

EN BANC

[G.R. No. 222702, April 05, 2016]

**RAPPLER, INC., PETITIONER, VS. ANDRES D. BAUTISTA,
RESPONDENT.**

R E S O L U T I O N

CARPIO, J.:

Petitioner Rappler, Inc. (petitioner) filed a petition for *certiorari* and prohibition against Andres D. Bautista (respondent), in his capacity as Chairman of the Commission on Elections (COMELEC). The petition seeks to nullify Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the Memorandum of Agreement (MOA) on the 2016 presidential and vice-presidential debates, for being executed without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and for violating the fundamental rights of petitioner protected under the Constitution. The MOA, signed on 13 January 2016, was executed by the COMELEC through its Chairman, respondent Bautista, and the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP), and the various media networks, namely: ABS-CBN Corporation, GMA Network, Inc., Nine Media Corporation, TV5 Network, Inc., Philstar Daily, Inc., Philippine Daily Inquirer, Inc., Manila Bulletin Publishing Corporation, Philippine Business Daily Mirror Publishing, Inc., and petitioner. Under the MOA, the KBP was designated as Debate Coordinator while ABS-CBN, GMA, Nine Media, and TV5, together with their respective print media partners were designated as Lead Networks.

Petitioner alleged that on 21 September 2015, respondent called for a meeting with various media outlets to discuss the "PiliPinas 2016 Debates," for presidential and vice-presidential candidates, which the COMELEC was organizing.^[1] Respondent showed a presentation explaining the framework of the debates, in which there will be three presidential debates and one vice presidential debate. Respondent proposed that petitioner and Google, Inc. be in charge of online and social media engagement. Respondent announced during the meeting that KBP will coordinate with all media entities regarding the organization and conduct of the debates.

On 22 September 2015, petitioner sent a proposed draft for broadcast pool guidelines to COMELEC and the KBP. A broadcast pool has a common audio and video feed of the debates, and the cost will be apportioned among those needing access to the same. KBP informed petitioner that the proposal will be discussed in the next meeting.

On 19 October 2015, another meeting was held at the COMELEC office to discuss a draft MOA on the debates. In the draft, petitioner and Google's participation were dropped in favor of the online outlets owned by the Lead Networks. After the meeting, the representatives of the Lead Networks drew lots to determine who will

host each leg of the debates. GMA and its partner Philippine Daily Inquirer sponsored the first presidential debate in Mindanao on 21 February 2016; TV5, Philippine Star, and Businessworld sponsored the second phase of presidential debate in the Visayas on 20 March 2016; ABS-CBN and Manila Bulletin will sponsor the presidential debate to be held in Luzon on 24 April 2016; and the lone vice-presidential debate will be sponsored by CNN, Business Mirror, and petitioner on 10 April 2016. Petitioner alleged that the draft MOA permitted online streaming, provided proper attribution is given the Lead Network.

On 12 January 2016, petitioner was informed that the MOA signing was scheduled the following day. Upon petitioner's request, the draft MOA was emailed to petitioner on the evening of 12 January 2016. Petitioner communicated with respondent its concerns regarding certain provisions of the MOA particularly regarding online streaming and the imposition of a maximum limit of two minutes of debate excerpts for news reporting. Respondent assured petitioner that its concerns will be addressed afterwards, but it has to sign the MOA because time was of the essence. On 13 January 2016, petitioner, along with other media networks and entities, executed the MOA with the KBP and the COMELEC for the conduct of the three presidential debates and one vice-presidential debate. Petitioner alleged that it made several communications with respondent and the COMELEC Commissioners regarding its concerns on some of the MOA provisions, but petitioner received no response. Hence, this petition.

In this petition for *certiorari* and prohibition, petitioner prays for the Court to render judgment:

- a. Declaring null and void, for being unconstitutional, pertinent parts of the Memorandum of Agreement that violate the rights of the Petitioner, specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 [of the MOA];
- b. Prohibiting the Respondent from implementing specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA;
- c. Pending resolution of this case, issuing a Preliminary Injunction enjoining the Respondent from implementing Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA; and
- d. Pending resolution of this case, issuing a Preliminary Mandatory Injunction requiring the Respondent to ensure an unimpaired and equal access to all mass media, online or traditional, to all the Debates.^[2]

Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA read:

VI
ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x

C. ONLINE STREAMING

x x x x

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;

D. NEWS REPORTING AND FAIR USE

20. Allow a maximum of two minutes of excerpt from the debates they have produced to be used for news reporting or fair use by other media or entities as allowed by the copyright law: Provided, that the use of excerpts longer than two minutes shall be subject to the consent of the Lead Network concerned;^[3]

Respondent argues that the petition should be dismissed for its procedural defects. In several cases, this Court has acted liberally and set aside procedural lapses in cases involving transcendental issues of public interest,^[4] especially when time constraint is a factor to be considered, as in this case. As held in *GMA Network, Inc. v. Commission on Elections*:^[5]

Respondent claims that *certiorari* and prohibition are not the proper remedies that petitioners have taken to question the assailed Resolution of the COMELEC. Technically, respondent may have a point. However, considering the very important and pivotal issues raised, and the limited time, such technicality should not deter the Court from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance. "[T]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein."^[6]

The urgency to resolve this case is apparent considering that the televised debates have already started and only two of the scheduled four national debates remain to be staged.^[7] And considering the importance of the debates in informing the electorate of the positions of the presidential and vice-presidential candidates on vital issues affecting the nation, this case falls under the exception laid down in *GMA Network, Inc. v. Commission on Elections*.

Petitioner is a signatory to the MOA. In fact, the sole vice-presidential debate, to be held in Manila on 10 April 2016, will be sponsored by CNN Philippines (owned and operated by Nine Media Corporation) and its partners Business Mirror and petitioner. Petitioner, however, is alleging that it is being discriminated particularly as regards the MOA provisions on live audio broadcast via online streaming. Petitioner argues that the MOA grants radio stations the right to simultaneously broadcast live the audio of the debates, even if the radio stations are not obliged to perform any obligation under the MOA. Yet, this right to broadcast by live streaming online the audio of the debates is denied petitioner and other online media entities, which also have the capacity to live stream the audio of the debates. Petitioner insists that it

signed the MOA believing in good faith the issues it has raised will be resolved by the COMELEC.

The provisions on Live Broadcast and Online Streaming under the MOA read:

VI
ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x

B1. LIVE BROADCAST

10. Broadcast the debates produced by the Lead Networks in their respective television stations and other news media platforms;

11. Provide a live feed of the debate to other radio stations, other than those of the Lead Network's, for simultaneous broadcast;

12. Provide a live feed of the debates produced by them to radio stations not belonging to any of the Lead Networks for simultaneous broadcast;

x x x x

C. ONLINE STREAMING

17. Live broadcast the debates produced by the Lead Networks on their respective web sites and social media sites for free viewing by the public;

18. Maintain a copy of the debate produced by the Lead Network on its on-line site(s) for free viewing by the public during the period of elections or longer;

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;^[8] (Boldfacing and underscoring supplied)

Petitioner's demand to exercise the right to live stream the debates is a contractual right of petitioner under the MOA. Under Part VI (C), paragraph 19 of the MOA, the Lead Networks are expressly mandated to "**allow the debates they have produced to be shown or streamed on other websites,**" but "**subject to copyright conditions or separate negotiations with the Lead Networks.**" The use of the word "or" means that compliance with the "copyright conditions" is sufficient for petitioner to exercise its right to live stream the debates in its website.

The "copyright conditions" refer to the limitations on copyright as provided under Section 184.1(c) of the Intellectual Property Code (IPC), thus:

SEC. 184. *Limitations on Copyright.* - 184.1 Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

x x x x

(c) **The reproduction or communication to the public by mass media** of articles on current political, social, economic, scientific or religious topic, lectures, **addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved; *Provided, That the source is clearly indicated***; (Sec. 11, P.D. No. 49) (Boldfacing and underscoring supplied)

Under this provision, the debates fall under "**addresses and other works of the same nature.**" Thus, the copyright conditions for the debates are: (1) **the reproduction or communication to the public by mass media of the debates is for information purposes**; (2) **the debates have not been expressly reserved by the Lead Networks** (copyright holders); and (3) **the source is clearly indicated.**

Condition 1 is complied because the live streaming by petitioner is obviously for information purposes. Condition 2 is also complied because Part VI (C), paragraph 19 of the MOA expressly "**allow[s] the debates x x x to be shown or streamed on other websites,**" including petitioner's website. This means that the "reproduction or communication (of the debates) to the public by mass media x x x has not been expressly reserved" or withheld. Condition 3 is complied by clearly indicating and acknowledging that the source of the debates is one or more of the Lead Networks.

Part VI (C), paragraph 19 of the MOA, which expressly allows the debates produced by the Lead Networks to be shown or streamed on other websites, **clearly means that the Lead Networks have not "expressly reserved" or withheld the use of the debate audio for online streaming.** In short, the MOA expressly allows the live streaming of the debates subject only to compliance with the "copyright conditions." Once petitioner complies with the copyright conditions, petitioner can exercise the right to live stream the audio of the debates as expressly allowed by the MOA.

Under the MOA, the Lead Networks are mandated to promote the debates for maximum audience.^[9] **The MOA recognizes the public function of the debates and the need for the widest possible dissemination of the debates. The MOA has not reserved or withheld the reproduction of the debates to the public but has in fact expressly allowed the reproduction of the debates "subject to copyright conditions."** Thus, petitioner may live stream the debate in its entirety by complying with the "copyright conditions," including the condition that "the source is clearly indicated" and that there will be no alteration, which means that the streaming will include the proprietary graphics used by the Lead Networks. If petitioner opts for a clean feed without the proprietary graphics used by the Lead Networks, in order for petitioner to layer its own proprietary graphics and text on the same, then petitioner will have to negotiate separately with the Lead Networks.