

EN BANC

[G.R. No. 190259, June 07, 2011]

DATU ZALDY UY AMPATUAN, ANSARUDDIN ADIONG, REGIE SAHALI-GENERALE PETITIONERS, VS. HON. RONALDO PUNO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND ALTER-EGO OF PRESIDENT GLORIA MACAPAGAL-ARROYO, AND ANYONE ACTING IN HIS STEAD AND ON BEHALF OF THE PRESIDENT OF THE PHILIPPINES, ARMED FORCES OF THE PHILIPPINES (AFP), OR ANY OF THEIR UNITS OPERATING IN THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM), AND PHILIPPINE NATIONAL POLICE, OR ANY OF THEIR UNITS OPERATING IN ARMM, RESPONDENTS.

D E C I S I O N

ABAD, J.:

On November 24, 2009, the day after the gruesome massacre of 57 men and women, including some news reporters, then President Gloria Macapagal-Arroyo issued Proclamation 1946,^[1] placing "the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency." She directed the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) "to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence" in the named places.

Three days later or on November 27, President Arroyo also issued Administrative Order 273 (AO 273)^[2] "transferring" supervision of the Autonomous Region of Muslim Mindanao (ARMM) from the Office of the President to the Department of Interior and Local Government (DILG). But, due to issues raised over the terminology used in AO 273, the President issued Administrative Order 273-A (AO 273-A) amending the former, by "delegating" instead of "transferring" supervision of the ARMM to the DILG.^[3]

Claiming that the President's issuances encroached on the ARMM's autonomy, petitioners Datu Zaldy Uy Ampatuan, Ansaruddin Adiong, and Regie Sahali-Generale, all ARMM officials,^[4] filed this petition for prohibition under Rule 65. They alleged that the proclamation and the orders empowered the DILG Secretary to take over ARMM's operations and seize the regional government's powers, in violation of the principle of local autonomy under Republic Act 9054 (also known as the Expanded ARMM Act) and the Constitution. The President gave the DILG Secretary the power to exercise, not merely administrative supervision, but control over the ARMM since the latter could suspend ARMM officials and replace them.^[5]

Petitioner ARMM officials claimed that the President had no factual basis for

declaring a state of emergency, especially in the Province of Sultan Kudarat and the City of Cotabato, where no critical violent incidents occurred. The deployment of troops and the taking over of the ARMM constitutes an invalid exercise of the President's emergency powers.^[6] Petitioners asked that Proclamation 1946 as well as AOs 273 and 273-A be declared unconstitutional and that respondents DILG Secretary, the AFP, and the PNP be enjoined from implementing them.

In its comment for the respondents,^[7] the Office of the Solicitor General (OSG) insisted that the President issued Proclamation 1946, not to deprive the ARMM of its autonomy, but to restore peace and order in subject places.^[8] She issued the proclamation pursuant to her "calling out" power^[9] as Commander-in-Chief under the first sentence of Section 18, Article VII of the Constitution. The determination of the need to exercise this power rests solely on her wisdom.^[10] She must use her judgment based on intelligence reports and such best information as are available to her to call out the armed forces to suppress and prevent lawless violence wherever and whenever these reared their ugly heads.

On the other hand, the President merely delegated through AOs 273 and 273-A her supervisory powers over the ARMM to the DILG Secretary who was her alter ego any way. These orders did not authorize a take over of the ARMM. They did not give him blanket authority to suspend or replace ARMM officials.^[11] The delegation was necessary to facilitate the investigation of the mass killings.^[12] Further, the assailed proclamation and administrative orders did not provide for the exercise of emergency powers.^[13]

Although normalcy has in the meantime returned to the places subject of this petition, it might be relevant to rule on the issues raised in this petition since some acts done pursuant to Proclamation 1946 and AOs 273 and 273-A could impact on the administrative and criminal cases that the government subsequently filed against those believed affected by such proclamation and orders.

The Issues Presented

The issues presented in this case are:

1. Whether or not Proclamation 1946 and AOs 273 and 273-A violate the principle of local autonomy under Section 16, Article X of the Constitution, and Section 1, Article V of the Expanded ARMM Organic Act;
2. Whether or not President Arroyo invalidly exercised emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City; and
3. Whether or not the President had factual bases for her actions.

The Rulings of the Court

We dismiss the petition.

One. The claim of petitioners that the subject proclamation and administrative

orders violate the principle of local autonomy is anchored on the allegation that, through them, the President authorized the DILG Secretary to take over the operations of the ARMM and assume direct governmental powers over the region.

But, in the first place, the DILG Secretary did not take over control of the powers of the ARMM. After law enforcement agents took respondent Governor of ARMM into custody for alleged complicity in the Maguindanao massacre, the ARMM Vice-Governor, petitioner Ansaruddin Adiong, assumed the vacated post on December 10, 2009 pursuant to the rule on succession found in Article VII, Section 12,^[14] of RA 9054. In turn, Acting Governor Adiong named the then Speaker of the ARMM Regional Assembly, petitioner Sahali-Generale, Acting ARMM Vice-Governor.^[15] In short, the DILG Secretary did not take over the administration or operations of the ARMM.

Two. Petitioners contend that the President unlawfully exercised emergency powers when she ordered the deployment of AFP and PNP personnel in the places mentioned in the proclamation.^[16] But such deployment is not by itself an exercise of emergency powers as understood under Section 23 (2), Article VI of the Constitution, which provides:

SECTION 23. x x x (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same.

Three. The President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution, which provides.^[17]

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. x x x

While it is true that the Court may inquire into the factual bases for the President's exercise of the above power,^[18] it would generally defer to her judgment on the matter. As the Court acknowledged in *Integrated Bar of the Philippines v. Hon. Zamora*,^[19] it is clearly to the President that the Constitution entrusts the

determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment. Thus, the Court said:

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President, as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. x x x.^[20]

Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the "calling out" power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the take over of the entire ARMM by the DILG Secretary had no basis too.^[21]

But, apart from the fact that there was no such take over to begin with, the OSG also clearly explained the factual bases for the President's decision to call out the armed forces, as follows:

The Ampatuan and Mangudadatu clans are prominent families engaged in the political control of Maguindanao. It is also a known fact that both families have an arsenal of armed followers who hold elective positions in various parts of the ARMM and the rest of Mindanao.

Considering the fact that the principal victims of the brutal