

EN BANC

[G.R. No. 199082, July 23, 2013]

JOSE MIGUEL T. ARROYO, PETITIONER, VS. DEPARTMENT OF JUSTICE; COMMISSION ON ELECTIONS; HON. LEILA DE LIMA, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE; HON. SIXTO BRILLANTES, JR., IN HIS CAPACITY AS CHAIRPERSON OF THE COMMISSION ON ELECTIONS; AND THE JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE AND FACT-FINDING TEAM, RESPONDENTS.

[G.R. NO. 199085]

BENJAMIN S. ABALOS, SR., PETITIONER, VS. HON. LEILA DE LIMA, IN HER CAPACITY AS SECRETARY OF JUSTICE; HON. SIXTO S. BRILLANTES, JR., IN HIS CAPACITY AS COMELEC CHAIRPERSON; RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO V. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM AND AUGUSTO C. LAGMAN, IN THEIR CAPACITY AS COMELEC COMMISSIONERS; CLARO A. ARELLANO, GEORGE C. DEE, JACINTO G. ANG, ROMEO B. FORTES AND MICHAEL D. VILLARET, IN THEIR CAPACITY AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE ON THE 2004 AND 2007 ELECTION FRAUD RESPONDENTS.

[G.R. NO. 199118]

GLORIA MACAPAGAL-ARROYO, PETITIONER, VS. COMMISSION ON ELECTIONS, REPRESENTED BY CHAIRPERSON SIXTO S. BRILLANTES, JR., DEPARTMENT OF JUSTICE, REPRESENTED BY SECRETARY LEILA M. DE LIMA, JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE, SENATOR AQUILINO M. PIMENTEL III, AND DOJ-COMELEC FACT-FINDING TEAM, RESPONDENTS.

R E S O L U T I O N

PERALTA, J.:

For resolution are the separate motions for reconsideration filed by movants Gloria Macapagal Arroyo (GMA)^[1] in G.R. No. 199118 and Jose Miguel T. Arroyo (Mike Arroyo)^[2] in G.R. No. 199082 praying that the Court take a second look at our September 18, 2012 Decision^[3] dismissing their petitions and supplemental petitions against respondents Commission on Elections (Comelec), the Department of Justice (DOJ), Senator Aquilino M. Pimentel III (Senator Pimentel), Joint DOJ-Comelec Preliminary Investigation Committee (Joint Committee) and DOJ-Comelec

Fact-Finding Team (Fact-Finding Team), *et al.*

For a better perspective, we briefly state the relevant factual and procedural antecedents as found by the Court in the assailed decision, to wit:

On August 15, 2011, the Comelec and the DOJ issued Joint Order No. 001-2011 creating and constituting a Joint Committee and Fact-Finding Team (referred to as Joint Panel) on the 2004 and 2007 National Elections electoral fraud and manipulation cases. The Joint Committee was mandated to conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team. The Fact-Finding Team, on the other hand, was created for the purpose of gathering real, documentary, and testimonial evidence which can be utilized in the preliminary investigation to be conducted by the Joint Committee. Pursuant to Section 7^[4] of the Joint Order, on August 23, 2011, the Joint Committee promulgated its Rules of Procedure.

In its Initial Report^[5] dated October 20, 2011, the Fact-Finding Team concluded that manipulation of the results in the May 14, 2007 senatorial elections in the provinces of North and South Cotabato, and Maguindanao was indeed perpetrated.^[6] The Fact-Finding Team recommended, among others, that petitioner Benjamin S. Abalos, Sr. (Abalos) be subjected to preliminary investigation for electoral sabotage for conspiring to manipulate the election results in North and South Cotabato; that GMA and Abalos be subjected to another preliminary investigation for manipulating the election results in Maguindanao;^[7] and, that Mike Arroyo be subjected to further investigation.^[8] The case was docketed as DOJ-Comelec Case No. 001-2011.

Meanwhile, on October 17, 2011, Senator Pimentel filed a Complaint-Affidavit^[9] for Electoral Sabotage against petitioners and twelve others, and several John Does and Jane Does. The case was docketed as DOJ-Comelec Case No. 002-2011.

On October 24, 2011, the Joint Committee issued two subpoenas against petitioners in DOJ-Comelec Case Nos. 001-2011 and 002-2011.^[10] On November 3, 2011, petitioners, through counsel, appeared before the Joint Committee^[11] and respondents therein were ordered to submit their Counter-Affidavits by November 14, 2011.^[12]

Thereafter, petitioners filed before the Court separate Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the creation of the Joint Panel.^[13] The petitions were eventually consolidated.

On November 14, 2011, Mike Arroyo filed a Motion to Defer Proceedings^[14] before the Joint Committee, in view of the pendency of his petition before the Court. On the same day, GMA filed before the Joint Committee an Omnibus Motion *Ad Cautelam*^[15] to require Senator Pimentel to furnish her with documents referred to in his complaint-affidavit and for the production of election documents as basis for the charge of electoral sabotage. GMA prayed that she be allowed to file her counter-affidavit within ten (10) days from receipt of the requested documents.^[16] Petitioner Abalos, for his part, filed a Motion to Suspend Proceedings (*Ex Abundante*

Ad Cautelam),^[17] in view of the pendency of his petition brought before the Court.

In an Order^[18] dated November 15, 2011, the Joint Committee denied the aforesaid motions of petitioners. GMA, subsequently, filed a motion for reconsideration.^[19]

On November 16, 2011, the Joint Committee promulgated a Joint Resolution which was later indorsed to the Comelec.^[20] On November 18, 2011, the Comelec *en banc* issued a Resolution^[21] approving and adopting the Joint Resolution subject to modifications. The Comelec resolved, among others, that an information for electoral sabotage be filed against GMA and Abalos, while the charges against Mike Arroyo be dismissed for insufficiency of evidence.

On even date, pursuant to the above Resolution, the Comelec's Law Department filed with the Regional Trial Court (RTC), Pasay City, an Information against petitioner GMA, Governor Andal Ampatuan, Sr., and Atty. Lintang H. Bedol, for violation of Section 42(b)(3) of Republic Act (RA) No. 9369, amending Section 27 (b) of RA 6646, docketed as Criminal Case No. RPSY-11-04432-CR.^[22] The case was raffled to Branch 112 and the corresponding Warrant of Arrest was issued which was served on GMA on the same day.^[23]

On November 18, 2011, GMA filed with the RTC an Urgent Omnibus Motion *Ad Cautelam*^[24] with leave to allow the Joint Committee to resolve the motion for reconsideration filed by GMA, to defer issuance of a warrant of arrest and a hold departure order, and to proceed to judicial determination of probable cause. She, likewise, filed with the Comelec a Motion to Vacate *Ad Cautelam*^[25] praying that its Resolution be vacated for being null and void. The RTC, nonetheless, issued a Warrant for her arrest which was duly served. GMA was later arraigned and she entered a plea of "not guilty." She was, for some time, on hospital arrest but was able to obtain temporary liberty when her motion for bail was granted. At present, she is again on hospital arrest by virtue of a warrant issued in another criminal case.

On September 18, 2012, the Court rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the petitions and supplemental petitions are **DISMISSED**. Comelec Resolution No. 9266 dated August 2, 2011, Joint Order No. 001-2011 dated August 15, 2011, and the Fact-Finding Team's Initial Report dated October 20, 2011, are declared **VALID**. However, the Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections is declared **INEFFECTIVE** for lack of publication.

In view of the constitutionality of the Joint Panel and the proceedings having been conducted in accordance with Rule 112 of the Rules on Criminal Procedure and Rule 34 of the Comelec Rules of Procedure, the conduct of the preliminary investigation is hereby declared **VALID**.

Let the proceedings in the Regional Trial Court of Pasay City, Branch 112, where the criminal cases for electoral sabotage against petitioners GMA

and Abalos are pending, proceed with dispatch.

SO ORDERED.^[26]

Hence, these motions for reconsideration.

Issues

Mike Arroyo reiterates his arguments on the independence of the Comelec as basis in nullifying the subject joint DOJ-Comelec resolutions. Echoing Justice Arturo Brion in his Dissenting and Concurring Opinion,^[27] Mike Arroyo insists that the creation of the Joint Panel undermines the decisional independence of the Comelec.^[28]

Mike Arroyo also maintains that the DOJ should conduct preliminary investigation only when deputized by the Comelec but not exercise concurrent jurisdiction.^[29] Finally, as has been repeatedly pointed out in his earlier pleadings before the Court, Mike Arroyo claims that the proceedings involving the electoral sabotage case were rushed because of pressures from the executive branch of the government.^[30]

For her part, GMA claims that in availing of the procedural remedies available, she merely exercised her earnest efforts to defend herself and should not have been deemed by the Court as acts which purportedly tend to demonstrate that she either waived or forfeited her right to submit her counter-affidavit and countervailing evidence.^[31] Citing several cases decided by the Court, she likewise faults the Court in not upholding her right to ask for additional time within which to submit her counter-affidavit and countervailing evidence.^[32] GMA highlights that the subject Comelec Resolution creating the Joint Panel is different from the previous Comelec resolutions requesting the DOJ Secretary to assign prosecutors to assist the Comelec, as the latter emphasize the role of the DOJ as deputized agency in the conduct of preliminary investigation. She maintains that it is the Comelec and not the Joint Committee that has the primary, if not exclusive, authority to conduct preliminary investigation of election cases.^[33]

In their Consolidated Comment,^[34] respondents defend the creation of the Joint Committee and argue that it does not undermine the independence of the Comelec as a constitutional body because it is still the Comelec that ultimately determines probable cause.^[35] As to the conduct of the preliminary investigation, respondents maintain that no rights were violated as GMA was afforded the opportunity to defend herself, submit her counter-affidavit and other countervailing evidence.^[36] They, thus, consider GMA's claim of availing of the remedial measures as "delaying tactics" employed to thwart the investigation of charges against her by the Joint Committee.^[37]

The Court's Ruling

Clearly from the above discussion, movants raise issues that have been thoroughly explained by the Court in the assailed decision. The issues were all addressed and the explanation was exhaustive, thus, we find no reason to disturb the Court's conclusions.

At any rate, if only to address the motions of the movants herein and to put an end to the questions attached to the creation of the Joint Panel and, consequently, to the performance of their assigned tasks, we hereby reiterate our findings and conclusions made in the assailed decision.

This is not the first time that the Court is confronted with the issue of whether the Comelec has the exclusive power to investigate and prosecute cases of violations of election laws. In *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,^[38] the constitutionality of Section 43^[39] of RA 9369^[40] had already been raised by petitioners therein and addressed by the Court. While recognizing the Comelec's exclusive power to investigate and prosecute cases under *Batas Pambansa Bilang* 881 or the Omnibus Election Code, the Court pointed out that the framers of the 1987 Constitution did not have such intention. This exclusivity is thus a legislative enactment that can very well be amended by Section 43 of RA 9369. Therefore, under the present law, the Comelec and other prosecuting arms of the government, such as the DOJ, now exercise concurrent jurisdiction in the investigation and prosecution of election offenses.

Indeed, as aptly pointed out by GMA, there is a discrepancy between Comelec Resolution No. 3467^[41] dated January 12, 2001 and Joint Order No. 001-2011, dated August 15, 2011, creating and constituting a Joint Committee and Fact-Finding Team on the 2004 and 2007 National Elections electoral fraud and manipulation cases. However, GMA seemed to miss the date when these two resolutions were promulgated by the Comelec. It is noteworthy that Comelec Resolution No. 3467 was issued when Section 265 of the Omnibus Election Code was still effective, while Joint Order No. 001-2011 as well as Comelec Resolution Nos. 8733^[42] and 9057^[43] mentioned in the assailed decision but missed out by GMA in her motion, were issued during the effectivity of Section 43 of RA 9369, giving the Comelec and other prosecuting arms of the government the concurrent jurisdiction to investigate and prosecute election offenses. This amendment paved the way for the discrepancy. In Comelec Resolution No. 3467, the Comelec maintained the continuing deputation of prosecutors and the Comelec Law Department was tasked to supervise the investigatory and prosecutory functions of the task force pursuant to the mandate of the Omnibus Election Code. However, with the amendment, the Comelec likewise changed the tenor of the later resolutions to reflect the new mandate of the Comelec and other prosecuting arms of the government now exercising concurrent jurisdiction. Thus, the Comelec Law Department and the Office of the Chief State Prosecutor of the DOJ were tasked to jointly supervise the investigatory and prosecutory functions of the Comelec-DOJ Task Force. Considering, therefore, that the later resolutions, including Joint Order No. 001-2011, were issued pursuant to Section 43 of RA 9369 amending Section 265 of BP 881 which was declared "constitutional" in *Banat*, there is no reason for us to declare otherwise. To maintain the previous role of other prosecuting arms of the government as mere deputies despite the amendment would mean challenging Section 43 of RA 9369 *anew* which has already been settled in *Banat*.

To be sure, the creation of a Joint Committee is not repugnant to the concept of "concurrent jurisdiction" authorized by the amendatory law. As we explained in our September 18, 2012 Decision: