

EN BANC

[G.R. No. 163193, June 15, 2004]

SIXTO S. BRILLANTES, JR. PETITIONER, VS. JOSE CONCEPCION, JR., JOSE DE VENECIA, EDGARDO J. ANGARA, DR. JAIME Z. GALVEZ, TAN, FRANKLIN M. DRILON, FRISCO SAN JUAN, NORBERTO M. GONZALES, HONESTO M. ISLETA, AND JOSE A. BERNAS, PETITIONERS-IN-INTERVENTION, VS. COMMISSION ON ELECTIONS, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Before us is the petition for certiorari and prohibition under Rule 65 of the Rules of Court filed by Atty. Sixto S. Brillantes, Jr., a voter and taxpayer, seeking to nullify, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, Resolution No. 6712 dated April 28, 2004 approved by the Commission on Elections (COMELEC) *En Banc* captioned GENERAL INSTRUCTIONS FOR THE ELECTRONIC TRANSMISSION AND CONSOLIDATION OF ADVANCED RESULTS IN THE MAY 10, 2004 ELECTIONS.^[1] The petitioner, likewise, prays for the issuance of a temporary restraining order and, after due proceedings, a writ of prohibition to permanently enjoin the respondent COMELEC from enforcing and implementing the questioned resolution.

After due deliberation, the Court resolved to require the respondent to comment on the petition and to require the parties to observe the status quo prevailing before the issuance by the COMELEC of the assailed resolution. The parties were heard on oral arguments on May 8, 2004. The respondent COMELEC was allowed during the hearing to make a presentation of the Electronic Transmission, Consolidation and Dissemination (PHASE III) program of the COMELEC, through Mr. Renato V. Lim of the Philippine Multi-Media System, Inc. (PMSI).

The Court, thereafter, resolved to maintain the *status quo* order issued on May 6, 2004 and expanded it to cover any and all other issuances related to the implementation of the so-called election quick count project. In compliance with the resolution of the Court, the respondent, the petitioner and the petitioners-in-intervention submitted the documents required of them.

The Antecedents

On December 22, 1997, Congress enacted Republic Act No. 8436^[2] authorizing the COMELEC to use an automated election system (AES) for the process of voting, counting of votes and canvassing/consolidating the results of the national and local elections. It also mandated the COMELEC to acquire automated counting machines (ACMs), computer equipment, devices and materials; and to adopt new electoral forms and printing materials.

The COMELEC initially intended to implement the automation during the May 11, 1998 presidential elections, particularly in the Autonomous Region in Muslim Mindanao (ARMM). The failure of the machines to read correctly some automated ballots, however, deferred its implementation.^[3]

In the May 2001 elections, the counting and canvassing of votes for both national and local positions were also done manually, as no additional ACMs had been acquired for that electoral exercise because of time constraints.

On October 29, 2002, the COMELEC adopted, in its Resolution No. 02-0170, a modernization program for the 2004 elections consisting of three (3) phases, to wit:

(1) PHASE I – Computerized system of registration and voters validation or the so-called “biometrics” system of registration;

(2) PHASE II – Computerized voting and counting of votes; and

(3) PHASE III – Electronic transmission of results.

It resolved to conduct biddings for the three phases.

On January 24, 2003, President Gloria Macapagal-Arroyo issued Executive Order No. 172,^[4] which allocated the sum of P2,500,000,000 to exclusively fund the AES in time for the May 10, 2004 elections.

On January 28, 2003, the COMELEC issued an Invitation to Bid^[5] for the procurement of supplies, equipment, materials and services needed for the complete implementation of all three phases of the AES with an approved budget of P2,500,000,000.

On February 10, 2003, upon the request of the COMELEC, President Gloria Macapagal-Arroyo issued Executive Order No. 175,^[6] authorizing the release of a supplemental P500 million budget for the AES project of the COMELEC. The said issuance, likewise, instructed the Department of Budget and Management (DBM) to ensure that the aforementioned additional amount be used exclusively for the AES prescribed under Rep. Act No. 8436, particularly “the process of voting, counting of votes and canvassing/consolidation of results of the national and local elections.”^[7]

On April 15, 2003, the COMELEC promulgated Resolution No. 6074 awarding the contract for Phase II of the AES to Mega Pacific Consortium and correspondingly entered into a contract with the latter to implement the project. *On the same day*, the COMELEC entered into a separate contract with Philippine Multi-Media System, Inc. (PMSI) denominated “ELECTRONIC TRANSMISSION, CONSOLIDATION & DISSEMINATION OF ELECTION RESULTS PROJECT CONTRACT.”^[8] The contract, by its very terms, pertains to Phase III of the respondent COMELEC’s AES modernization program. It was predicated on a previous bid award of the contract, for the lease of 1,900 units of satellite-based Very Small Aperture Terminals (VSAT) each unit consisting of an indoor and outdoor equipment, to PMSI for possessing the legal, financial and technical expertise necessary to meet the project’s objectives. The COMELEC bound and obliged itself to pay PMSI the sum of P298,375,808.90 as

rentals for the leased equipment and for its services.

In the meantime, the Information Technology Foundation of the Philippines (ITFP), filed a petition for certiorari and prohibition in this Court for the nullification of Resolution No. 6074 approving the contract for Phase II of AES to Mega Pacific Consortium, entitled and docketed as *Information Technology Foundation of the Philippines, et al. vs. COMELEC, et al.*, G.R. No. 159139. While the case was pending in this Court, the COMELEC paid the contract fee to the PMSI in trenches.

On January 13, 2004, this Court promulgated its Decision nullifying COMELEC Resolution No. 6074 awarding the contract for Phase II of the AES to Mega Pacific Consortium. Also voided was the subsequent contract entered into by the respondent COMELEC with Mega Pacific Consortium for the purchase of computerized voting/counting machines for the purpose of implementing the second phase of the modernization program. Phase II of the AES was, therefore, scrapped based on the said Decision of the Court and the COMELEC had to maintain the old manual voting and counting system for the May 10, 2004 elections.

On the other hand, the validation scheme under Phase I of the AES apparently encountered problems in its implementation, as evinced by the COMELEC's pronouncements prior to the elections that it was reverting to the old listing of voters. Despite the scrapping of Phase II of the AES, the COMELEC nevertheless ventured to implement Phase III of the AES through an electronic transmission of advanced "unofficial" results of the 2004 elections for national, provincial and municipal positions, also dubbed as an "unofficial quick count."

Senate President Franklin Drilon had misgivings and misapprehensions about the constitutionality of the proposed electronic transmission of results for the positions of President and Vice-President, and apprised COMELEC Chairman Benjamin Abalos of his position during their meeting on January 28, 2004. He also wrote Chairman Abalos on February 2, 2004. The letter reads:

Dear Chairman Abalos,

This is to confirm my opinion which I relayed to you during our meeting on January 28th that the Commission on Elections cannot and should not conduct a "quick count" on the results of the elections for the positions of President and Vice-President.

Under Section 4 of Article VII of the Constitution, it is the Congress that has the sole and exclusive authority to canvass the votes for President and Vice-President. Thus, any quick count to be conducted by the Commission on said positions would in effect constitute a canvass of the votes of the President and Vice-President, which not only would be preemptive of the authority of the Congress, but also would be lacking of any Constitutional authority. You conceded the validity of the position we have taken on this point.

In view of the foregoing, we asked the COMELEC during that meeting to reconsider its plan to include the votes for President and Vice-President in the "quick count", to which you graciously consented. Thank you very much.^[9]

The COMELEC approved a Resolution on February 10, 2004 referring the letter of the Senate President to the members of the COMELEC and its Law Department for study and recommendation. Aside from the concerns of the Senate President, the COMELEC had to contend with the primal problem of sourcing the money for the implementation of the project since the money allocated by the Office of the President for the AES had already been spent for the acquisition of the equipment. All these developments notwithstanding, and despite the explicit specification in the project contract for Phase III that the same was functionally intended to be an interface of Phases I and II of the AES modernization program, the COMELEC was determined to carry out Phase III of the AES. On April 6, 2004, the COMELEC, in coordination with the project contractor PMSI, conducted a field test of the electronic transmission of election results.

On April 27, 2004, the COMELEC met en banc to update itself on and resolve whether to proceed with its implementation of Phase III of the AES.^[10] During the said meeting, COMELEC Commissioner Florentino Tuason, Jr. requested his fellow Commissioners that "whatever is said here should be confined within the four walls of this room and the minutes so that *walang masyadong problema*."^[11] Commissioner Tuason, Jr. stated that he had no objection as to the Phase III of the modernization project itself, but had concerns about the budget. He opined that other funds of the COMELEC may not be proper for realignment. Commissioners Resurreccion Z. Borra and Virgilio Garcillano also expressed their concerns on the budget for the project. Commissioner Manuel Barcelona, Jr. shared the sentiments of Commissioners Garcillano and Tuason, Jr. regarding personnel and budgetary problems. Commissioner Sadain then manifested that the consideration for the contract for Phase III had already been almost fully paid even before the Court's nullification of the contract for Phase II of the AES, but he was open to the possibility of the realignment of funds of the COMELEC for the funding of the project. He added that if the implementation of Phase III would not be allowed to continue just because Phase II was nullified, then it would be P300,000,000 down the drain, in addition to the already allocated disbursement on Phase II of the AES.^[12] Other concerns of the Commissioners were on the legality of the project considering the scrapping of Phase II of the AES, as well as the operational constraints related to its implementation.

Despite the dire and serious reservations of most of its members, the COMELEC, the next day, April 28, 2004, barely two weeks before the national and local elections, approved the assailed resolution declaring that it "adopts the policy that the precinct election results of each city and municipality shall be immediately transmitted electronically in advance to the COMELEC, Manila."^[13] For the purpose, respondent COMELEC established a National Consolidation Center (NCC), Electronic Transmission Centers (ETCs) for every city and municipality, and a special ETC at the COMELEC, Manila, for the Overseas Absentee Voting.^[14]

Briefly, the procedure for this electronic transmission of precinct results is outlined as follows:

- I. The NCC shall receive and consolidate all precinct results based on the data transmitted to it by each ETC;^[15]

II. Each city and municipality shall have an ETC "where votes obtained by each candidate for all positions shall be encoded, and shall consequently be transmitted electronically to the NCC, through Very Small Aperture Terminal (VSAT) facilities."^[16] For this purpose, personal computers shall be allocated for all cities and municipalities at the rate of one set for every one hundred seventy-five (175) precincts;^[17]

III. A Department of Education (DepEd) Supervisor shall be designated in the area who will be assigned in each polling center for the purpose of gathering from all Board of Election Inspectors (BEI) therein the envelopes containing the Copy 3 of the Election Returns (ER) for national positions and Copy 2 of the ER for local positions, both intended for the COMELEC, which shall be used as basis for the encoding and transmission of advanced precinct results.^[18]

The assailed resolution further provides that written notices of the date, time and place of the electronic transmission of advanced precinct results shall be given not later than May 5, 2004 to candidates running for local positions, and not later than May 7, 2004 to candidates running for national positions, as well as to political parties fielding candidates, and parties, organizations/coalitions participating under the party-list system.^[19]

In relation to this, Section 13 of the assailed resolution provides that the encoding proceedings were ministerial and the tabulations were "advanced unofficial results." The entirety of Section 13, reads:

Sec. 13. *Right to observe the ETC proceedings.* – Every registered political party or coalition of parties, accredited political party, sectoral party/organization or coalition thereof under the party-list, through its representative, and every candidate for national positions has the *right to observe/witness the encoding and electronic transmission* of the ERs within the authorized perimeter.

Provided, That candidates for the *sangguniang panlalawigan, sangguniang panglungsod or sangguniang bayan* belonging to the same slate or ticket shall collectively be entitled to only one common observer at the ETC.

The citizens' arm of the Commission, and civic, religious, professional, business, service, youth and other similar organizations collectively, with prior authority of the Commission, shall each be entitled to one (1) observer. Such fact shall be recorded in the Minutes.

The observer shall have the right to observe, take note of and make observations on the proceedings of the team. Observations shall be in writing and, when submitted, shall be attached to the Minutes.

The encoding proceedings being ministerial in nature, and the tabulations being advanced unofficial results, no objections or protests shall be allowed or entertained by the ETC.