Metropolitan Manila Commission*, G.R. No. 56124, reasoned out that by asking that the Commission on Elections be compelled to hold an election of the city councils and the municipal councils in Greater Manila, Mr. Gemiliano C. Lopez, Jr. admitted the validity of the creation of the Metropolitan Manila Commission. The decision declared:

“As was stated in the Memorandum of the Solicitor General Estelito P. Mendoza, the fact that it is a suit for mandamus is an admission of the validity of Presidential Decree No. 824.”

It is difficult to follow the logic of this line of reasoning. How can a party be deemed to have admitted impliedly what he is assailing expressly?

The city councils and the municipal councils of the cities and the municipalities in Greater Manila did not owe their existence to Presidential Decree No. 824. They antedated the issuance of Presidential Decree No. 824. They were abolished by Presidential Decree No. 1274-A. Precisely, the position of Mr. Gemiliano C. Lopez, Jr. was that their abolition was unconstitutional. The city city councils and the municipal councils for which he wanted elections to be held referred to the city councils and the municipal councils of the cities and the municipalities in Greater Manila before they were unconstitutionally abolished.

The decision of the Supreme Court went on to boldly assert that the residents of Greater Manila had a voice in decision-making, saying:

“Nor would mandamus lie, it being provided therein that ‘the *Sangguniang Bayan* shall be composed of as many barangay captains as may be determined and chosen by the Commission, and such number of representatives from other sectors of the society as may be appointed by the President upon recommendation of the Commission.’ The Solicitor General can, therefore, plausibly assert: ‘This demonstrates that the petition’s charge, that there is no duly constituted Sangguniang Bayan in Metro Manila Area is untrue, and that the citizenry therein do have a voice in decision-making, through the respective Sangguniang Bayans of each of the political units therein.’”

This observation is incorrect. First of all, the Sangguniang Bayan created by Presidential Decree No. 824 was abolished by Presidential Decree No. 1274-A, which amended Section 9 of Presidential Decree No. 824 to read as follows:

“*The city and municipal councils in Metropolitan Manila are hereby abolished and in lieu thereof, there shall be a consultative legislative assembly that shall assist the Commission in the formulation of ordinances, resolutions and other measures affecting the four cities and thirteen municipalities within Metropolitan Manila which shall hereinafter be known as the Sanggunian ng Kalakhang Maynila, whose members shall hold office at the pleasure of the President.*”

The *Sanggunian ng Kalakhang Maynila* shall recommend to the Commission ordinances, resolutions, or such measures as it may adopt; Provided, that no such ordinance, resolution or measure shall become effective until after its approval by

the Commission; and Provided, further, that the power to impose taxes and other levies, the power to appropriate money and the power to pass ordinances or resolutions with penal resolutions shall be vested exclusively in the Commission.” (Italics supplied)

Secondly, the *Sanggunian ng Kalakhang Maynila* was never organized.

Lastly, the non-existent *Sanggunian ng Kalakhang Maynila* had no power to approve any ordinance, resolution or power. All that it could have done was to make recommendations, which the Metropolitan Manila Commission would have been at complete liberty to ignore.

C. Equal Protection of the Law

With the abolition of the city councils and the municipal councils of the cities and the municipalities in Greater Manila, they were singled out for deprivation of the power to legislate on local matters. While the smallest barangay and the poorest municipality outside Greater Manila can enact ordinances, the cities and the municipalities in Greater Manila cannot do so.

In ruling that this does not violate the guarantee of equal protection, the Supreme Court reasoned out:

“It is quite obvious that under the conditions then existing - - still present and, with the continued growth of population, attended with more complexity - - what was done was a response to a great public need.”

For a classification to be valid, it must be germane to the purpose of the law.⁴

If the continued growth of the population in Greater Manila has given rise to a complexity in the conditions in Greater Manila, it does not follow that the city councils and the municipal councils in Greater Manila should be abolished. Stripping them of the power to legislate on local matters to cope with such problem is not germane to the purpose of the law. While there may be a need for the cities and the municipalities in Greater Manila to coordinate their activities, it does not follow that their city councils and municipal councils should be abolished. Because of the abolition of their city councils and municipal councils, the cities and the municipal councils cannot legislate on matters of local concern that affect solely one city or one municipality and do not affect the rest of them.

D. Recognition of Metropolitan Manila

The Supreme Court upheld the validity of the creation of the Metropolitan Manila Commission on the ground that Section 2, Article VIII of the Constitution presently in force, as amended in 1984, and its accompanying Ordinance recognized the existence of Metropolitan Manila.

Section 2, Article VIII of the Constitution, as amended in 1981, provides as follows:

“The *Batasang Pambansa* which shall be composed of not more than 200 members unless otherwise provided by law, shall include representatives elected from different regions of the Philippines, those elected or selected from various sectors as may be provided by law, and those chosen by the President from the

members of the Cabinet. Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio."

Section 2, Article VIII of the Constitution presently in force, as amended in 1984, states in part:

"The Batasang Pambansa which shall be composed of not more than 200 Members unless otherwise provided by law, shall include representatives elected from the different provinces, with their component cities, highly urbanized cities as may be declared by or pursuant to law, and districts in Metropolitan Manila, those elected or selected from the various sectors as may be provided by law, and those chosen by the President from Members of the Cabinet. Each district in Metropolitan Manila shall comprise, as far as practicable, contiguous, compact and adjacent territory. The elective representatives shall be apportioned by law among the provinces with their component cities, highly urbanized cities, and the districts of Metropolitan Manila in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio, but the provinces with their component cities and highly urbanized cities shall have at least one representative each. The provinces and cities shall have at least the same total number of representatives as under the 1935 Constitution."

Section 1 of the Ordinance appended to the Constitution reads in part:

"For purposes of the election of the Members of the regular Batasang Pambansa on the second Monday of May, 1984 and subsequent elections and until otherwise provided by law, the Members of the Batasang Pambansa, other than the sectoral representatives and those chosen by the President from the Cabinet, shall be apportioned to the different provinces with their component cities, highly urbanized cities and the representative districts of Metropolitan Manila as follows:

"National Capital Region: Manila, six (6); Quezon City, four (4); Caloocan, two (2); Pasay, one (1); Pasig and Marikina, two (2); Las Piñas and Parañaque, one (1); Makati, one (1); Malabon, Navotas and Valenzuela, two (2); San Juan and Mandaluyong, one (1); Taguig, Pateros and Muntinlupa, one (1)."

First of all, in not one of these provisions is there any mention of the Metropolitan Manila Commission.

Secondly, the provisions relied upon by the Supreme Court simply drew up a scheme for representation in the Batasang Pambansa. They had nothing to do with the form of local government in Metropolitan Manila. They referred to the national government. They did not deal with local governments.

In explaining Section 2, Article VIII of the Constitution presently in force, as amended in 1981, Minister Jose Roño, the sponsor of the amendment, remarked:

"Mr. Roño: Mr. Speaker, to my mind and I hope the Gentleman from Region V will correct me if I am wrong, *there is a difference between decentralization*

that the Gentleman speaks of and a constituency for purpose of representation. I do not know even the relation between the two.

“Mr. Tatad: If the distinguished Minister does not know the relationship between the two, it is rather too late for me to supply the distinction:

“Article XI of the Constitution says, and I quote:

‘Section 7. The territorial and political subdivisions of the Philippines are the provinces, cities, municipalities, and barrios.’

“It is very clear from this provision that the region is not yet a political subdivision, Mr. Speaker. If this observation is correct, will the Constitution be amended to include regions among political subdivisions?

“Mr. Roño: Here again, Mr. Speaker, I am almost sure that the Gentleman from Region V will not understand me, and I think I will even be beyond help by the Gentleman from Catanduanes.

“We are speaking here of an area as a constituency. There are two different things to my understanding of what political law is when you speak of political subdivision as defined in Section I of Article XI; you speak of municipal corporations, you do not speak of constituencies. When you speak of districts in the old Constitution, you are not speaking of political subdivisions, you are speaking of constituencies, and when you speak of region in this Constitution, you are not speaking of political subdivisions. And, therefore, this constitutional provision has no relevance to the proposed amendments.”⁵ (Italics Supplied)

Thirdly, the provisions cited by the decision of the Supreme Court simply recognized Metropolitan Manila as a territory to be represented in the Batasang Pambansa. From this, it does not follow that the local government created over such territory known as the Metropolitan Manila Commission is valid. Territory is an element of a municipal corporation which is separate and distinct from its legal creation. Mcquillin aptly put it:

“It thus appears that the elements of the municipal corporation are:

“1. A legal creation or incorporation, duly authorized by the sovereign power, evidenced by the charter containing the corporate powers;

“2. A corporate name by which the artificial personality or legal entity is known and in which all corporate acts are done;

“3. Inhabitants constituting the population who are invested with the political and corporate powers, which are executed through duly constituted officers and agents;

"4. A place or territory within which the local civil government and corporate functions are exercised."⁶

Fourthly, the recognition of Metropolitan Manila as a territory for representation does not make the creation of the Metropolitan Manila Commission valid. Metropolitan Manila can exist as a territory for representation in the Batasang Pambansa without having to create the Metropolitan Manila Commission to govern it. If this line of reasoning were to be followed to its logical conclusion, the rest of the regions represented in the Batasang Pambansa should be governed by a similar commission. The fact is that they are not governed by a similar commission.

Lastly, the creation of the Metropolitan Manila Commission violates Section 10, Article II and Sections 1, 4 and 5 of Article XI of the Constitution presently in force. These provisions have not been repealed. Hence, the provisions cited by the Supreme Court cannot be deemed to have validated the creation of the Metropolitan Manila Commission. In construing a constitution, its provisions must be taken together.

The Supreme Court also cited Section 12 of the Election Code of 1978 and Section 3 of Presidential Decree No. 1396 as additional manifestations of acknowledgment of Metropolitan Manila. The author of the Election Code of 1978 and Presidential Decree No. 1396 is Mr. Ferdinand E. Marcos, who also issued Presidential Decree No. 824. How can the issuance of the Election Code of 1978 and Presidential Decree No. 1396 add an iota to the validity of Presidential Decree No. 824? As the situation stands, the author of a law whose validity is being questioned acknowledged to himself its validity.

Besides, the Election Code of 1978 and Presidential Decree No. 1396 stand merely on equal footing with Presidential Decree No. 824. The norm of the validity of a law is the Constitution and not another law. The Supreme Court itself held:

"The concept of the Constitution as the fundamental law setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our systems of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy."⁷

E. The Power of Control

Section 10(1), Article VII of the Constitution of 1935 provides:

"The President shall have control of all the executive departments, bureaus, or offices, *exercise general supervision over all local governments*, as may be provided by law, and take care that the laws be faithfully executed."

There is no similar provision in the Constitution presently in force expressly granting the President the power of supervision over local governments. Instead Section 18, Article VII of the Constitution presently in force states:

"All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not herein provided for or conferred upon

any official shall be deemed and are hereby vested in the President unless the Batasang Pambansa provides otherwise.”

By virtue of this provision, the power to exercise general supervision over all local governments has been vested in the President. While this provision that the President shall exercise this power unless the Batasang Pambansa provides otherwise, this does not mean that the Batasang Pambansa may confer upon the President the power of control instead of general supervision over local governments. Rather, it means that the President shall wield the power of general supervision over local governments unless the Batasang Pambansa decides to remove such power from him. The thrust of the Constitution presently in force is to enhance the autonomy of local governments. Section 10, Article II of the Constitution presently in force reads:

“The state shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities.”

To give the President control over local governments will clash with this provision. Section 13 of Presidential Decree No. 824 provides:

“The Commission, the General Manager and any official of the Commission shall be under the direct supervision and control of the President. Notwithstanding any provision in this Decree, the President shall have the power to revoke, amend or modify any ordinance, resolution or act of the Commission, the General Manager and the Commissioners.”

In a strained attempt to save this provision from unconstitutionality, the Supreme Court snatched the pen from Mr. Ferdinand E. Marcos and rewrote this provision in the following tenor:

“Accordingly, the presidential power of control over acts of the Metro Manila Commission is limited to those that may be considered national in character. There can be no valid objection to such exercise of authority . . . Where, however, the acts of the Metro Manila Commission may be considered as properly appertaining to local governments, the power of the President is confined to general supervision. As thus construed, Section 13 clearly appears to be free from any constitutional infirmity.”

While avoiding saying so, this pronouncement has in effect struck down the power of control of the President over the Metropolitan Manila Commission. As a local government unit, the Metropolitan Manila Commission cannot be vested with power to act on matters of national concern.⁸

Apart from Section 13 of Presidential Decree No. 824, another provision also vests the President with control over the Metropolitan Manila Commission. Section 3 of Presidential Decree No. 824 provides in part:

“The Commission shall be composed of a Chairman or Governor, a Vice-Chairman or Vice Governor and three Commissioners one for planning, another for

finance and a third one for operations *all of whom* shall be appointed by the President and *shall hold office at his pleasure.*"

By his power of terminating the services of the Governor, the Vice Governor and the Commissioners of the Metropolitan Manila Commission anytime it may suit his pleasure to do so, the President has been unconstitutionally vested with the power of control over them. He can compel them to submit to his dictation by brandishing over them his power to terminate their services at any time.⁹

F. Estoppel

Without elaborating, Mr. Justice Felix V. Makasiar opined that estoppel is another ground for dismissing the petitions in the cases of *Lopez vs. Commission on Elections*, G.R. No. 56022 and *Lopez, et al. vs. Metropolitan Manila Commission*, G.R. No. 56124.

The principle of estoppel does not apply to these cases for several reasons.

First, whether or not the creation of the Metropolitan Manila Commission violates certain constitutional provisions is a question of law. Estoppel does not apply to questions of law. On this precise point, the Supreme Court held:

"Again, the rule on estoppel applied to questions of *fact, not of law*, about the truth of which *the other party is ignorant.*"¹⁰

"The reason for this is that everyone is conclusively presumed to know the law."¹¹

Secondly, estoppel requires intention by one party to mislead and reliance by the other party upon the conduct of the party sought to be estopped. Thus, the Supreme Court explained the elements of estoppel as follows:

"Intention to mislead is an important element of estoppel, as null as the misled party's reliance upon the declaration, act or omission of the party sought to be estopped."¹²

The Commission on Elections and the Metropolitan Manila Commission were not misled by Messrs. Gemiliano C. Lopez, Jr. and Reynaldo B. Aralar into believing the creation of the Metropolitan Manila Commission is valid.

Thirdly, estoppel does not apply if the party invoking it suffered no prejudice.¹³ Neither the Commission on Elections nor the Metropolitan Manila Commission suffered any prejudice.

Fifthly, the lapse of time will not bar the filing of an action questioning the legality of the creation of a municipal corporation.¹⁴ Thus, the Court of Appeals of Kentucky ruled:

"A municipal government that never had any legal existence cannot be continued when its authority is questioned merely because the persons who raise the issue did not act as soon as they might have acted."¹⁵

In fact, when the Supreme Court declared the creation of municipal corporations by the President on the strength of Section 68 of the Revised Administrative Code, it pointed out:

"It is, however, a matter of common knowledge, subject to judicial cognizance, that *the President has, for many years issued executive orders creating municipal corporations* and that the same have been organized and in actual operations, thus indicating, without peradventure of doubt, that the expenditures incidental thereto, have been sanctioned, approved or passed in audit by the General Auditing Office and its officials."¹⁶

Thus, the lapse of many years did not prevent the Supreme Court from declaring the creation of municipalities by the President unconstitutional.

Lastly, where the whole people in a local government unit are affected, the question of the illegality of its creation cannot be barred by estoppel or laches. On this point, the Court of Appeals of Kentucky held:

"In the cases where the doctrine of estoppel was applied to deny the right to assail invalid legislation, only the complaining individuals were affected, but here the whole people of the city are concerned, and in a measure the public generally. Its officers have large powers and discretion in the administration of the public affairs that belong to the municipal government, and the people who are affected by their authority are immediately interested in the question of their power to act. It would be extending the doctrine of estoppel and laches far beyond reasonable or safe limits to apply it in cases like this."¹⁷

III. OTHER GROUNDS OF UNCONSTITUTIONALITY

Aside from the fact that the reasons given by the Supreme Court for upholding the validity of the creation of the Metropolitan Manila Commission stand on shaky grounds, the creation of the Metropolitan Manila Commission violates several provisions of the Constitution presently in force.

A. Loss of Autonomy

Section 10, Article II of the Constitution presently in force requires the state to guarantee and promote the autonomy of local government units. In explaining this provision, Mr. Justice Ruperto Martin wrote:

"To accomplish this there should be less interference in the management of their affairs from the national government. In matters of legislation they should be given greater freedom in the enactment of ordinances affecting purely local matters."

What Presidential Decree No. 824 has done is the exact opposite. It killed the autonomy of the cities and the municipalities in Greater Manila. The Metropolitan Manila Commission can amend or repeal all their ordinances, resolutions and acts. Section 4 of Presidential Decree No. 824 provides:

"The Commission shall have the following powers and functions"

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"(5) To review, amend, revise or repeal all ordinances, resolutions and acts of cities and municipalities within Metropolitan Manila."

Thus, even if such ordinances, resolutions and acts are legal and proper, the Metropolitan Manila Commission can nullify them and substitute its discretion for that of the cities and the municipalities in Greater Manila.

In addition, Section 9 of Presidential Decree No. 1274-A stripped the cities and the municipalities in Greater Manila of the power to impose taxes and other levies, the power to appropriate money, and the power to pass ordinances or resolutions with penal sanctions and transferred these powers to the Metropolitan Manila Commission. He who controls the purse strings of a city or municipality necessarily controls that city or municipality.

B. Limitation of Political Subdivisions

Section 1, Article XI of the Constitution presently in force declares:

“The territorial and political subdivisions of the Philippines are the provinces, cities, municipalities and barrios.”

This enumeration implies that no other political subdivision, such as the Metropolitan Manila Commission can be created. *Expressio unius est exclusio alterius.*¹⁹

In explaining this provision, the delegates to the Constitutional Convention who were members of the Committee on Local Government wrote:

“By being excluded from the enumeration, sub-provinces and municipal districts are eliminated as local units.”²⁰

By the same token, the Metropolitan Manila Commission cannot be established as a local government unit.

In fact, the Committee on Local Governments of the Constitutional Convention recommended the adoption of the following provision as Section 1(b) of Article XI:

“Metropolitan, regional and other forms of local governments may be created by law when social and economic conditions require, subject to approval by majority vote in a plebiscite in the units affected.”²¹

However, this recommendation was rejected by the Constitutional Convention. This implies that the delegates to the Constitutional Convention did not want to authorize the creation of a local government unit like the Metropolitan Manila Commission.

C. Coordination of Local Government Units.

Section 4(2), Article XI of the Constitution presently in force reads:

“Local government units may group themselves, or consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them.”

In explaining this provision, the Committee on Local Governments of the Constitutional Convention pointed out:

"First, it authorizes local governments having common interests and problems to 'group themselves', which, in a loose sense suggests a confederation *without any diminution of local powers*, in order to establish an association of local authorities to undertake, perhaps, joint projects in certain administrative areas."²² (*Italics Supplied*)

Commenting on the same provision, Rev. Joaquin G. Bernas, S.J., observes:

"It is important to note that the authority to decide whether to enter into group efforts with other local government units is given to the units themselves. This is another guarantee of local autonomy and it is submitted that the grouping cannot be compelled from above. Moreover, the consolidation contemplated is merely in 'their efforts, services and resources', and not in their corporate personality. The resultant consolidation, therefore, would not be a new corporate body."²³

Thus, the creation of the Metropolitan Manila Commission is unconstitutional. It diminished and abolished numerous powers of the cities and the municipalities in Greater Manila. Their grouping was imposed from above. The consolidation resulted in the creation of a new corporate body.

D. Loss of the Power to Tax

Section 5, Article XI of the Constitution presently in force states:

"Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law."

This provision grants to local government units the power to levy taxes. All that the law can do is impose limitations on the power of taxation of local government units. It cannot abolish such power. In defining the legal meaning of the word "restrict", the Supreme Court of Mississippi said:

"To 'restrict' is to restrain within bounds; to limit; to confine, and *does not mean to destroy or prohibit*."²⁴

Section 9 of Presidential Decree No. 824, as amended by Presidential Decree No. 1274-A, stripped the cities and the municipalities in Greater Manila of the power to impose taxes. On this score, Presidential Decree No. 824, as amended by Presidential Decree No. 1274-A, is unconstitutional.

CONCLUSION

Viewed from any angle, the creation of the Metropolitan Manila Commission is unconstitutional. If great cases, like bad cases, make bad law, martial law cases make worse law.

FOOTNOTES

¹Paredes v. Executive Secretary, 128 SCRA 6, 13.

²Yu Chuck vs. Kong Li Po, 46 Phil. 608, 615.

³Tolentino vs. Commission on Elections, 41 SCRA 702, 729.

⁴People vs. Cayat, 68 Phil. 12, 18; In re Subido, 35 SCRA 1, 6; Peralta vs. Commission on Elections, 82 SCRA 30, 54; Dumlao vs. Commission on Elections, 76 O.G. 6907, 6919.

⁵Record of the Batasan, January 28, 1981, pp. 145-146.

⁶McQuillin, The Law of Municipal Corporation, 2nd ed., Vol. 1, p. 431.

⁷Mutuc vs. Commission on Elections, 36 SCRA 228, 234.

⁸People v. Vera, 65 Phil. 56, 124.

⁹Pelaez vs. Auditor General, 122 Phil. 969, 981.

¹⁰Tañada vs. Cuenco, 103 Phil. 1051, 1093.

¹¹U.S. vs. De la Torre, 42 Phil. 62, 65; Eugenio vs. Perdito, 94 Phil. 41, 44.

¹²Philippine National Bank vs. Court of Appeals, 77 O.G. 1620, 1638-1639.

¹³Kalalo vs. Luz, 34 SCRA 337, 347; Rodriguez vs. Reyes, 37 SCRA 195, 205.

¹⁴State ex rel. Lands vs. Town of Boyton Beach, 177 So 327, 330; City of Coral Gables vs. State ex rel. Watson, 38 So 2d 48, 50.

¹⁵Hurley vs. Motz, 152 SW 248, 250.

¹⁶Pelaez vs. Auditor General, 122 Phil. 969, 983.

¹⁷Hurley vs. Motz, 152 SW 248, 250.

¹⁸Martin, The New Constitution of the Philippines, p. 50.

¹⁹Lerum vs. Cruz, 87 Phil. 652, 657.

²⁰Montejo, The New Constitution, p. 173.

²¹Report of the Committee on Local Governments, p. 106.

²²Ibid, p. 145.

²³Bernas, Philippine Constitutional Law, 1984 ed., pp. 671-672.

²⁴Words and Phrases, Vol. 25, p. 483.