

EN BANC

[G.R. No. 208062, April 07, 2015]

**SOCIAL WEATHER STATIONS, INC. AND PULSE ASIA, INC.,
PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

DECISION

LEONEN, J.:

This resolves the Petition^[1] for certiorari and prohibition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure praying that respondent Commission on Elections' Resolution No. 9674^[2] dated April 23, 2013 be nullified and set aside and that the Commission on Elections be permanently enjoined from enforcing the same Resolution, as well as prosecuting Social Weather Stations, Inc. and Pulse Asia, Inc. for violating it or otherwise compelling compliance with it.^[3]

Commission on Elections' (COMELEC) Resolution No. 9674 directed Social Weather Stations, Inc. (SWS) and Pulse Asia, Inc. (Pulse Asia), as well as "other survey firms of similar circumstance"^[4] to submit to COMELEC the names of all commissioners and payors of all surveys published from February 12, 2013 to April 23, 2013, including those of their "subscribers."^[5]

SWS and Pulse Asia are social research and public polling firms. Among their activities is the conduct of pre-election surveys.^[6]

As recounted by SWS and Pulse Asia, on February 15 to February 17, 2013, SWS conducted a pre-election survey on voters' preferences for senatorial candidates. Thereafter, it published its findings.^[7] The following question was asked in the survey:

Kung ang eleksyon ay gaganapin ngayon, sino ang pinakamalamang ninyong iboboto bilang **mga SENADOR ng PILIPINAS**? Narito ang listahan ng mga kandidato. Paki-shade o itiman po ang naaangkop na oval katabi ng pangalan hg mga taong pinakamalamang ninyong iboboto. Maaari po kayong pumili ng hanggang labindalawang (12) kandidato.

(LIST OF CANDIDATES OMITTED)

*If the elections were held today, whom would you most probably vote for as **SENATORS of the PHILIPPINES**? Here is a list of candidates. Please shade the oval beside the name of the persons you would most likely vote for. You may choose up to twelve (12) candidates.*

(LIST OF CANDIDATES OMITTED)^[8] (Emphasis in the original)

On March 20, 2013, Representative Tobias M. Tiangco (Tiangco), Secretary-General of the United Nationalist Alliance (UNA), wrote Atty. Esmeralda Ladra, Director of COMELEC's Law Department.^[9] In his letter,^[10] Tiangco asked COMELEC to "compel [SWS] to either comply with the directive in the Fair Election Act and COMELEC Resolution No. 9[6]1[5] and give the names or identities of the subscribers who paid for the [pre-election survey conducted from February 15 to February 17, 2013], or be liable for the violation thereof, an act constitutive of an election offense."^[11]

Tiangco recounted that on February 28, 2013, he wrote to SWS requesting, among others, that he "be furnished the identity of persons who paid for the [pre-election survey conducted from February 15 to February 17, 2013] as well as those who subscribed to it."^[12] Sometime in March 2013, SWS supposedly replied to Tiangco, "furnishing [him] with some particulars about the survey but [without] disclosing] the identity of the persons who commissioned or subscribed to the survey."^[13]

Acting on Tiangco's letter and on the COMELEC Law Department's recommendation, the COMELEC En Bane issued the Order^[14] dated April 10, 2013 setting the matter for hearing on April 16, 2013. The same Order directed SWS to submit its Comment within three (3) days of receipt.^[15] On April 12, 2013, Pulse Asia received a letter from COMELEC "requesting its representative to attend the COMELEC hearing on 16 April 2013."^[16]

SWS and Pulse Asia recounted that during the hearing, COMELEC Chairman Sixto S. Brillantes, Jr. (COMELEC Chairman Brillantes) stated that the proceeding was merely a clarificatory hearing and not a formal hearing or an investigation.^[17]

On April 23, 2013, COMELEC issued the assailed Resolution No. 9674. The entire dispositive portion of this Resolution reads:

WHEREFORE, premises considered, the Commis[s]ion RESOLVED, as it hereby RESOLVES, to DIRECT the SWS, Pulse Asia and other survey firms of similar circumstance to submit within three (3) days from receipt of this Resolution the names of all commissioners and payors of surveys published from February 12, 2013 to the date of the promulgation of this Resolution for copying and verification by the Commission. The submission shall include the names of all "subscribers" of those published surveys. Such information/data shall be for the exclusive and confidential use of the Commission;

RESOLVED FURTHER, that all surveys published subsequent to the promulgation of this Resolution must be accompanied by all the information required in Republic Act no. 9006, including the names of commissioners, payors and subscribers.

This resolution shall take effect immediately after publication.

A violation of these rules shall constitu[t]e an election offense as

provided in Republic Act no. 9006, or the Fair Election Act.^[18] (Emphasis in the original)

As basis for Resolution No. 9674, COMELEC cited Article IX-C, Section 2(1)^[19] of the 1987 Constitution and Sections 5.1 to 5.3^[20] of Republic Act No. 9006, otherwise known as the Fair Election Act, as implemented by COMELEC Resolution No. 9615.^[21]

SWS and Pulse Asia alleged that following the issuance of Resolution No. 9674 and as of their filing before this court of the present Petition, they had not been furnished copies of Resolution No. 9674.^[22] (They emphasized that while a certified true copy of this Resolution was attached to their Petition, this was a copy which they themselves secured "for the purpose of complying with the requirement that Rule 65 petitions must be accompanied by a certified true copy of the assailed order or resolution[.]"^[23])

In the letter^[24] dated April 30, 2013, SWS and Pulse Asia informed COMELEC Chairman Brillantes that they had not received a copy of Resolution No. 9674. They also articulated their view that Resolution No. 9674 was tainted with irregularities, having been issued *ultra vires* (i.e., in excess of what the Fair Election Act allows) and in violation of the non-impairment of contracts clause of the Constitution. They also expressed their intention to bring the matter before this court on account of these supposed irregularities. Thus, they requested that COMELEC defer or hold in abeyance Resolution No. 9674's enforcement.^[25]

On May 8, 2013, the COMELEC Law Department issued a Notice^[26] to SWS (and also to Pulse Asia) directing it to furnish COMELEC with a list of the names of all "commissioners, subscribers, and payors of surveys published from February 12, 2013 until April 23, 2013."^[27] SWS was warned that failure to comply with the Notice shall constitute an election offense punishable under the Omnibus Election Code.^[28]

On July 1, 2013, COMELEC issued a Subpoena^[29] notifying SWS and Pulse Asia that a Complaint "for violation of Section 264[,] par. 1 and 2 of the Omnibus Election Code^[30] in relation to R.A. 9006"^[31] was filed against them. (This was docketed as E.O. Case No. 13-222). They were also directed to appear and to submit their counter-affidavits and other supporting documents at the hearing set on August 6, 2013.^[32]

SWS and Pulse Asia maintained that before receiving the Subpoena, they were never informed that a criminal case had been filed against them. They added that they were never furnished copies of the relevant criminal Complaint.^[33]

On July 26, 2013, petitioners Social Weather Stations, Inc. and Pulse Asia, Inc. filed the present Petition.^[34] They assail Resolution No. 9674 as having been issued *ultra vires*. They are of the position that Resolution No. 9674, in requiring the submission of information on subscribers, is in excess of what the Fair Election Act requires.^[35] Likewise, they, assert that Resolution No. 9674 transgresses the Fair Election Act in

making itself executory immediately after publication.^[36] Moreover, they claim that it violates the non-impairment of contracts clause of the Constitution,^[37] and was enforced in violation of their right to due process (as they were charged with its violation despite not having been properly served with copies of the complaint filed against them).^[38] Petitioners pray for the issuance of a temporary restraining order and/or writ of preliminary injunction in the interim.^[39]

In this court's July 30, 2013 Resolution,^[40] COMELEC was required to file a Comment on the Petition. In the same Resolution, this court issued a temporary restraining order "enjoining the enforcement of COMELEC Resolution No. 9674 with respect to submission of the names of regular subscribers but not to the submission of (1) the names of specific subscribers for the limited period of February 12, 2013 to April 23, 2013 who have paid a substantial amount of money for access to survey results and privileged survey data; and (2) the names of all commissioners and payors of surveys published within the same period."^[41]

On October 10, 2013, COMELEC filed its Comment.^[42] On February 12, 2014, petitioners filed their Joint Reply.^[43]

In this court's February 18, 2014 Resolution,^[44] the present Petition was given due course, and the parties were directed to file their memoranda. Petitioners complied on May 16, 2014^[45] and COMELEC on June 25, 2014.^[46]

For resolution are the following issues:

First, whether Resolution No. 9674 is invalid in that it requires the disclosure of the names of "subscribers" of election surveys;

Second, whether the rights of petitioners to free speech will be curtailed by the requirement to submit the names of their subscribers;

Third, whether Resolution No. 9674, insofar as it compels petitioners to submit the names of their subscribers, violates the constitutional proscription against the impairment of contracts (Article II, Section 10);

Fourth, whether at the time petitioners were required by COMELEC to reveal the names of the subscribers to their election surveys, Resolution No. 9674 was already in force and effect; and

Lastly, whether COMELEC deprived petitioners of due process of law when it:

a) failed to provide them with a copy of Resolution No. 9674 and the criminal complaint for an election offense; and

b) refused to specify the election offense under which they were being prosecuted.

We sustain the validity of Resolution No. 9674. The names of those who commission

or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Section 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of "guarantee[ing] equal access to opportunities for public service[.]"^[47] Section 5.2(a)'s requirement of disclosing subscribers neither curtails petitioners' free speech rights nor violates the constitutional proscription against the impairment of contracts.

However, it is evident that Resolution No. 9674 was promulgated in violation of the period set by the Fair Election Act. Petitioners were also not served a copy of Resolution No. 9674 with which they were asked to comply. They were neither shown nor served copies of the criminal Complaint subject of E.O. Case No. 13-222. Petitioners' right to due process was, thus, violated.

Petitioners assail Resolution No. 9674's requirement of submission of names of subscribers, including those who did not commission or pay for a specific survey or cause its publication, for being *ultra vires*. They maintain that the Fair Election Act "as it was written by Congress covers only those who commission or pay for a particular election survey, and requires disclosure of their names only when that particular survey is published."^[48] From this, they add that COMELEC exceeded its authority — "creating] an election offense where there was none before"^[49] — in considering as an election offense any violation of Resolution No. 9674.

COMELEC, for its part, insists on the "wide latitude of discretion"^[50] granted to it in the performance of its constitutional duty to "[e]nforce and administer all laws and regulations relative to the conduct of an election[.]"^[51] It adds that "as the specialized constitutional body charged with the enforcement and administration of election laws,"^[52] its contemporaneous construction of Section 5.2(a) of the Fair Election Act is "entitled to great weight and respect."^[53] Citing the supposed legislative intent of Section 5.2 as "broaden[ing] the subject of disclosure,"^[54] COMELEC claims that Section 5.2(a) "draws no distinction between the direct payors and the indirect payors of the survey."^[55] It adds that requiring the disclosure of survey subscribers addresses the requirement of reporting election expenditures by candidates and political parties, thereby helping COMELEC check compliance with this requirement.^[56]

Section 5.2(a) of the Fair Election Act, read in a manner consistent not only with its text but also with the purpose for which it, along with the Fair Election Act, was adopted, sustains COMELEC's position.

Republic Act No. 9006 was adopted with the end in mind of "guarantee[ing] or ensuring] equal opportunity for public service"^[57] and to this end, stipulates mechanisms for the "supervision] or regulation of] the enjoyment or utilization of all franchises or permits for the operation of media of communication or information[.]"^[58] Hence, its short title: *Fair Election Act*.

Situated within the constitutional order, the Fair Election Act provides means to realize the policy articulated in Article II, Section 26 of the 1987 Constitution to "guarantee equal access to opportunities for public service[.]" Article II, Section 26