

Kanai v. Ngaraard State Gov't, 1 ROP Intrm. 278 (Tr. Div. 1985)

GIBSON KANAI, ELBUHEL SADANG, MAKARIO RDECHOR, DAVID ORAK, and OPDULIA MALSOL, on behalf of themselves and all other petitioners in their capacities as taxpayers, voters, and citizens of Ngaraard State, Palau, Plaintiffs,

v.

NGARAARD STATE GOVERNMENT, JOHN O. NGIRAKED, in his capacity as Ngaraard State Election Commissioner, NGARAARD STATE OLBETIBEL, as lawmaking branch of Ngaraard State Government, and individual members thereof in their capacities as lawmakers, Defendants.

CIVIL ACTION NO. 187-85

Supreme Court, Trial Division
Republic of Palau

Order

Decided: December 13, 1985

BEFORE: MAMORU NAKAMURA, Chief Justice.

This matter came on for hearing on the Plaintiffs' motion for temporary restraining order and preliminary injunction on November 22, 1985, at 3:00 o'clock in the afternoon. Mr. Kaleb Udui, Esq., appeared on behalf of the Plaintiffs and Mr. John O. Ngiraked, appeared on behalf of the Defendants.

The Plaintiffs urged the Court to restrain and enjoin the Defendants from proceeding with the general election for members of the Ngaraard State Olbetibel then scheduled for **1279** November 30, 1985, until and unless the proposed amendments to the Ngaraard State Constitution are appended to the ballot to be voted by the Ngaraard voters at the same time. The Defendants argued that they needed more time to conduct and carry out a political education on the proposed constitutional amendments before a general referendum on the amendments should be placed before the voters.

The Plaintiff's petition proposing constitutional amendments to Ngaraard State Constitution were signed by 278 voters of Ngaraard State and the petition was submitted to the Secretary of the State of Ngaraard State Government on September 10, 1985. The election for members of Ngaraard State Olbetibel was set to be held on November 30, 1985, pursuant to Ngaraard State Public Law No. 002-86.

Section 1 of Article XII of the Ngaraard State Constitution provides for two ways by which the Constitution may be amended. Such amendments may be proposed by (1) a petition signed by not less than twenty-five percent of the registered voters, or (2) by resolution adopted

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by not less than three-fourths of the members of each house of the Olbetibel.

Section 2 of Article XII of Ngaraard State Constitution provides that “any proposed amendment to this Constitution shall become effective if approved in a state-wide referendum by a majority of the votes cast on that amendment.”

It is clear to the Court that the Constitution provided a mechanism for direct participation by the people in amending their Constitution. This right given to the people is sacred, and must of necessity be given due recognition.

In Section 5(c) of RPPL No. 1-22, the Court is given authority to suspend any election in certain circumstances to safeguard and preserve the right to vote for all citizens of the Republic of Palau. Admittedly, such is an extraordinary authority, and the Court in exercising this authority must weigh and consider all factors, all facts and the circumstances of each case before exercising such authority.

It is obvious from the facts and circumstances of this case that the Ngaraard State Olbetibel did not take the initiative to propose amendments to the Ngaraard State Constitution. The Plaintiffs in this case by more than 25% of the voters had filed a petition proposing amendments to the Ngaraard State Constitution pursuant to subparagraph A of Section 1 of Article XII of the same constitution. What is **1280** left, therefore, is a mere ministerial duty on the part of the Ngaraard State Government to take such action and to enact such legislation as shall be deemed necessary to cause the proposed constitutional amendments presented by the Plaintiffs on the ballot and allow the voters of Ngaraard State to vote on them in a state-wide referendum. To save the cost to the Ngaraard State Government and to ensure the people of Ngaraard State were to be given an opportunity to exercise their rights to vote, the Ngaraard State Government should have scheduled the referendum on the proposed amendments and the election of members of the Ngaraard State Olbetibel to take place at the same time on November 30, 1985. Since this was not done, the Court based on RPPL No. 1-22, should allow and give an opportunity to Ngaraard State Government to enact such legislative measures that will provide for the election of members of the Ngaraard State Olbetibel and at the same time set up the system and mechanism to protect the rights of the people.

Based on the foregoing and good cause appearing, IT IS ORDERED, DECREED, AND ADJUDGED:

1. That Ngaraard State Government is hereby given an opportunity within thirty calendar days from November 22, 1985, to enact such legislative measures as shall be necessary to cause the election of members of Ngaraard State Olbetibel to take place on January 18, 1986.

2. That on the same ballot containing names of candidates for election to membership in the Ngaraard State Olbetibel a proposition to approve or not to approve the proposed constitutional amendments to Ngaraard State Constitution be presented. A simple “yes” or “no” slots next to the proposition for the voters to

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mark their preference with regard to all of the proposed constitutional
amendments will be sufficient.

3. If the proposed amendments to Ngaraard State Constitution shall be approved by the Ngaraard State electors and if the majority of all the votes cast for and against the proposed amendments to Ngaraard State Constitution favor their adoption, then the election of the Governor for Ngaraard State shall take place no later than thirty days from January 18, 1986. Members-elect to Ngaraard State Olbetibel and Governor-elect shall be installed into office on February 28, 1986.

4. The term of office for the incumbent members of Ngaraard State Olbetibel shall run until 12:00 o'clock noon on February 28, 1986.

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5. The Court shall retain jurisdiction of this case until further notice.