

EN BANC

[G.R. No. 199082, September 18, 2012]

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., SARMIENTO, 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. LAGAMAN, 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 MEMBER, RESPECTIVELY, OF THE JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE ON THE 200 AND 2007 ELECTION FRAUD, RESPONDENTS.

[G.R. NO. 199118]

GLORIA MACAPAGAL-AROYO, 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.

DECISION

PERALTA, J.:

The Court is vested with the constitutional mandate to resolve justiciable controversies by applying the rule of law with due deference to the right to due process, irrespective of the standing in society of the parties involved. It is an assurance that in this jurisdiction, the wheels of justice turn unimpeded by public opinion or clamor, but only for the ultimate end of giving each and every member of society his just due without distinction.

Before the Court are three (3) consolidated petitions and supplemental petitions for *Certiorari* and Prohibition under Rule 65 of the Rules of Court filed by Jose Miguel T. Arroyo (Mike Arroyo) in G.R. No. 199082, Benjamin S. Abalos, Sr. (Abalos) in G.R. No. 199085 and Gloria Macapagal Arroyo (GMA) in G.R. No. 199118 assailing the following: (1) Commission on Elections (Comelec) Resolution No. 9266 "In the Matter of the Commission on Elections and Department of Justice Joint Investigation on the Alleged Election Offenses Committed during the 2004 and 2007 Elections Pursuant to Law"^[1] dated August 2, 2011; (2) Joint Order No. 0012011 (Joint Order) "Creating and Constituting a Joint DOJ-Comelec Preliminary Investigation Committee [Joint Committee] and Fact-Finding Team on the 2004 and 2007 National Elections Electoral Fraud and Manipulation Cases"^[2] dated August 15, 2011; (3) Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections (Joint Committee Rules of Procedure)^[3] dated August 23, 2011; and (4) Initial Report of the Fact-Finding Team dated October 20, 2011.

^[4] The consolidated petitions and supplemental petitions likewise assail the validity of the

proceedings undertaken pursuant to the aforesaid issuances.

The Antecedents

Acting on the discovery of alleged new evidence and the surfacing of new witnesses indicating the occurrence of massive electoral fraud and manipulation of election results in the 2004 and 2007 National Elections, on August 2, 2011, the Comelec issued Resolution No. 9266 approving the creation of a committee jointly with the Department of Justice (DOJ), which shall conduct preliminary investigation on the alleged election offenses and anomalies committed during the 2004 and 2007 elections.⁵

On August 4, 2011, the Secretary of Justice issued Department Order No. 6406 naming three (3) of its prosecutors to the Joint Committee.

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 on the 2004 and 2007 National Elections electoral fraud and manipulation cases. The Joint Committee and the Fact-Finding Team are composed of officials from the DOJ and the Comelec. Section 2 of the Joint Order lays down the mandate of the Joint Committee, to wit:

Section 2. *Mandate.* – The Committee shall conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team created and referred to in Section 4 hereof. Resolutions finding probable cause for election offenses, defined and penalized under the Omnibus Election Code and other election laws shall be approved by the Comelec in accordance with the Comelec Rules of Procedure. For other offenses, or those not covered by the Omnibus Election Code and other election laws, the corresponding criminal information may be filed directly with the appropriate courts.^[7]

The Fact-Finding Team,^[8] 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. Its specific duties and functions as enumerated in Section 4 of the Joint Order are as follows:

- a) Gather and document reports, intelligence information, and investigative leads from official as well as unofficial sources and informants;
- b) Conduct interviews, record testimonies, take affidavits of witnesses, and collate material and relevant documentary evidence, such as, but not limited to, election documents used in the 2004 and 2007 national elections. For security reasons, or to protect the identities of informants, the Fact-Finding Team may conduct interviews or document testimonies discreetly;
- c) Assess and evaluate affidavits already executed and other documentary evidence submitted or may be submitted to the Fact-Finding Team and/or Committee;
- d) Identify the offenders, their offenses and the manner of their commission, individually or in conspiracy, and the provisions of election and general criminal laws violated, establish evidence for individual criminal and administrative liability and prosecution, and prepare the necessary documentation, such as complaints and charge sheets for the initiation of preliminary investigation proceedings against said individuals to be conducted by the Committee;
- e) Regularly submit to the Committee, the Secretary of Justice and the Chairman of the Comelec periodic reports and recommendations, supported by real, testimonial and documentary evidence, which may then serve as the Committee's basis for immediately commencing appropriate preliminary investigation proceedings, as provided under Section 6 of this Joint Order; and
- f) Upon the termination of its investigation, make a full and final report to the

Committee, the Secretary of Justice, and the Chairman of the Comelec.^[9]

Pursuant to Section 7^[10] of the Joint Order, on August 23, 2011, the Joint Committee promulgated its Rules of Procedure.

The members of the Fact-Finding Team unanimously agreed that the subject of the Initial Report would be the electoral fraud and manipulation of election results allegedly committed during the May 14, 2007 elections. Thus, in its Initial Report^[11] 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 were indeed perpetrated.^[12] The Fact-Finding Team recommended that petitioner Abalos and ten (10) others^[13] be subjected to preliminary investigation for electoral sabotage for conspiring to manipulate the election results in North and South Cotabato. Twenty-six (26)^[14] persons, including petitioners GMA and Abalos, were likewise recommended for preliminary investigation for electoral sabotage for manipulating the election results in Maguindanao.^[15] Several persons were also recommended to be charged administratively, while others,^[16] including petitioner Mike Arroyo, were recommended to be subjected to further investigation.^[17] The case resulting from the investigation of the Fact-Finding Team was docketed as DOJ- Comelec Case No. 001-2011.

Meanwhile, on October 17, 2011, Senator Aquilino Pimentel III (Senator Pimentel) filed a Complaint-Affidavit^[18] for Electoral Sabotage against petitioners and twelve others^[19] 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.^[20] On November 3, 2011, petitioners, through counsel, appeared before the Joint Committee.^[21] On that preliminary hearing, the Joint Committee consolidated the two DOJ-Comelec cases. Respondents therein were likewise ordered to submit their Counter-Affidavits by November 14, 2011.^[22]

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.^[23] The petitions were eventually consolidated.

On November 14, 2011, petitioner Mike Arroyo filed a Motion to Defer Proceedings^[24] before the Joint Committee, in view of the pendency of his petition before the Court. On the same day, petitioner GMA filed before the Joint Committee an Omnibus Motion *Ad Cautelam*^[25] 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 contended that for the crime of electoral sabotage to be established, there is a need to present election documents allegedly tampered which resulted in the increase or decrease in the number of votes of local and national candidates.^[26] GMA prayed that she be allowed to file her counter-affidavit within ten (10) days from receipt of the requested documents.^[27] Petitioner Abalos, for his part, filed a Motion to Suspend Proceedings (Ex Abundante Ad Cautelam),^[28] in view of the pendency of his petition brought before the Court.

In an Order^[29] dated November 15, 2011, the Joint Committee denied the aforesaid motions of petitioners. GMA subsequently filed a motion for reconsideration.^[30]

On November 16, 2011, the Joint Committee promulgated a Joint Resolution which was later indorsed to the Comelec.^[31] On November 18, 2011, after conducting a special session, the Comelec en banc issued a Resolution^[32] approving and adopting the Joint Resolution subject to modifications. The dispositive portion of the Comelec Resolution reads:

WHEREFORE, premises considered, the Resolution of the Joint DOJ-COMELEC Preliminary Investigation Committee in DOJ-COMELEC Case No. 001-2011 and DOJ-COMELEC Case No. 002-2011, upon the recommendation of the COMELEC's own representatives in the Committee, is hereby **APPROVED** and **ADOPTED**, subject to the following MODIFICATIONS:

1. That information/s for the crime of **ELECTORAL SABOTAGE** under **Section 42 (b) of R.A. 9369, amending Section 27 (b) of R.A. 6646**, be filed against **GLORIA MACAPAGAL-ARROYO, BENJAMIN ABALOS, SR., LINTANG H. BEDOL, DATU ANDAL AMPATUAN, SR.** and **PETER REYES**;
2. That the charges against MICHAEL C. ABAS, NICODEMO FERRER, REUBEN BASIAO, JAIME PAZ and NORIE K. UNAS be subjected to further investigation;
3. That the charges against JOSE MIGUEL T. ARROYO, BONG SERRANO, ALBERTO AGRA, ANDREI BON TAGUM, GABBY CLAUDIO, ROMY DAYDAY, JEREMY JAVIER, JOHN DOE a.k.a BUTCH, be DISMISSED for insufficiency of evidence to establish probable cause;
4. That the recommendation that **ESTELITA B. ORBASE, ELIZA A. GASMIN, ELSA Z. ATINEN, SALIAO S. AMBA, MAGSAYSAY B. MOHAMAD, SALONGA K. EDZELA, RAGAH D. AYUNAN, SUSAN U. CANANBAN, RUSSAM H. MABANG, ASUNCION CORAZON P. RENIEDO, NENA A. ALID, MA. SUSAN L. ALBANO, ROHAIDA T. KHALID, ARAW M. CAO, JEEHAN S. NUR, ALICE A. LIM, NORIJEAN P. HANGKAL, CHRISTINA ROAN M. DALOPE**, and **MACEDA L. ABO** be administratively charged be subjected to further review by this Commission to determine the appropriate charge/s that may be filed against them;
5. That the findings of lack of probable cause against **LILIAN S. SUAN-RADAM** and **YOGIE G. MARTIRIZAR** be **REJECTED** by reason of the pendency of their respective cases before the Regional Trial Court of Pasay (Branch 114) and this Commission for the same offense under consideration.

In the higher interest of justice and by reason of manifest attempts to frustrate the government's right to prosecute and to obtain speedy disposition of the present case pending before the Commission, the Law Department and/or any **COMELEC** legal officers as may be authorized by this Commission is hereby **ORDERED** to **IMMEDIATELY PREPARE** and **FILE** the necessary Information/s before the appropriate court/s

SO ORDERED.^[33] (Emphasis supplied.)

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 (R.A.) No. 9369, amending Section 27 (b) of R.A. No. 6646, docketed as Criminal Case No. RPSY-11-04432-CR.^[34] The case was raffled to Branch 112 and the corresponding Warrant of Arrest was issued which was served on GMA on the same day.^[35]

On November 18, 2011, petitioner GMA filed with the RTC an Urgent Omnibus Motion *Ad Cautelam*^[36] 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^[37] 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 thereafter filed a Motion for Bail which was granted.

Issues

In G.R. No. 199082, petitioner Arroyo relies on the following grounds:

- A. THE CREATION OF THE JOINT COMMITTEE VIA THE JOINT ORDER IS AT WAR WITH THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, HAVING BEEN CREATED WITH THE SOLE END IN VIEW OF INVESTIGATING AND PROSECUTING CERTAIN PERSONS AND INCIDENTS ONLY, SPECIFICALLY THOSE INVOLVING THE 2004 AND 2007 ELECTIONS TO THE EXCLUSION OF OTHERS, IN VIOLATION OF THE DOCTRINE IN *BIRAOGO V. TRUTH COMMISSION* AND COMPANION CASE.
- B. NO LAW OR RULE AUTHORIZES THE JOINT COMMITTEE TO CONDUCT PRELIMINARY INVESTIGATION.
- C. THE CREATION OF THE JOINT COMMITTEE, WHICH FUSES THE COMMISSION ON ELECTIONS - A CONSTITUTIONALLY INDEPENDENT BODY - WITH THE DEPARTMENT OF JUSTICE - A POLITICAL AGENT OF THE EXECUTIVE - DEMOLISHES THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS AS PROVIDED IN ARTICLE IX(A), SECTIONS 1 AND 2 AND IX(C) OF THE CONSTITUTION.
- D. IN VIEW OF THE NUMEROUS AND PERSISTENT PUBLIC PRONOUNCEMENTS OF THE PRESIDENT, HIS SPOKESPERSONS, THE HEADS OF THE DOJ AND THE COMELEC, AND MEMBERS OF THE JOINT COMMITTEE THAT CASES SHOULD BE FILED AGAINST PETITIONER AND HIS FAMILY AND ALLEGED ASSOCIATES BY THE END OF 2011, THE PROCEEDINGS THEREOF SHOULD BE ENJOINED FOR BEING PERSECUTORY, PURSUANT TO *ALLADO V. DIOKNO* AND RELATED CASES.
- E. THE CREATION AND CONSTITUTION OF THE JOINT COMMITTEE TRAMPLES UPON PETITIONER'S RIGHT TO A FAIR PROCEEDING BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL.
- F. THE COMELEC, AND SUBSEQUENTLY, THE RTC OF PASAY CITY, HAVE ASSUMED JURISDICTION OVER THE SUBJECT MATTER SOUGHT TO BE INVESTIGATED BY THE JOINT COMMITTEE, TO THE EXCLUSION OF ANY BODY, INCLUDING THE JOINT COMMITTEE.^[38]

In G.R. No. 199085, petitioner Abalos raises the following issues:

I.

DOES JOINT ORDER NO. 001-2011, CREATING THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW?

II.

DID THE CONDUCT AND PROCEEDINGS OF THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW?

III.

DID THE DOJ AND COMELEC VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS BY