

## EN BANC

[ G.R. No. 191998, December 07, 2010 ]

**WALDEN F. BELLO AND LORETTA ANN P. ROSALES,  
PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

[G.R. NO. 192769]

**LIZA L. MAZA AND SATURNINO C. OCAMPO, PETITIONERS, VS.  
COMMISSION ON ELECTIONS AND JUAN MIGUEL "MIKEY"  
ARROYO, RESPONDENTS.**

[G.R. NO. 192832]

**BAYAN MUNA PARTY-LIST, REPRESENTED BY TEODORO CASINO,  
PETITIONER, VS. COMMISSION ON ELECTIONS AND JUAN  
MIGUEL "MIKEY" ARROYO OF ANG GALING PINOY PARTY-LIST,  
RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

We resolve the three (3) consolidated<sup>[1]</sup> special civil actions for *certiorari*, *mandamus* and prohibition that commonly aim to disqualify respondent Juan Miguel "Mikey" Arroyo as the nominee of the *Ang Galing Pinoy Party-List (AGPP)* in the May 10, 2010 elections.

#### **The Factual Antecedents**

The common factual antecedents, gathered from the pleadings, are briefly summarized below.

On November 29, 2009, AGPP filed with the Commission on Elections (*COMELEC*) its Manifestation of Intent to Participate in the May 10, 2010 elections. Subsequently, on March 23, 2010, AGPP filed its Certificate of Nomination together with the Certificates of Acceptance of its nominees.<sup>[2]</sup>

On March 25, 2010, the COMELEC issued Resolution No. 8807<sup>[3]</sup> which prescribed the rules of procedure applicable to petitions to disqualify a party-list nominee for purposes of the May 10, 2010 elections.<sup>[4]</sup>

Section 6 of the Resolution provides that the party-list group and the nominees must submit documentary evidence<sup>[5]</sup> to duly prove that the nominees truly belong to the marginalized and underrepresented sector/s, and to the sectoral party, organization, political party or coalition they seek to represent. It likewise provides

that the COMELEC Law Department shall require party-list groups and nominees to make the required documentary submissions, if not already complied with prior to the effectivity of the Resolution, not later than three (3) days from the last day of filing of the list of nominees.<sup>[6]</sup>

Under Section 10 of the same Resolution, the COMELEC may *motu proprio* effect the disqualification of party-list nominees who violate any of the limitations mentioned in Section 7 of the Resolution.<sup>[7]</sup> Section 8 of Rule 32 of the COMELEC Rules of Procedure also states that the COMELEC may cancel *motu proprio* the registration of any party registered under the party-list system for failure to comply with applicable laws, rules or regulations of the Commission. Pursuant to COMELEC Resolution No. 8646,<sup>[8]</sup> in relation to Section 6 of Resolution No. 8807, the deadline for submitting the requirements mentioned in Section 6 of the latter Resolution was on March 29, 2010.<sup>[9]</sup>

On March 25, 2010, petitioners Liza L. Maza, Saturnino C. Ocampo, and Bayan Muna Party-List, represented by Teodoro Casiño, (collectively referred to as *certiorari petitioners*) filed with the COMELEC a petition for disqualification<sup>[10]</sup> against Arroyo, pursuant to Resolution No. 8696,<sup>[11]</sup> in relation with Sections 2 and 9 of Republic Act (RA) No. 7941<sup>[12]</sup> (the Party-List System Act).<sup>[13]</sup>

The *certiorari* petitioners argued that not only must the party-list organization factually and truly represent the marginalized and the underrepresented; the nominee must as well be a Filipino citizen belonging to the marginalized and underrepresented sectors, organizations and parties, citing in this regard the case of *Ang Bagong Bayani-OFW Labor Party v. COMELEC*<sup>[14]</sup>. On this basis, the *certiorari* petitioners concluded that Arroyo cannot be considered a member of the marginalized and underrepresented sector, particularly, the sector which the AGPP represents - tricycle drivers and security guards - because he is not only a member of the First Family, but is also (a) an incumbent member of the House of Representatives; (b) the Chairman of the House's Energy Committee; and, (c) a member of key committees in the House, namely: Natural Resources, Aquaculture, Fisheries Resources, Ethics and Privileges, Justice, National Defense and Security, Public Works and Highways, Transportation and Ways and Means.<sup>[15]</sup>

In his Answer, Arroyo counter-argued that the COMELEC had no jurisdiction over issues involving the qualifications of party-list nominees; Section 9 of RA 7941 merely requires that the party-list nominee must be a *bonafide* member of the party or organization which he seeks to represent at least ninety (90) days preceding the day of the election.<sup>[16]</sup>

When the COMELEC published on March 26, 2010 its initial "List of Political Parties/Sectoral Organizations/Coalitions Participating in the May 10, 2010 elections with their respective Nominees," Arroyo was listed as AGPP's first nominee.

On March 30, 2010, the petitioner Bayan Muna Party-List, represented by Neri Colmenares, filed with the COMELEC another petition for disqualification against Arroyo.<sup>[17]</sup> It alleged that Arroyo is not qualified to be a party-list nominee because he (a) does not represent or belong to the marginalized and underrepresented sector; (b) has not been a *bona fide* member of AGPP ninety (90) days prior to the

May 10, 2010 elections; (c) is a member of the House of Representatives; and that (d) AGPP is not a legitimate and qualified party-list group and has no authority to nominate him.<sup>[18]</sup>

In his Answer, Arroyo reiterated that the COMELEC does not have jurisdiction over cases involving the qualifications of party-list nominees. He stated as well that he is a *bonafide* member of AGPP at least ninety (90) days prior to the elections.<sup>[19]</sup>

Meanwhile, on April 6, 2010, petitioners Walden F. Bello and Loretta Ann P. Rosales (*mandamus petitioners*) wrote the COMELEC Law Department a letter requesting for a copy of the documentary evidence submitted by AGPP, in compliance with Section 6 of Resolution No. 8807. On the same day, the COMELEC Law Department replied that as of that date, the AGPP had not yet submitted any documentary evidence required by Resolution No. 8807.<sup>[20]</sup>

Through a letter dated April 7, 2010, the *mandamus* petitioners requested the COMELEC and its Law Department to act, consistently with Section 10 of Resolution No. 8807, and declare the disqualification of the nominees of AGPP for their failure to comply with the requirements of Section 6 of Resolution No. 8807.<sup>[21]</sup> They also wrote the COMELEC on April 20, 2010, reiterating their letter-request dated April 7, 2010. The COMELEC failed to respond to both letters.<sup>[22]</sup>

### **The COMELEC Second Division Ruling**

In its May 7, 2010 Joint Resolution, the COMELEC Second Division dismissed the petitions for disqualification against Arroyo.<sup>[23]</sup> It noted that Section 9 of RA 7941 merely requires the nominee to be "a *bona fide* member [of the party or organization which he seeks to represent for] at least ninety (90) days preceding the day of the elections."<sup>[24]</sup> It found that Arroyo (a) became a member of the party on November 20, 2009; (b) actively participated in the undertakings of AGPP and adhered to its advocacies; and, (c) actively supported and advanced the projects and programs of the AGPP by regularly attending its meetings, livelihood and skills program, and farmers' day activities.<sup>[25]</sup>

### **The COMELEC *en banc* Ruling**

The COMELEC *en banc* refused to reconsider the Second Division's ruling in its July 19, 2010 consolidated resolution.<sup>[26]</sup> It held, among others, that a Filipino citizen, in order to qualify as a party-list nominee, only needs to be a *bona fide* member of the party or organization which he seeks to represent, for at least ninety (90) days preceding the day of the election, and must likewise be at least twenty-five (25) years of age on the day of the election.<sup>[27]</sup> The COMELEC *en banc* also held that Section 6 of Resolution No. 8807 is *ultra vires*, since the requirement that a nominee belong to the marginalized and underrepresented sector he seeks to represent is not found in RA 7941.<sup>[28]</sup> Thus, it concluded that Arroyo possessed all the requirements mandated by Section 9 of RA 7941.<sup>[29]</sup>

On May 7, 2010, the *mandamus* petitioners filed with this Court their Petition for Mandamus and Prohibition with Application for Temporary Restraining Order and/or

Preliminary Injunction,<sup>[30]</sup> docketed as **G.R. No. 191998.**<sup>[31]</sup> They sought to compel the COMELEC to disqualify *motu proprio* the AGPP nominees for their failure to comply with Section 6 of Resolution No. 8807, and to enjoin the COMELEC from giving due course to the AGPP's participation in the May 10, 2010 elections.

On July 23 and 29, 2010, the certiorari petitioners elevated their case to this Court via two (2) separate petitions for certiorari,<sup>[32]</sup> docketed as G.R. Nos. 192769<sup>[33]</sup> and 192832,<sup>[34]</sup> to annul the COMELEC Second Division's

May 7, 2010 joint resolution and the COMELEC *en banc's* July 19, 2010 consolidated resolution that dismissed their petitions for disqualification against Arroyo as AGPP's nominee.

In the interim, AGPP obtained in the May 10, 2010 elections the required percentage of votes sufficient to secure a single seat. This entitled Arroyo, as AGPP's first nominee, to sit in the House of Representatives.<sup>[35]</sup>

On July 21, 2010, the COMELEC, sitting as the National Board of Canvassers, proclaimed Arroyo as AGPP's duly-elected party-list representative in the House of Representatives.<sup>[36]</sup> On the same day, Arroyo took his oath of office, as AGPP's Representative, before Court of Appeals Presiding Justice Andres B. Reyes. His name was, thereafter, entered in the Roll of Members of the House of Representatives.<sup>[38]</sup>

On July 28 and 29, 2010, two (2) separate petitions for *quo warranto*<sup>[39]</sup> were filed with the House of Representatives Electoral Tribunal (HRET) questioning Arroyo's eligibility as AGPP's representative in the House of Representatives. On September 7, 2010, the HRET took cognizance of the petitions by issuing a Summons directing Arroyo to file his Answer to the two petitions.<sup>[40]</sup>

### **The Petitions**

The *mandamus* petitioners in **G.R. No. 191998** argue that the COMELEC committed grave abuse of discretion (a) in failing to order the *motu proprio* disqualification of AGPP despite its failure to comply with the mandatory requirements under Section 6 of Resolution No. 8807; and, (b) in giving due course to the participation of AGPP and its nominees in the May 10, 2010 elections.

On the other hand, the *certiorari* petitioners in **G.R. Nos. 192769** and **192832** contend in common that the COMELEC *en banc* gravely abused its discretion in failing to disqualify Arroyo as AGPP's nominee since: (1) he does not belong to the marginalized and underrepresented sector he claims to represent; (2) he is not a *bona fide* AGPP member for at least ninety (90) days preceding the May 10, 2010 elections; (3) in light of these preceding reasons, he would not be able to contribute to the formulation and enactment of appropriate legislations for the sector he seeks to represent; and (4) his nomination and acceptance of nomination as AGPP's nominee violate AGPP's continuing undertaking upon which its petition for registration and accreditation was based and granted.

In **G.R. No. 192832**, the petitioner Bayan Muna Party-List also prays that the Court: (a) direct the COMELEC *en banc* to review all its decisions in cases for

disqualification of nominees and cancellation of registration of party-list groups filed in the May 10, 2010 elections, as well as those which have not been resolved, in line with the eight-point guidelines set forth in *Ang Bagong Bayani*;<sup>[41]</sup> and (b) order Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco and Elias R. Yusoph to explain why they should not be cited in contempt for their open defiance of the Court's Decisions in *Ang Bagong Bayani*<sup>[42]</sup> and *Barangay Association for National Advancement and Transparency v. COMELEC*.<sup>[43]</sup>

### **The Case for the Respondents**

In **G.R. Nos. 192769** and **192832**, Arroyo counter-argues that the petitions should be dismissed outright because upon his proclamation, oath and assumption to office as a duly elected member of the House of Representatives, the jurisdiction over issues relating to his qualifications now lies with the HRET as the sole judge of all contests relating to the election, returns, and qualifications of members of the House of Representatives.

Similarly, the COMELEC, through the Office of the Solicitor General (OSG), prays for the dismissal of the petitions in **G.R. Nos. 192769** and **192832** for lack of jurisdiction in view of Arroyo's proclamation and assumption to office as a Member of the House of Representatives.

Despite notice, the OSG failed to comment on the **G.R. No. 191998** petition.

We deemed the case ready for resolution on the basis of the parties' submissions.

### **Issues**

The core issues boil down to (1) whether *mandamus* lies to compel the COMELEC to disqualify AGPP's nominees *motu proprio* or to cancel AGPP's registration; (2) whether the COMELEC can be enjoined from giving due course to AGPP's participation in the May 10, 2010 elections, the canvassing of AGPP's votes, and proclaiming it a winner; and (3) whether the HRET has jurisdiction over the question of Arroyo's qualifications as AGPP's nominee after his proclamation and assumption to office as a member of the House of Representatives.

### **Our Ruling**

**We dismiss the petitions.**

For a writ of *mandamus* to issue (in **G.R. No. 191998**), the mandamus petitioners must comply with Section 3 of Rule 65 of the Rules of Court, which provides:

SEC. 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper