

EN BANC

[G.R. No. 159139, June 06, 2017]

INFORMATION TECHNOLOGY FOUNDATION OF THE PHILIPPINES, MA. CORAZON M. AKOL, MIGUEL UY, EDUARDO H. LOPEZ, AUGUSTO C. LAGMAN, REX C. DRILON, MIGUEL HILADO, LEY SALCEDO, AND MANUEL ALCUAZ, JR., PETITIONERS, VS. COMMISSION ON ELECTIONS, COMELEC CHAIRMAN BENJAMIN ABALOS, SR., COMELEC BIDDING AND AWARDS COMMITTEE CHAIRMAN EDUARDO D. MEJOS AND MEMBERS GIDEON DE GUZMAN, JOSE F. BALBUENA, LAMBERTO P. LLAMAS, AND BARTOLOME SINOCRUZ, JR., RESPONDENTS.

[G.R. NO. 174777]

AQUILINO Q. PIMENTEL, JR., SERGIO R. OSMEÑA III, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, RODOLFO G. BIAZON, AND RICHARD J. GORDON, PETITIONERS, VS. MA. MERCEDITAS NAVARRO-GUTIERREZ, IN HER CAPACITY AS OMBUDSMAN, RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

In *Information Technology Foundation of the Philippines (Infotech) v. Commission on Elections (COMELEC)*,^[1] we nullified the COMELEC's award to Mega Pacific Consortium of the procurement contract involving the automated counting machines (ACMs) for the 2004 national elections. We found that the COMELEC gravely abused its discretion when it awarded the contract to an entity which failed to establish itself as a proper consortium, and despite the ACMs' failure to meet certain technical requirements. This case presents the question of whether our conclusion in *Infotech* that the COMELEC committed grave abuse of discretion is tantamount to a finding of probable cause that the COMELEC officials violated penal laws, thereby making it the ministerial duty of the respondent Ombudsman to file the appropriate criminal complaints.

I

On January 13, 2004, we promulgated the Decision in *Infotech* declaring as null and void: (a) COMELEC Resolution No. 6074 which awarded the contract for Phase II of the Comprehensive Automated Electoral System to Mega Pacific Consortium (MPC); and (b) the procurement contract for ACMs executed between the COMELEC and Mega Pacific eSolutions, Inc. (MPEI).^[2] We found that the COMELEC's failure to follow its own rules, policies, and guidelines in respect of the bidding process, and to

adequately check and observe financial, technical and legal requirements constituted grave abuse of discretion. In particular, we found that the winning bidder, MPC, failed to include in its bid documents any joint venture or consortium agreement between MPEI, Election.com, Ltd., WeSolv Open Computing, Inc., SK C&C, ePLDT and Oracle System (Philippines), Inc. that would prove that MPC is a proper consortium. Thus, we concluded that there was no documentary basis for the COMELEC to determine that the alleged consotium really existed and was eligible and qualified to bid.^[3] Furthermore, we found that the ACMs from MPC failed to meet the 99.9995% accuracy rating required in the COMELEC's own Request for Proposal (RFP). Based on a 27-point test conducted by the Department of Science and Technology (DOST), MPC failed in eight mostly software-related items—which result should have warranted the rejection of MPC's bid.^[4] Finally, we also found that it was grave abuse for the COMELEC to evaluate the demo version of the software instead of the final version which would be run during the national elections. And because the final version was still to be developed when the ACM contract was awarded, the COMELEC practically permitted the winning bidder to change and alter the subject of the contract, particularly the software, thus effectively allowing a substantive amendment without public bidding.^[5] As a result of the foregoing lapses of the COMELEC, we also directed the Ombudsman to determine the criminal liability, if any, of the public officials and private individuals involved in the nullified resolution and contract.^[6]

As mandated by the *Infotech* Decision, the Ombudsman initiated a fact-finding investigation docketed as CPL-C-04-0060. On January 21, 2004, Senator Aquilino Pimentel, Jr. also filed criminal and administrative complaints against COMELEC Chairman Benjamin S. Abalos, Sr. and other COMELEC officials with the Ombudsman, docketed as OMB-C-C-04-0011-A and OMB-C-A-04-0015-A.^[7] Kilosbayan Foundation and Bantay Katarungan Foundation later filed a related complaint with the Ombudsman against COMELEC officials and stockholders of MPEI on September 19, 2004, docketed as OMB-L-C-02-0922-J.^[8] The Field Investigation Office (FIO) of the Ombudsman filed a supplemental complaint on October 6, 2004. These cases were later on consolidated by the Ombudsman.^[9]

In the meantime, the petitioners in the *Infotech* case (docketed as G.R. No. 159139) filed a Manifestation and Motion^[10] dated December 22, 2005, as well as a Supplemental Motion^[11] dated January 20, 2006, alleging that the Ombudsman has yet to comply with our directive in the *Infotech* Decision. Thus, on February 14, 2006, we issued a Resolution^[12] directing the Ombudsman to show cause why it should not be held in contempt for its failure to comply with the Court's directive. In compliance with the foregoing Resolution, the Ombudsman filed its Comment^[13] contending that it should not be held in contempt of court because it has "long acted on the referral, or complied with this x x x Court's *directive*' in this case, to its full extent."^[14] In a Resolution^[15] dated March 28, 2006, we directed the Ombudsman, under pain of contempt, to submit quarterly reports to the Court starting June 30, 2006.^[16]

Consequently, the Ombudsman issued a Resolution^[17] dated June 28, 2006 recommending: (a) the filing of an information with the Sandiganbayan against Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas,

Bartolome J. Sinocruz, Jr., Willy U. Yu, Bonnie Yu, Enrique Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernardo L. Fong, and Lauriano Barrios; (b) the dismissal of the complaint against Jose Tolentino, Jaime Paz, Zita Buena-Castillon, and Rolando Vilorio; (c) the referral of the findings against COMELEC Commissioner Resurreccion Z. Borra to the House of Representatives; (d) the dismissal of Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas, and Batiolome J. Sinocruz, Jr. from service; and (e) the conduct of further fact-finding investigation by the Ombudsman.^[18] The respondents in the Ombudsman cases filed a Motion for Reconsideration of the aforementioned Resolution on July 10, 2006.^[19]

On July 13, 2006, the investigating panel of the Office of the Ombudsman reconvened to carry out further investigation and clarificatory hearings. They invited resource persons and witnesses to testify and present relevant documents and papers in order to determine criminal liability of the public and private respondents in the Ombudsman cases. In all, the investigating panel conducted a total of 12 public hearings between July 13, 2006 and August 23, 2006, interviewed 10 witnesses, and received no less than 198 documents.^[20]

Following these public hearings, the Ombudsman issued a Supplemental Resolution^[21] dated September 27, 2006 which reversed and set aside the June 28, 2006 Resolution, and dismissed the administrative and criminal complaints against both public and private respondents for lack of probable cause. The Supplemental Resolution stated that the Investigating Panel "cannot find an iota of evidence to show that the acts of [the Bids and Awards Committee (BAC)] in allowing MPC to bid and its subsequent recommendation to award [the] Phase II Contract to MPC constitute manifest [] partiality, evident bad faith or gross inexcusable negligence" and that it cannot establish that any "unwarranted benefit, advantage or preference was extended to MPC or MP[E]I by [the] BAC in the exercise of its administrative function in the determination [of] MPC's eligibility and subsequent recommendation made to [the] COMELEC."^[22] In sum, the Ombudsman opined that a finding of grave abuse of discretion in the *Infotech* case cannot be considered criminal in nature in the absence of evidence showing bad faith, malice or bribery in the bidding process.^[23]

Aggrieved by the Ombudsman's reversal, the petitioners filed the present special civil action for *certiorari* docketed as G.R. No. 174777 seeking to nullify the Ombudsman's Supplemental Resolution and to cite the Ombudsman in contempt. On the other hand, petitioners in G.R. No. 159139 filed a Motion^[24] dated October 17, 2006 praying for the Court to: (1) reject the Ombudsman's Supplemental Resolution as compliance with the Court's directive in the *Infotech* decision; and (2) order the Ombudsman to file an information with the Sandiganbayan against the COMELEC officials and other private individuals. On the same date, we resolved to consolidate the two cases.^[25]

II

As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative

and criminal complaints, it is clear from the allegations therein that what petitioners are questioning is the criminal aspect of the assailed resolution, *i.e.*, the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases.^[26] Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.^[27]

In *Kuizon v. Desierto*^[28] and *Mendoza-Arce v. Office of the Ombudsman*,^[29] we held that this Court has jurisdiction over petitions for *certiorari* questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman (Visayas)*^[30] that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The *Dagan* ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman—first enunciated in *Fabian v. Desierto*^[31]—*that is*, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for *certiorari* under Rule 65, must be filed with the Court of Appeals.

Accordingly, we shall limit our resolution to the criminal aspect of the Ombudsman's Supplemental Resolution dated September 27, 2006.

III

The dispositive portion of the *Infotech* decision reads:

WHEREFORE, the Petition is *GRANTED*. The Court hereby declares *NULL* and *VOID* Comelec Resolution No. 6074 awarding the contract for Phase II of the AES to Mega Pacific Consortium (MPC). Also declared null and void is the subject Contract executed between Comelec and Mega Pacific eSolutions (MPEI). Comelec is further *ORDERED* to refrain from implementing any other contract or agreement entered into with regard to this project.

Let a copy of this Decision be furnished the Office of the Ombudsman which shall determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract. Let the Office of the Solicitor General also take measures to protect the government and vindicate public interest from the ill effects of the illegal disbursements of public funds made by reason of the void Resolution and Contract.^[32] (Citation omitted, emphasis supplied.)

The Ombudsman maintains that it has the discretion to determine whether a criminal case, given the facts of the case and the applicable laws and jurisprudence, should be filed.^[33] The respondents in G.R. No. 159139, the COMELEC and MPEI,

support the Ombudsman's position. They point to the plain text of the dispositive portion, *i.e.*, the use of the phrase "if any," which clearly demonstrates the Court's intent for the Ombudsman to conduct its own investigation and render an independent assessment based on whatever evidence the Ombudsman gathers.^[34]

Against this straightforward interpretation, the petitioners in G.R. No. 174777 and movants in G.R. No. 159139 insist that "[t]he Supreme Court in the *Infotech* case has already established that a crime has been committed and endorsed the case to the Ombudsman to determine the specific personalities who are 'probably guilty' thereof."^[35] They allege that, by issuing the Supplemental Resolution, the Ombudsman reversed the findings of the Supreme Court.^[36] Consequently, they argue that the Ombudsman should also be held in indirect contempt because she failed to comply with our directive in *Infotech*. We take their arguments in turn.

A

The Court is mindful that the directive in the *Infotech* Decision may have been susceptible to misinterpretation, particularly when taken in conjunction with the oftentimes strong language used in the body of the *ponencia*. However, such statements were made only to emphasize the critical role of the COMELEC in the electoral process and to sternly remind the COMELEC that it cannot afford to be lackadaisical in the implementation of the bidding laws and rules, particularly when what is involved is no less than the national elections. Thus, to allay any fear that we are arrogating unto ourselves the powers of the Ombudsman, we deemed it proper to clarify the nature of our directive in a Resolution^[37] dated June 13, 2006, the relevant portion of which provides:

The Court emphatically stresses that its directive to the OMB to render a report on a regular basis, pursuant to this Court's Decision promulgated on January 13, 2004, does **not in any way** impinge upon, much less rob it of its independence as provided under the Constitution. Nowhere in the questioned Resolutions did the Court demand the OMB to decide or make a specific determination—one way or the other—of the culpability of any of the parties. Our directive was for the OMB to report on its "final determination of *whether* a probable cause exists against *any* of the public officials (and conspiring private individuals, *if any*) x x x." Surely, these emphasized words indicate that the Court in no way intends to intrude upon the discretionary powers of the OMB. x x x^[38] (Emphasis in the original.)

Our pronouncements in the June 13, 2006 Resolution are consistent with the Court's policy of non-interference with the Ombudsman's conduct of preliminary investigations, and to leave the Ombudsman sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause.^[39] As a general rule, the Court does not intervene with the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public