



Republic of the Philippines  
 Supreme Court  
 Baguio City

EN BANC

SMARTMATIC CORPORATION AND SMARTMATIC PHILIPPINES, INC.,

TIM AND

G.R. No. 270564

Present:

Petitioners,

GESMUNDO, C.J.,  
 LEONEN,  
 CAGUIOA,  
 HERNANDO,  
 LAZARO-JAVIER,  
 INTING,  
 ZALAMEDA,  
 LOPEZ, M.,  
 GAERLAN,  
 ROSARIO,  
 LOPEZ, J.,  
 DIMAAMPAO,  
 MARQUEZ,  
 KHO, JR., and  
 SINGH, JJ.

-versus-

COMMISSION ON ELECTIONS *EN BANC*, ELISEO MIJARES RIO, JR., AUGUSTO CADELIÑA LAGMAN, FRANKLIN FAYLOGA YSAAC, AND LEONARDO OLIVERA ODOÑO,\*

Respondents.

Promulgated:  
 April 16, 2024

x

DECISION

MARQUEZ, J.:

In exercising its constitutional mandate to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda, and recall, the Commission on Elections (COMELEC) must comply with existing laws and regulations, including Republic Act No. 9184,<sup>1</sup> or the Government Procurement Reform Act (GPR), and its 2016 Revised Implementing Rules and Regulations<sup>2</sup> (2016 Revised IRR).

\* Also referred to as "Leonardo Olivero Odoño" in some parts of the *rollo*.  
<sup>1</sup> Republic Act No. 9184 (2003), Government Procurement Reform Act (GPR).  
<sup>2</sup> The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 (Updated as of April 15, 2024).

Before the Court is a Petition for *Certiorari* (With Extremely Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) With Urgent Motion for Special Raffle<sup>3</sup> under Rule 65, Rules of Court filed by petitioners Smartmatic TIM Corporation (Smartmatic TIM) and Smartmatic Philippines, Inc. (Smartmatic PH) (collectively referred to as Smartmatic), assailing the November 29, 2023 Resolution<sup>4</sup> of the COMELEC *En Banc*, which disqualified Smartmatic from participating in any bidding process for elections.

Smartmatic alleges that it was the service provider of the Automated Election System (AES) in the 2010, 2013, 2016, 2019, and 2022 National and Local Elections (NLE).<sup>5</sup> On February 22, 2023, it received an invitation from the COMELEC to attend an Election Summit in preparation for the 2025 NLE.<sup>6</sup> Smartmatic attended the Election Summit and the subsequent Procurement Summit. It also received multiple Requests for Information from the COMELEC regarding the 2025 AES.<sup>7</sup>

On October 27, 2023, the COMELEC published the Invitation to Bid for the Lease of Full Automation System with Transparency Audit/Count (FASTrAC) for the 2025 NLE.<sup>8</sup> On October 30, 2023, Smartmatic purchased the bidding documents.<sup>9</sup> On November 13, 2023, SMMT-TIM 2016, Inc. (an entity related to, but separate from, Smartmatic) attended the Pre-Bid Conference.<sup>10</sup>

In the meantime, private respondents Eliseo Mijares Rio, Jr., Augusto Cadeliña Lagman, Franklin Fayloga Ysaac, and Leonardo Olivera Odoño (Rio, Jr. et al.) filed a petition,<sup>11</sup> supplemental petition,<sup>12</sup> and second supplemental petition<sup>13</sup> before the COMELEC *En Banc*. In their petitions, Rio, Jr. et al. alleged that: (a) the transmission of the results of certain precincts preceded the printing of election results; (b) a scheme to clone vote counting machine (VCM) transmissions was shown by the fact that the logs reflect the same internet protocol (IP) address for certain machines instead of separate IP addresses; and (c) Smartmatic's affiliates and/or representatives reportedly met with the representatives of a presidential candidate while Smartmatic's Secure Electronic Transmission Services (SETS) Contract for the 2022 NLE results was still in force, in violation of Clause 5.13 of the SETS Contract.<sup>14</sup> Among other reliefs, Rio, Jr. et al. prayed that "[t]he qualifications of Smartmatic be reviewed by the [Bids and Awards Committee (BAC)] in

<sup>3</sup> *Rollo*, pp. 3-82.

<sup>4</sup> *Id.* at 83-99. The November 29, 2023 Resolution in EM Case No. 23-003 was signed by Chairperson George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand F. Maceda, Jr., and Nelson J. Celis of the COMELEC *En Banc*. Commissioner Aimee P. Ferolino filed a Separate Opinion. *See rollo*, pp. 100-103.

<sup>5</sup> *Id.* at 16-18.

<sup>6</sup> *Id.* at 18.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 18-19.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 109-119.

<sup>12</sup> *Id.* at 154-160.

<sup>13</sup> *Id.* at 170-177.

<sup>14</sup> *Id.* at 19-20.

view of the serious and material irregularities in the transmission and reception of election results in the system which Smartmatic developed and provided for the [May 9, 2022] Elections,”<sup>15</sup> and that the COMELEC *En Banc* order the BAC to “disqualify or declare ineligible Smartmatic from participating in the procurement for the 2025 Automated Election System” if the “serious and grave irregularities” are not satisfactorily explained.<sup>16</sup>

On August 10, 2023, the COMELEC *En Banc* directed its Law Department to review and submit a recommendation on the petitions filed by Rio, Jr. et al.<sup>17</sup> On August 31, 2023, the COMELEC Law Department submitted its Compliance, opining that there is no legal basis to prohibit Smartmatic from participating in the bidding process.<sup>18</sup>

On October 5, 2023, the COMELEC *En Banc* set the case for hearing on October 17, 2023.<sup>19</sup> It also required Smartmatic to comment on the petitions filed by Rio, Jr. et al.<sup>20</sup>

During the October 17, 2023 hearing, the COMELEC *En Banc* required the parties to file their respective memoranda and formal offer of evidence within five days, and their respective reply memoranda within three days from receipt of the other party’s memorandum.<sup>21</sup>

On November 29, 2023, the COMELEC *En Banc* ruled in favor of Rio, Jr. et al. The dispositive portion of its Resolution reads:

**WHEREFORE**, premises considered, the Commission (*En Banc*) hereby **RESOLVED** to **GRANT** the Petition. **SMARTMATIC PHILIPPINES, INC. is DISQUALIFIED AND DISALLOWED** from participating in any public bidding process for elections, in the exercise of its administrative power to decide all matters affecting election [sic] and in pursuit of its constitutional mandate.

**FURTHER**, the Commission (*En Banc*) hereby **RESOLVES** that in the exercise of its administrative power, it may, upon [Rio, Jr. et al.’s] instance, order the conduct of recount of ballots in areas in every region in the country, the procedure and extent of which to be determined, and at no cost to [Rio, Jr. et al.].

**SO ORDERED.**<sup>22</sup> (Emphasis in the original)

The COMELEC *En Banc* first clarified that *at that stage of the procurement process and as head of the procuring entity, it cannot review the qualifications of Smartmatic.*<sup>23</sup>

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<sup>15</sup> *Id.* at 117.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 86.

<sup>18</sup> *Id.* at 87.

<sup>19</sup> *Id.* at 89.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 22.

<sup>22</sup> *Id.* at 98–99.

<sup>23</sup> *Id.* at 91.

Under the GPRA, a procuring entity has the authority to assess the qualifications of a bidder at any time during the procurement process, provided there are reasonable grounds to suspect misrepresentation by the bidder or a change in the bidder's capacity to undertake the project since the submission of eligibility requirements.<sup>24</sup> However, Rio, Jr. et al. filed their Petition on June 15, 2023, *before* the procurement process had begun.<sup>25</sup> While the Special Bids and Awards Committee (SBAC) assumed jurisdiction over matters relating to the procurement for the 2025 AES upon the holding of the pre-bid conference, Non-Policy Matter (NPM) No. 104-2017 issued by the Government Procurement Policy Board (GPPB) clarified that a bidder may only be disqualified during eligibility screening, bid evaluation, and post qualification.<sup>26</sup> In addition, Rio, Jr. et al. did not comply with the procedure for blacklisting under the 2016 Revised IRR.<sup>27</sup>

*The COMELEC En Banc then went on to hold that the Constitution grants it the broad power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.*<sup>28</sup> This constitutional authority is distinct from the COMELEC's authority as a procuring entity under the GPRA, and its task of ensuring electoral integrity necessarily includes maintaining the public's confidence in the elections.<sup>29</sup> To discharge this duty completely and effectively, it should assure the public that this obligation extends to its partners.<sup>30</sup>

In this regard, the COMELEC *En Banc* narrated that as early as October 2022, it received requests for official documents relative to an ongoing criminal investigation by the United States Department of Justice (US DOJ) against former COMELEC Chairperson Juan Andres D. Bautista (Bautista) and other individuals and entities:<sup>31</sup>

Pursuant to the treaty between the Government of the Philippines and the Government of the United States on Mutual Legal Assistance in Criminal Matters (PH-US MLAT), an investigation was conducted for the alleged violation of U.S. criminal laws, including the Foreign Corrupt Practices Act, conspiracy, wire fraud, and money laundering. The U.S. prosecutor sought assistance in obtaining official records from the Commission as part of the efforts to establish a case.

The evidence requested is deemed crucial for tracking the flow of suspected bribe payments and identifying other individuals involved in the alleged scheme. It is noteworthy that *Bautista, who served as the Chairman of the Commission, was formally charged in September 2023, in connection with allegations of receiving bribes in exchange for awarding a contract for election machines to Smartmatic Corp.* Bautista and others are alleged to have laundered the bribe money through multiple entities. It was revealed that *Bautista established a foreign shell company, which was used to receive bribe payments from Smartmatic.* The charges against Smartmatic and

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 92.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 94.

<sup>28</sup> *Id.* at 95.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

former Chairman Bautista are of public knowledge and tend to cause speculation and distrust in integrity of the electoral process.<sup>32</sup> (Emphasis supplied)

Considering the allegations of bribery and compromised procurement processes, as independently determined by foreign bodies, the COMELEC *En Banc* held that there exists an imminent threat to democratic processes.<sup>33</sup> *Citing its administrative powers over all aspects of elections, the COMELEC En Banc disallowed Smartmatic from participating in any public bidding for elections.*<sup>34</sup> The COMELEC *En Banc* also referred the matter to the SBAC for possible permanent disqualification and blacklisting of Smartmatic from all government procurement proceedings.<sup>35</sup>

However, the COMELEC *En Banc* categorically rejected Rio, Jr. et al.'s allegations of irregularities in the conduct of the 2022 NLE:

To be clear, *the Commission (En Banc) categorically states that no irregularities attended the conduct of the 2022 NLE.* The allegations of Petitioners pertaining to the alleged consistency in the ratio of transmitted results, the use of single IP address, and alleged discrepancies in the transmission and election returns have been sufficiently addressed by the Commission at length.

In fact, apart from the successful conduct of the Random Manual Audit attended by independent observers and accredited political parties showing the consistency in the results, and the observations by accredited citizens' arms[,] Petitioners themselves admitted that the parallel count conducted by the Parish Pastoral Council for Responsible Voting (PPCRV) matched the transmitted results.<sup>36</sup> (Emphasis supplied)

Hence, this Petition.

Smartmatic contends that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in (a) ruling on the disqualification and blacklisting of Smartmatic;<sup>37</sup> (b) wrongfully invoking Article IX-C, Section 2(1) of the Constitution<sup>38</sup> to justify its disqualification and blacklisting of Smartmatic;<sup>39</sup> and (c) whimsically and arbitrarily disregarding the procedure for disqualification and blacklisting under the GPRA and its 2016 Revised IRR.<sup>40</sup> Among other arguments, Smartmatic avers that it was Smartmatic TIM, and not Smartmatic PH, that entered in the SETS Contract for the 2022 NLE, but the petitions filed by Rio, Jr. et al. before the COMELEC wrongfully impleaded Smartmatic PH.<sup>41</sup> The COMELEC also arbitrarily disqualified and blacklisted Smartmatic based on grounds that were never raised in the petitions, i.e., its alleged involvement in

<sup>32</sup> *Id.* at 95–96.

<sup>33</sup> *Id.* at 96.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 97.

<sup>37</sup> *Id.* at 30–47.

<sup>38</sup> The cited provision states that the COMELEC shall “[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.”

<sup>39</sup> *Id.* at 47–53.

<sup>40</sup> *Id.* at 53–56.

<sup>41</sup> *Id.* at 35–37.

the US government's investigation against Bautista, and despite its categorical finding that no irregularities attended the conduct of the 2022 NLE.<sup>42</sup>

The COMELEC's citation of Article IX-C, Section 2(1) of the Constitution is also misplaced because the said provision only permits the COMELEC to enforce and administer *existing* laws and regulations.<sup>43</sup> It does not empower the COMELEC to supplant the procedures provided by the GPRA and its 2016 Revised IRR.<sup>44</sup> Government procurement is governed by the principles of transparency, competitiveness, streamlined procurement process, accountability, and public monitoring, and the COMELEC violated these principles when it refused to apply the GPRA and its 2016 Revised IRR.<sup>45</sup>

In support of its prayer for the issuance of a TRO and/or writ of preliminary injunction, Smartmatic claims that it has a clear and unmistakable right to participate in the public bidding for the lease of the FASTrAC because it complied with the bidding requirements and its disqualification has no legal basis.<sup>46</sup> Smartmatic also maintains that the implementation of the assailed Resolution will cause grave and irreparable injury to its goodwill and business reputation.<sup>47</sup>

On December 18, 2023, Smartmatic filed a Manifestation and Supplement to the Petition for *Certiorari* dated 6 December 2023 (With Application for the Issuance of a Status Quo Ante Order)<sup>48</sup> reiterating its prayer for the issuance of a TRO and/or writ of preliminary injunction and praying for the issuance of a status quo ante order (SQAQO). Smartmatic informed the Court that bid submission took place on December 14, 2023, and that the SMMT-TIM 2016, Inc. attempted to submit its bid, but the COMELEC directed the SBAC not to accept its bidding documents.<sup>49</sup> It also alleged that the SBAC declared a failure of bidding because the sole bidder—a joint venture composed of Miru Systems Co. Ltd., Integrated Computer Systems, St. Timothy Construction Corporation, and Centerpoint Solution Technologies, Inc. (Miru Systems)—failed to comply with certain documentary requirements under the GPRA and its 2016 Revised IRR.<sup>50</sup> As a result, the conduct of bidding was reset to January 4, 2024.<sup>51</sup>

On the same day, the Court *En Banc* issued a Resolution<sup>52</sup> ordering the COMELEC and Rio, Jr. et al. to personally file and serve their comments on the Petition and the prayer for the issuance of a TRO and/or writ of preliminary injunction within a non-extendible period of 10 days from notice, or by December 28, 2023.<sup>53</sup>

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<sup>42</sup> *Id.* at 37–47.

<sup>43</sup> *Id.* at 47–50.

<sup>44</sup> *Id.* at 50–53.

<sup>45</sup> *Id.* at 53–56.

<sup>46</sup> *Id.* at 56–60.

<sup>47</sup> *Id.* at 61–64.

<sup>48</sup> *Id.* at 728–741.

<sup>49</sup> *Id.* at 729.

<sup>50</sup> *Id.* at 732.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 722–724.

<sup>53</sup> *Id.* at 723.

On December 28, 2023, the COMELEC filed an Omnibus Motion (i) For the Reconsideration of the Honorable Court's Order dated 18 December 2023; and (ii) For an Additional Period to File Comment<sup>54</sup> requesting an additional period of seven days, or until January 4, 2024, to comment on the Petition and the prayer for a TRO and/or writ of preliminary injunction.<sup>55</sup>

The next day, December 29, 2023, Smartmatic filed its Opposition<sup>56</sup> to the COMELEC's Omnibus Motion, contending that it is a mere dilatory tactic intended to deprive Smartmatic of the opportunity to participate in the procurement process of the 2025 AES.

On January 2, 2024, Rio, Jr., Lagman, and Ysaac submitted their Comment (To the Petition dated 06 December 2023) With Opposition to the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.<sup>57</sup> They claim that the COMELEC acted within its constitutional mandate in disqualifying Smartmatic, and that the serious irregularities which occurred during the transmission of the election results in the 2022 NLE were sufficient basis for Smartmatic's disqualification.<sup>58</sup> As to Smartmatic's application for a TRO and/or writ of preliminary injunction, they argue that Smartmatic failed to establish a clear and unmistakable right to participate in the bidding for the lease of FASTrAC for the 2025 NLE.<sup>59</sup>

On January 4, 2024, the COMELEC submitted its Comment with Opposition to the Prayer for Status Quo Ante Order, Temporary Restraining Order, and/or Preliminary Injunction.<sup>60</sup> It raises procedural objections to the Petition, arguing that Smartmatic's direct resort to the Court violates the rule on hierarchy of courts.<sup>61</sup> Moreover, Smartmatic failed to file a motion for reconsideration before the COMELEC *En Banc*, which is a prerequisite to the filing of a petition for *certiorari*.<sup>62</sup> A motion for reconsideration is not a prohibited pleading since the COMELEC proceedings in this case are administrative, rather than quasi-judicial, in nature; accordingly, the prohibition on filing motions for reconsideration in quasi-judicial proceedings before the COMELEC does not apply. As a result, Smartmatic's resort to *certiorari*, without first seeking reconsideration of the assailed Resolution, did not toll the finality of the assailed Resolution.<sup>63</sup>

The COMELEC maintains that the GPRA and its 2016 Revised IRR restrict its power to disqualify a prospective bidder.<sup>64</sup> Thus, under the

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<sup>54</sup> *Id.* at 747–750.

<sup>55</sup> *Id.* at 748.

<sup>56</sup> *Id.* at 759–770.

<sup>57</sup> *Id.* at 777–796. To date, the Court has not received a comment from private respondent Odoño.

<sup>58</sup> *Id.* at 782–793.

<sup>59</sup> *Id.* at 793–794.

<sup>60</sup> *Id.* at 798–880.

<sup>61</sup> *Id.* at 809–816.

<sup>62</sup> *Id.* at 816–820.

<sup>63</sup> *Id.* at 817–818, 820–821.

<sup>64</sup> *Id.* at 821–839.

circumstances, it properly and reasonably exercised its broad constitutional powers, and it did not violate Smartmatic's right to due process.<sup>65</sup>

The COMELEC also opposes Smartmatic's prayer for the issuance of a TRO, writ of preliminary injunction, and/or SQAQO, maintaining that Smartmatic failed to avail of an ordinary, speedy, and adequate remedy, i.e., the filing of a motion for reconsideration.<sup>66</sup> Moreover, Smartmatic did not establish any clear legal right that needs to be protected or any circumstance warranting the issuance of an SQAQO on equitable grounds, and the public stands to suffer greater injury if an injunction is issued, as voters will be deprived of the full benefits of an automated election.<sup>67</sup>

On January 5, 2024, Rio, Jr., Lagman, and Ysaac filed a Manifestation,<sup>68</sup> informing the Court that they filed a petition with the COMELEC docketed as EM Case No. 24-001, titled "In the Matter of the Petition for the Honorable Commission on Elections to Revise the Terms of Reference ("TOR") for the 2025 National and Local Elections Automation Project by Adopting a Hybrid Election System Consisting of Manual Voting and Counting of Votes with Automated Transmission and Canvassing of Results."

On January 11, 2024, Smartmatic filed a Manifestation with Reiterative Motion (For the Issuance of Temporary Restraining Order and/or Status Quo Ante Order).<sup>69</sup> According to Smartmatic, bid submission pushed through on January 8, 2024 (instead of January 4, 2024, as previously announced), and the SBAC refused to accept the bid of a joint venture composed of SMMT-TIM 2016 Inc., Smartmatic Holdings Inc., and Jarltech International Inc.<sup>70</sup> Miru Systems was again the lone bidder, and the SBAC opened its bid and declared it eligible.<sup>71</sup> As a result, the SBAC was scheduled to proceed with the post-qualification process with Miru Systems.<sup>72</sup> Smartmatic repeated its prayer for the issuance of a TRO and/or writ of preliminary injunction, SQAQO, and an order annulling any and all proceedings which proceeded or will proceed pursuant to the implementation of the assailed Resolution.<sup>73</sup>

In its January 23, 2024 Resolution,<sup>74</sup> the Court resolved, among others, to require the COMELEC and Rio, Jr. et al. to show cause as to why they should not be disciplined for not filing their respective comments in compliance with the Court's December 18, 2023 Resolution.<sup>75</sup>

On January 26, 2024, COMELEC submitted a Motion for Leave to File and Admit the Attached Counter-Manifestation with Motion to Dismiss,<sup>76</sup>

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<sup>65</sup> *Id.* at 840–864.

<sup>66</sup> *Id.* at 867–868.

<sup>67</sup> *Id.* at 868–873.

<sup>68</sup> *Id.* at 881–883.

<sup>69</sup> *Id.* at 972–978.

<sup>70</sup> *Id.* at 973.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 975.

<sup>74</sup> *Id.* at 988–991.

<sup>75</sup> *Id.* at 989–990.

<sup>76</sup> *Id.* at 992–1003.

where it confirmed that Miru Systems was required to submit the necessary business and financial documents for post-qualification evaluation.<sup>77</sup> The COMELEC moved for the dismissal of the Petition for being moot and academic<sup>78</sup> because the act that Smartmatic sought to enjoin, i.e., preventing Smartmatic from bidding for the lease of FASTrAC, had already been consummated and post-qualification proceedings were already underway.<sup>79</sup>

On February 29, 2024, the COMELEC filed a Motion for Leave to File and Admit Manifestation,<sup>80</sup> informing the Court that the SBAC declared Miru Systems as the post-qualified bidder with the Single Calculated and Responsive Bid for the lease of FASTrAC for the 2025 NLE.<sup>81</sup> The SBAC recommended the issuance of the Notice of Award, contract, and Notice to Proceed to Miru Systems, and the COMELEC *En Banc* approved this recommendation.<sup>82</sup>

On March 13, 2024, the COMELEC filed another Motion for Leave to File and Admit Manifestation,<sup>83</sup> this time informing the Court that the COMELEC and Miru Systems signed the Contract for the Lease of FASTrAC for the 2025 NLE (2025 FASTrAC Contract) on March 11, 2024.<sup>84</sup>

On March 18, 2024, the COMELEC filed its third Motion for Leave to File and Admit Manifestation<sup>85</sup> informing the Court that the US DOJ had already unsealed the criminal complaint against Bautista.<sup>86</sup> The COMELEC provided the Court with a copy of the complaint,<sup>87</sup> which alleged, among others, that a group of related unnamed corporations made several payments to Bautista to secure the award of the AES contracts for the 2016 NLE. It was signed by a certain Colberd Almeida, a Special Agent of the Homeland Security Investigations, US Department of Homeland Security.<sup>88</sup> The last paragraph of the attached supporting affidavit, also signed by Mr. Almeida, states:

#### CONCLUSION

70. Based on the foregoing, your Affiant submits there is probable cause to issue a criminal complaint and arrest warrant charging Juan Andres “Andy” Donato Bautista with conspiring to launder monetary instruments and conspiring to engage in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. §§ 1956(a)(2)(A), 1956(a)(2)(B)(i), and 1957(a); all in violation of 18 U.S.C. § 1956(h); and laundering and attempted laundering of monetary instruments, in violation of 18 U.S.C. §§ 1956(a)(2)(A) and 1956(a)(2)(B)(i).

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<sup>77</sup> *Id.* at 994.

<sup>78</sup> *Id.* at 995–998.

<sup>79</sup> *Id.* at 998–999.

<sup>80</sup> *Id.* at 1017–1028.

<sup>81</sup> *Id.* at 1018.

<sup>82</sup> *Id.* at 1018–1020.

<sup>83</sup> *Id.* at 1056–1066.

<sup>84</sup> *Id.* at 1057.

<sup>85</sup> *Id.* at 1067–1076.

<sup>86</sup> *Id.* at 1068.

<sup>87</sup> *Id.* at 1079–1109.

<sup>88</sup> *Id.* at 1108.

FURTHER YOUR AFFIANT SAYETH NAUGHT.<sup>89</sup>

On March 25, 2024, the COMELEC submitted a Manifestation of *Profuse Apology* and Motion<sup>90</sup> in compliance with the Court's show cause order in its January 23, 2024 Resolution. The COMELEC claims that it was impossible for it to comply with the non-extendible period under the Court's December 18, 2023 Resolution to personally file its Comment due to the voluminous documents involved and the intervening holidays.<sup>91</sup>

We first dispose of the COMELEC's procedural objections.

Contrary to the COMELEC's protestations, relaxation of the doctrine of hierarchy of courts and direct recourse to the Court are justified.

In *Causing v. People*,<sup>92</sup> the Court discussed the doctrine of hierarchy of courts as follows:

Certainly, regional trial courts, the Court of Appeals (CA), and the Court share original and concurrent jurisdiction in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. However, *the doctrine of hierarchy of courts prevents parties from randomly selecting which among these forums their actions will be directed*. Thus, as a rule, direct resort to the Court is improper because *the Supreme Court is a court of last resort and must remain so in order for it to satisfactorily perform its constitutional functions*.<sup>93</sup> (Emphasis supplied, citations omitted)

However, the Court has provided certain exceptions to the doctrine of hierarchy of courts, namely: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) in cases of first impression; (d) the constitutional issues raised are better decided by the Supreme Court; (e) the time element or exigency in certain situations; (f) the filed petition reviews an act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; and (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.<sup>94</sup>

In *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*,<sup>95</sup> the Court explained that the decisive factor in permitting the invocation of the Court's original jurisdiction in the issuance of

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 1111–1122.

<sup>91</sup> *Id.* at 1114. To date, the Court has yet to receive any compliance from respondents Rio, Jr., Lagman, and Ysaac.

<sup>92</sup> G.R. No. 258524, October 11, 2023 [Per J. Inting, Third Division].

<sup>93</sup> *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>94</sup> *Bayyo Association, Inc. v. Secretary Tugade*, G.R. No. 254001, July 11, 2023 [Per J. Singh, *En Banc*] at 14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. *Citing The Diocese of Bacolod v. COMELEC*, 757 Phil. 301, 331–335 (2015) [Per J. Leonen, *En Banc*].

<sup>95</sup> 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

extraordinary writs is the nature of the question raised by the parties.<sup>96</sup> It held that *the Court will only allow direct recourse when the issue raised is a pure question of law.*<sup>97</sup> When a question before the Court involves a determination of a factual issue that is indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of compelling reasons.<sup>98</sup>

The present Petition questions the COMELEC's non-compliance with the GPRA and its 2016 Revised IRR during the procurement of the lease of FASTrAC for the 2025 NLE. In its defense, the COMELEC cites its constitutional mandate to enforce and administer all laws relating to elections, and claims that this mandate permits it to disqualify Smartmatic without resort to the applicable procedure under the GPRA. The controversy raises genuine issues of constitutionality that are of transcendental importance and must be addressed at the most immediate time. Moreover, the factual background of the present controversy is not disputed. As the only issue before the Court is a pure question of law, i.e., whether the COMELEC erred in disqualifying Smartmatic without following the procedure prescribed by the GPRA and its 2016 Revised IRR, the instant Petition is an exception to the doctrine of hierarchy of courts.

It is also worth noting that Section 58 of the GPRA, does not bar the Court from exercising jurisdiction over the dispute. It states:

**SEC. 58. Report to Regular Courts; Certiorari.** – *Court action may be resorted to only after the protests contemplated in [Article XVII] shall have been completed.* Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure. (Emphasis supplied)

An examination of Article XVII of the GPRA demonstrates that the “protests contemplated in [Article XVII]” refer to protests against decisions of the BAC, filed before the head of the procuring entity.<sup>99</sup> In this case, the assailed Resolution is not a decision resolving a protest from a decision rendered by the SBAC; rather, it resolved the original actions filed by Rio, Jr. et al. before the COMELEC *En Banc*, which did not challenge any action or decision of the SBAC.

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<sup>96</sup> *Id.* at 175.

<sup>97</sup> *Ocampo v. Macapagal-Arroyo*, G.R. No. 182734, June 27, 2023 [Per J. Gaerlan, *En Banc*] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. *Citing GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

<sup>98</sup> *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, 849 Phil. 120, 187 (2019) [Per J. Jardeleza, *En Banc*].

<sup>99</sup> GPRA, sec. 55 provides:

**SEC. 55. Protests on Decisions of the BAC.** – Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

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The COMELEC also maintains that Smartmatic's failure to file a motion for reconsideration before the COMELEC *En Banc* is fatal to its Petition.

On this score, the COMELEC's exercise of its powers under Article IX-C, Section 2(1) of the Constitution, is administrative in nature,<sup>100</sup> and the COMELEC is correct insofar as it argues that the prohibition on motions for reconsideration under the COMELEC Rules of Procedure<sup>101</sup> does not apply to the petitions filed by Rio, Jr. et al. However, the COMELEC is mistaken in insisting that Smartmatic's failure to seek reconsideration of the assailed Resolution renders the Petition dismissible.

In *Querubin v. Commission on Elections*,<sup>102</sup> the Court resolved a petition for *certiorari* under Rule 64 filed by certain private individuals against the COMELEC *En Banc*. In the COMELEC's challenged decision, it declared Smartmatic TIM, Smartmatic International Holding B.V., and Jarltech International Corporation as the bidder with the lowest calculated responsive bid in the COMELEC's "Two-Stage Competitive Bidding for the Lease of Election Management System (EMS) and Precinct-Based Optical Mark Reader (OMR) or Optical Scan (OP-Scan) System."<sup>103</sup>

In dismissing the petition, the Court held that the COMELEC *En Banc* rendered the assailed decision in the exercise of its administrative powers; consequently, a petition under Rule 65 was proper and the petition filed under Rule 64 was dismissible outright for being the wrong remedy:

As applied herein, recall that the instant petition revolves around the issue of whether or not Smartmatic JV is eligible to participate in the bidding process for the COMELEC's procurement of 23,000 units of optical mark readers. The case does not stem from an election controversy involving the election, qualification, or the returns of an elective office. Rather, it pertains to the propriety of the polling commission's conduct of the procurement process, and its initial finding that Smartmatic JV is eligible to participate therein. It springs from the COMELEC's compliance with the Constitutional directive to enforce and administer all laws and regulations relative to the conduct of an election. Specifically, it arose from the electoral commission's exercise of Sec. 12 of RA 8436, otherwise known as the Automated Elections Law, as amended by RA 9369, which authorized the COMELEC "to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities, and other services, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulations."

The subject matter of Smartmatic JV's protest, therefore, does not qualify as one necessitating the COMELEC's exercise of its adjudicatory or quasi-judicial powers that could properly be the subject of a Rule 64 petition, but is, in fact, administrative in nature. Petitioners should then have sought redress *via* a petition for the issuance of the extraordinary writ

<sup>100</sup> *Aggabao v. COMELEC*, G.R. No. 258456, July 26, 2022 [Per J. Lazaro-Javier, *En Banc*] at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>101</sup> COMELEC Rules of Procedure, Rule 13, sec. 1(d) provides that motions for reconsideration of an *en banc* ruling, resolution, order, or decision, are prohibited except in election offense cases.

<sup>102</sup> 774 Phil. 766 (2015) [Per J. Velasco, Jr., *En Banc*].

<sup>103</sup> *Id.* at 787-788.

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of *certiorari* under Rule 65 to assail the COMELEC *en banc*'s June 29, 2015 Decision granting the protest.<sup>104</sup> (Emphasis supplied, citations omitted)

Similarly, the present Petition challenges a ruling of the COMELEC *En Banc* in relation to its procurement activities. Considering that the assailed Resolution disqualified Smartmatic from participating in any public bidding process for elections, the dispute “pertains to the propriety of the polling commission’s conduct of the procurement process” and involves an exercise of the COMELEC’s administrative, and not quasi-judicial, functions. Accordingly, the COMELEC Rules of Procedure are inapplicable to the present dispute, and Smartmatic is not required to seek a reconsideration of the COMELEC *En Banc*’s Resolution.

This conclusion is supported by the plain text of the COMELEC Rules of Procedure. While Section 2 states that these Rules apply to all actions and proceedings brought before the COMELEC, with Part VI applying to election contests and *quo warranto* cases cognizable by courts of general jurisdiction, Section 5 only defines the following actions: ordinary actions, i.e., election protests, *quo warranto*, and appeals from decisions of courts in election protest cases; special actions, i.e., petitions to deny due course to certificates of candidacy, declare a candidate a nuisance candidate, or disqualify a candidate or postpone or suspend an election; special cases or pre-proclamation cases, and special reliefs consisting of *certiorari*, prohibition, and *mandamus* in limited cases;<sup>105</sup> and contempt. ***Proceedings such as those that led to the issuance of the assailed Resolution are not included in the foregoing enumeration, nor are they analogous to any of the enumerated cases. Expressio unius est exclusio alterius: the express mention of one person, thing, act, or consequence excludes all others.***<sup>106</sup>

Notwithstanding the foregoing, the circumstances of the present controversy call for the application of the following exceptions to the rule requiring a motion for reconsideration before resorting to *certiorari*: there is urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government, and the issue raised is one purely of law and public interest is involved.<sup>107</sup>

The urgent need to resolve this dispute is underscored by the impending 2025 NLE. Public interest in ensuring the conduct of free and fair elections is also undoubtedly involved in this controversy. Contrary to the COMELEC’s posturing, the dispute involves much more than Smartmatic’s private financial interests. The COMELEC’s choice of supplier for the FASTrAC is a matter

<sup>104</sup> *Id.* at 798–799.

<sup>105</sup> COMELEC Rules of Procedure, Rule 28, sec. 1, provides:

**Sec. 1. When available.** – In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective Municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission *en banc* may hear and decide petitions for *certiorari*, prohibition or *mandamus*.

<sup>106</sup> *Development Bank of the Philippines v. Commission on Audit*, 827 Phil. 818, 828 (2018) [Per J. Gesmundo, *En Banc*].

<sup>107</sup> *Rapid Manpower Consultants, Inc. v. De Guzman*, 770 Phil. 334, 340 (2015) [Per J. Perez, First Division].

of significant public interest, as the integrity, freedom, and fairness of automated elections depend largely on the AES to be utilized. In addition, the Petition presents the Court with an opportunity to further define the scope of the GPRA, as well as the duty of all government branches and instrumentalities to comply with this law and its 2016 Revised IRR. Thus, Smartmatic's failure to file a motion for reconsideration of the assailed Resolution will not prevent this Court from exercising jurisdiction over this Petition.

Next, we resolve Smartmatic's prayer for the issuance of a TRO and/or writ of preliminary injunction and SQAQO.

A writ of preliminary injunction is defined as:

... "an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction." It is aimed to "[p]revent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully."<sup>108</sup> (Citations omitted)

The requisites for the issuance of a writ of preliminary injunction are: (a) the applicant must have a clear and unmistakable right to be protected, that is, a right in *esse*; (b) there is a material and substantial invasion of such right; (c) there is an urgent need for the writ to prevent irreparable injury to the applicant; and, (d) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.<sup>109</sup> Where there is doubt or dispute as to the plaintiff's right, a preliminary injunction should not issue, as the possibility of irreparable damage to the plaintiff, absent proof of an actual existing right, does not warrant the issuance of a writ of preliminary injunction.<sup>110</sup>

In this case, Smartmatic failed to establish the elements of a right in *esse* and irreparable injury.

First, Smartmatic does not have a right in *esse* which the Court may enforce by issuing a TRO and/or writ of preliminary injunction.

In *Amalgamated Motors Philippines, Inc. v. Secretary of the Department of Transportation and Communications*,<sup>111</sup> the Land Transportation Office published an Invitation to Bid for the procurement of driver's license cards. Petitioner Amalgamated Motors Philippines, Inc. (AMPI) purchased the bidding documents and terms of reference for the

<sup>108</sup> *Republic v. Power Ads Intelli-Concepts Advertising and Production Corp.*, G.R. No. 243931, July 14, 2021 [Per J. Inting, Third Division]. (Citations omitted)

<sup>109</sup> *Bureau of Customs v. Court of Appeals-Cagayan de Oro Station*, G.R. No. 192809 et al., April 26, 2021 [Per J. Hernando, Third Division].

<sup>110</sup> *Republic v. Power Ads Intelli-Concepts Advertising and Production Corp.*, G.R. No. 243931, July 14, 2021 [Per J. Inting, Third Division].

<sup>111</sup> G.R. No. 206042, July 4, 2022 [Per J. J. Lopez, Second Division].

bid.<sup>112</sup> However, certain issues arose and respondent Department of Transportation and Communications (DOTC) created a Special Bids and Awards Committee, which published a new Invitation to Bid.<sup>113</sup> Interested parties who purchased the original bid documents, such as AMPI, would be issued the new bid documents upon presentation of their receipts for the previous documents.<sup>114</sup>

AMPI questioned the validity of the DOTC's proceedings before the Regional Trial Court (RTC), which granted AMPI's application for a writ of preliminary injunction.<sup>115</sup> On *certiorari* to the Court of Appeals (CA), however, the CA reversed the RTC and held that AMPI failed to establish any clear and unmistakable right that would justify injunctive relief.<sup>116</sup>

The Supreme Court affirmed the CA, ruling that *AMPI was merely a prospective bidder whose alleged right was, at best, merely speculative.*<sup>117</sup> The Court also rejected AMPI's contention that, as the current supplier of driver's license cards, it had sufficient legal interest and a real right regarding the proper implementation of procurement laws.<sup>118</sup> There was no urgent need for the writ to prevent irreparable injury to AMPI as it could still participate in the bidding process, and AMPI failed to substantiate its contention that it stood to lose billions of pesos, which in any event, is a form of damage easily capable of mathematical computation.<sup>119</sup>

Similar to *Amalgamated Motors Philippines, Inc.*, Smartmatic is merely a prospective bidder in the COMELEC's procurement of the lease of FASTrAC for the 2025 NLE. As such, Smartmatic is bereft of any "actual, clear, and positive right"<sup>120</sup> that would warrant the issuance of an injunctive order.

It must be stressed that any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.<sup>121</sup> The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial; otherwise, there would be a prejudgment of the main case and a reversal of the rule on the burden of proof.<sup>122</sup> In this case, it is precisely Smartmatic's alleged right not to be disqualified prior to the evaluation of its bid that is at the heart of the dispute. Such being the case, granting Smartmatic's application for injunctive relief would have preempted the Court's ruling on the principal issue raised in the Petition.

<sup>112</sup> *Id.* at 2. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 3.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 7-9.

<sup>118</sup> *Id.* at 11.

<sup>119</sup> *Id.* at 13-14.

<sup>120</sup> *Id.* at 10.

<sup>121</sup> *Bicol Medical Center v. Botor*, 819 Phil. 447, 461 (2017) [Per J. Leonen, Third Division], citing *Executive Secretary v. Forerunner Multi Resources, Inc.*, 701 Phil. 64, 69 (2013) [Per J. Carpio, Second Division].

<sup>122</sup> *Barbieto v. Court of Appeals*, 619 Phil. 819, 842 (2009) [Per J. Chico-Nazario, Third Division].

*Second*, the element of irreparable injury is absent.

To bolster its claim of irreparable injury, Smartmatic cites *Evy Construction and Development Corp. v. Valiant Roll Forming Sales Corp.*,<sup>123</sup> where the Court stated that:

Injury is considered irreparable if “there is no standard by which [its] amount can be measured with reasonable accuracy.” The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss. For this reason, *the loss of goodwill and business reputation, being unquantifiable, would be considered as grave and irreparable damage.*<sup>124</sup> (Emphasis supplied, citations omitted)

However, Article 2205 of the Civil Code provides that damages may be awarded for injury to a plaintiff’s business standing or commercial credit. The amount of temperate damages to be awarded is usually left to the discretion of the courts, but the same should be reasonable.<sup>125</sup>

In *Tanay Recreation Center and Development Corp. v. Fausto*,<sup>126</sup> the Court explained the application of Article 2205 of the Civil Code to awards of temperate damages:

An award of damages for loss of goodwill or reputation falls under actual or compensatory damages as provided in Article 2205 of the Civil Code, to wit:

Art. 2205. Damages may be recovered:

- (1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;
- (2) For injury to the plaintiff’s business standing or commercial credit.

Even if it is not recoverable as compensatory damages, it may still be awarded in the concept of temperate or moderate damages. In arriving at a reasonable level of temperate damages to be awarded, trial courts are guided by the ruling that:

... There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. *For instance, injury to one’s commercial credit or to the goodwill of a business firm is often hard to show certainty in terms of money.* Should damages be denied for that reason? *The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant’s wrongful act.*<sup>127</sup> (Emphasis supplied, citation omitted)

<sup>123</sup> 820 Phil. 123 (2017) [Per J. Leonen, Third Division].

<sup>124</sup> *Id.* at 139.

<sup>125</sup> *Yamauchi v. Suñiga*, 830 Phil. 122, 137 (2018) [Per J. Martires, Third Division].

<sup>126</sup> 495 Phil. 400 (2005) [Per J. Austria-Martinez, Second Division].

<sup>127</sup> *Id.* at 418–419.

Smartmatic's own citation of *Evy Construction and Development Corp.* is misplaced. In that case, the Court upheld the RTC's denial of the petitioner's application for the issuance of a temporary restraining order and writ of preliminary injunction, declaring that *the grant of injunctive relief could operate as a prejudgment in the main case* and that the possible damage claimed by the petitioner could be compensated with an award of damages:

As in *Spouses Chua*, respondent's attachment liens dated September 18, 2007, October 2, 2007, and November 8, 2007, if valid, may have been superior to whatever right petitioner may have acquired by virtue of the Deed of Absolute Sale, which was only registered on November 20, 2009. However, *the validity of the liens and the validity of the Deed of Absolute Sale are factual matters that have yet to be resolved by the trial court.* The trial court must also determine whether or not respondent had prior knowledge of the sale.

*Thus, no injunctive writ could be issued pending a final determination of petitioner's actual and existing right over the property. The grant of an injunctive writ could operate as a prejudgment of the main case.*

....

Thus, *what petitioner actually seeks is the removal of the annotations on its title, which is precisely what it asked for in its Complaint for Quieting of Title/Removal of Cloud, Annulment of Execution Sale and Certificate of Sale, and Damages before the trial court.* Injunctive relief would have no practical effect considering that the purported damage it seeks to be protected from has already been done. Therefore, *its proper remedy is not the issuance of an injunctive writ but to thresh out the merits of its Complaint before the trial court.*

....

The trial court, in the exercise of its discretion, denied petitioner's application for the issuance of a temporary restraining order and writ of preliminary injunction on the ground that petitioner would still have sufficient relief in its prayer for damages in its Complaint. In the event that the annotations on petitioner's title are found by the trial court to be invalid, *petitioner would have adequate relief in the removal of the annotations and in the award of damages.* Therefore, the trial court acted within the bounds of its discretion.<sup>128</sup> (Emphasis supplied, citations omitted)

In the same manner, the proper remedy here "is not the issuance of an injunctive relief, but to thresh out the merits" of Smartmatic's claim.

Even granting that injury to business reputation or goodwill is indeed irreparable for the purpose of injunctive relief, Smartmatic failed to substantiate its claim that it stands to suffer such injury. In its Petition, Smartmatic describes its alleged injury as follows:

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<sup>128</sup> *Evy Construction and Development Corp. v. Valiant Roll Forming Sales Corp.*, 820 Phil. 123, 138, 140-141 (2017) [Per J. Leonen, Third Division].

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To reiterate, Smartmatic was disqualified and blacklisted from the 2025 AES bid even prior to the SBAC's examination of its bidding documents and without compliance with the procedure outlined in R.A. 9184 and its IRR. Worse, the sole basis for Smartmatic's disqualification and blacklisting [by] the COMELEC is an unrelated and foreign issue which is clearly not a ground under R.A. 9184 and its IRR. Smartmatic has thus been deprived of its right to participate in the 2025 AES bid based on an unresolved and unsubstantiated issue and following an extralegal procedure outside of R.A. 9184 and its IRR.

Thereafter, *as soon as the Assailed Resolution was issued, media reports started spreading false imputations against Smartmatic.*

To illustrate, COMELEC's specific targeting of Smartmatic becomes more apparent through Chairman Garcia[s] public denunciations of Smartmatic's integrity to participate in the 2025 AES. Chairman Garcia described the move to disqualify Smartmatic as a decision to "maintain the integrity of our electoral process." Chairman Garcia clothed the move to disqualify Smartmatic in patriotic undertones, stating that the disqualification was "*Para sa Bayan.*" Undoubtedly, *the disqualification of Smartmatic, together with the statements of the Chairman of the COMELEC, sends the message to the public that Smartmatic has been engaging in irregular activities that affected the results of the previous NLE, to the extreme prejudice of Smartmatic as a company.*

Further, the COMELEC in issuing the Assailed Resolution and blacklisting Smartmatic from participating in the bidding for the 2025 AES, placed credibility on the unsubstantiated and unresolved allegation of bribery charges against Smartmatic and deemed the same true, or at least worthy of consideration to be deemed truthful. *Such an acknowledgment by the COMELEC, being a constitutional body, would naturally be given great weight not only by the public but also by other government bodies with whom Smartmatic may have dealings with [sic], whether presently or in the future. Hence, such a serious imputation, acknowledged by the COMELEC as somehow truthful, causes grave injury to Smartmatic's goodwill and reputation.*<sup>129</sup> (Emphasis supplied)

The above arguments focus on the purported wrongful actions of Chairperson Garcia and the COMELEC *En Banc*, without elaborating on the exact nature and scope of the supposed "grave injury to Smartmatic's goodwill and reputation" or the "extreme prejudice" that Smartmatic allegedly suffered. In effect, Smartmatic asks the Court to assume that the COMELEC's actions will cause injury to Smartmatic's goodwill and business reputation, without providing any evidence of the existence or possibility of such injury.

Neither did Smartmatic establish the need for an SQAQO, which has been described as:

. . . "an interlocutory [order] created by the Supreme Court *En Banc* to afford remedies to parties" and for "compelling reasons that cater to the demands of justice and equity." As such, the issuance of an SQAQO is not governed by any special rule, unlike restraining orders and injunctive writs. In issuing an SQAQO, *the Court primarily considers the following factors: (i) justice and equity considerations; (ii) when conservation of*

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<sup>129</sup> *Rollo*, pp. 62-63.

*the status quo is desirable or essential; (iii) the [prevention] of any serious damage; and (iv) where constitutional issues are raised.*<sup>130</sup> (Emphasis supplied)

The discussion on Smartmatic's prayer for a writ of preliminary injunction applies with equal force to Smartmatic's prayer for an SQAQO. The damage that Smartmatic may suffer from its disqualification is compensable, and there are no justice or equity considerations that necessitate the issuance of an SQAQO.

Finally, We reject the COMELEC's contention that the Petition has been rendered moot and academic with the COMELEC's award of the 2025 FASTrAC Contract to Miru Systems.

In *Province of Maguindanao del Norte v. Bureau of Local Government Finance*,<sup>131</sup> the Court explained that a case is moot if it ceases to present a justiciable controversy because of the supervening events such that a declaration thereon would be of no practical use or value.<sup>132</sup>

To recall, the assailed Resolution disqualified Smartmatic from "participating in *any* public bidding process for elections."<sup>133</sup> Contrary to the COMELEC's position, the COMELEC's award of the 2025 FASTrAC Contract to Miru Systems does not render the Petition moot, because the COMELEC disqualified Smartmatic from participating in *any* public bidding process for elections, not just in the bidding for the AES to be deployed in the 2025 NLE.

Having disposed of the COMELEC's procedural contentions, We now turn to the substance of the dispute.

In resolving the Petition, the Court will not consider the merits of the criminal complaint against Bautista or weigh the truth or falsity of Rio, Jr. et al.'s allegations of irregularities in the 2022 NLE. Such matters are beyond the scope of these proceedings. The issue before the Court is simple: *Did the COMELEC En Banc act with grave abuse of discretion amounting to lack or excess of jurisdiction in disqualifying Smartmatic, a prospective bidder, in a manner contrary to the GPRA and its 2016 Revised IRR?*

Smartmatic contends that in issuing the assailed Resolution, the COMELEC deviated from the procedure for disqualification and blacklisting under the GPRA and its 2016 Revised IRR. The COMELEC does not dispute this contention or claim that it complied with the GPRA; instead, the COMELEC maintains that the GPRA is inapplicable to its disqualification of

<sup>130</sup> *Okada v. Tiger Resort, Leisure & Entertainment, Inc.*, G.R. No. 256470, November 13, 2023 [Unsigned Resolution, First Division], citing J. Leonen, Separate Concurring Opinion, *ABS-CBN Corporation v. National Telecommunications Commission*, 879 Phil. 507, 551 (2020) [Per J. Perlas-Bernabe, *En Banc*].

<sup>131</sup> G.R. No. 265373, November 13, 2023 [Per J. Lazaro-Javier, Second Division].

<sup>132</sup> *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. Citing *Land Bank of the Phils. v. Fastech Synergy Phils., Inc.*, 816 Phil. 422, 443-444 (2017) [Per J. Leonen, Second Division], citing further *Timbol v. Commission on Elections*, 754 Phil. 578, 584 (2015) [Per J. Leonen, *En Banc*].

<sup>133</sup> *Rollo*, p. 98. (Emphasis supplied)

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Smartmatic, which was based on its broad constitutional mandate to enforce and administer all laws relating to elections.

The Court is guided by the following definition of grave abuse of discretion, which is the sole standard of review in petitions for *certiorari*:

[T]he sole office of a writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment to be “equivalent to lack of jurisdiction.” Furthermore, the abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law.<sup>134</sup>

*We find that the COMELEC En Banc acted with grave abuse of discretion when it rendered the assailed Resolution in disregard of the GPRA and its 2016 Revised IRR.* The COMELEC’s constitutional mandate does not permit it to cast aside procurement laws and regulations, and impose its own pre-qualification regime, disqualifying an interested private contractor prior to the latter’s submission of its bid and the SBAC’s evaluation of its eligibility documents.

At the outset, Smartmatic’s claim that it was denied due process lacks merit. Granting that it was Smartmatic PH, and not Smartmatic TIM, that was impleaded before the COMELEC *En Banc*, Smartmatic TIM was also able to participate in the proceedings before the COMELEC *En Banc*,<sup>135</sup> and is now one of the petitioners before the Court. In addition, the issues relating to the investigation by the US DOJ against Bautista were not introduced for the first time in the assailed Resolution; rather, as pointed out by the COMELEC *En Banc* in its Comment, they were first mentioned in Rio, Jr. et al.’s Motion for Early Resolution filed before the COMELEC *En Banc*<sup>136</sup> and later repeated in Rio, Jr. et al.’s Memorandum.<sup>137</sup>

Accordingly, the COMELEC *En Banc* did not violate Smartmatic’s right to due process.

Under the GPRA, procurement by the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by the following principles: transparency in procurement and implementation; competitiveness, by extending equal opportunity to eligible and qualified private contractors; a streamlined and uniform procurement

<sup>134</sup> *Manggagawa sa Komunikasyon ng Pilipinas v. PLDT, Inc.*, G.R. Nos. 244695 et al., February 14, 2024 [Per J. Zalameda, First Division] at 18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>135</sup> In its Petition, Smartmatic states:

7.21. Thus, on 11 October 2023, Smartmatic filed its Entry of Appearance with Motion for Additional Time of even date, where it stated that the Petitions incorrectly refer to Smartmatic PH considering that the entity that entered into the SETS Contract was Smartmatic TIM. All the later submissions of Smartmatic TIM likewise states [sic] the correction of such fact. (*Rollo*, p. 20)

<sup>136</sup> *Rollo*, p. 854.

<sup>137</sup> *Id.* at 855.

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process; accountability; and monitoring of the procurement process and the implementation of awarded contracts.<sup>138</sup>

In *Estrella v. Commission on Audit*,<sup>139</sup> the Court explained the purpose of the GPRA as follows:

*RA No. 9184 was enacted to promote transparency in the procurement process and implementation of contracts, as well as to provide a platform of competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. . . . Competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition, and to preclude suspicion of favoritism and anomalies in the execution of public contracts.* Thus, the BAC was tasked to “advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, [and] recommend award of contracts.”<sup>140</sup> (Emphasis supplied, citations omitted)

To this end, and by its plain language, the GPRA applies to the procurement of infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, by *all branches and instrumentalities of government, its departments, offices, and agencies, including government-owned and/or -controlled corporations and local government units*.<sup>141</sup> Where the words of a statute or the 1987 Constitution are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.<sup>142</sup> The GPRA does not include any exceptions for the COMELEC or any other branch or instrumentality of government, and it is not for the Court to judicially legislate any such exception.

Under the GPRA, the general rule is that procurement by all branches and instrumentalities of government must be done by public bidding.<sup>143</sup> The requirement of public bidding in government contracts is not an idle ceremony, but a requirement designed to protect the public interest by ensuring a method that arrives at the most fair and reasonable price for the government.<sup>144</sup> In this regard, *administrative rules and regulations governing procurement are enacted for strict and faithful compliance to protect the government coffers from unscrupulous transactions*.<sup>145</sup> The laudable purposes of public bidding will be undermined if bidders and prospective bidders are placed on unequal playing fields. Thus, the Court has held that:

<sup>138</sup> Republic Act No. 9184 (2003), sec. 3. Government Procurement Reform Act.

<sup>139</sup> G.R. No. 252079, September 14, 2021 [Per J. M. Lopez, *En Banc*].

<sup>140</sup> *Id.*

<sup>141</sup> Republic Act No. 9184 (2003), sec. 4. Government Procurement Reform Act.

<sup>142</sup> *Dela Cruz v. Wellex Group, Inc.*, G.R. No. 247439, August 23, 2023 [Per J. Singh, Third Division] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>143</sup> *See Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019 [Per J. Gesmundo, *En Banc*].

<sup>144</sup> *Light Rail Transit Authority v. Joy Mart Consolidated, Inc.*, G.R. Nos. 211281 & 212602, February 15, 2022 [Per J. Caguioa, First Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>145</sup> *Estrella v. Commission on Audit*, G.R. No. 252079, September 14, 2021 [Per J. M. Lopez, *En Banc*]. (Emphasis supplied)

Case law states that competition requires not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, and the same undertaking, but also that it be legitimate, fair and honest and not designed to injure or defraud the government. *The essence of competition in public bidding is that the bidders are placed on equal footing which means that all qualified bidders have an equal chance of winning the auction through their bids.* Another self-evident purpose of competitive bidding is to *avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.*<sup>146</sup> (Emphasis supplied)

To ensure an equal playing field and to minimize the procuring entity's exercise of discretion, the GPRA provides that *the eligibility of bidders is determined by the BAC, based on the bidders' compliance with the eligibility requirements provided in the invitation to bid:*

**SEC. 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects.** – *The BAC or, under special circumstances specified in the IRR, its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of Goods and Infrastructure Projects, based on the bidder's compliance with the eligibility requirements within the period set forth in the Invitation to Bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders. The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted.*

A prospective bidder may be allowed to submit his eligibility requirements electronically. However, said bidder shall later on certify under oath as to correctness of the statements made and the completeness and authenticity of the documents submitted. (Emphasis supplied)

As reflected by the discussions of the Senate Committee on Constitutional Amendments, Revision of Codes and Laws, the evaluation of bids based solely on the bidding documents submitted in compliance with the procuring entity's published requirements is integral to the GPRA's goal of minimizing the exercise of discretion by the procuring entity:

MR. CAMPOS. As long as the requirements are published in the invitation to bid so that everyone knows exactly what is expected of them, *it becomes much harder for discretion to creep in, Mr. Senator.* Because *nandoon na, nakalagay na*, everyone knows *eh na iyon ang requirements, one to ten.*<sup>147</sup> (Emphasis supplied)

Further:

MR. CAMPOS. *The third major project area is the use of – the existence of wide discretion among the Bids and Awards Committee members.* There has been quite a few problems in the past regarding TROs on contracts that have been awarded by government. And when we looked into this, a good deal of the problem have to do with the fact that the ratings of the technical requirements and the price or financial requirements are

<sup>146</sup> *Pabillo v. Commission on Elections*, 758 Phil. 806, 841-842 (2015) [Per J. Perlas-Bernabe, *En Banc*].

<sup>147</sup> Committee on Constitutional Amendments, Revision of Codes and Laws, August 6, 2002, p. 40.

mixed together. In other words, what you're really saying is, you can trade off quality for price. So you know, in a number of, let's say, case, controversial cases in the past, you'll have the situation where the lowest bidder basically filed a case, the one who had the lowest price and the agency basically awarded the contract to the bidder with the second lowest price and argue that he had a better quality. *Now the problem here is how, you know, there is discretion on how much more you weigh quality relative to price and whenever you can use this, you really open yourself up to opportunities for corruption* and as well as opportunities for situations where you may end up with [a] temporary restraining order that stops the contract on its heels, and basically, instead of having it done in three months, three years will pass and still you don't have a contract.<sup>148</sup> (Emphasis supplied)

The following discussions of the House of Representatives Committee on Appropriations lead to the same conclusion:

The [Chairperson]: . . . So, *we drafted this procurement bill specifically to reduce or to [stamp] out corruption in the government, specifically in the procurement phase of government.* The problems encountered by the government in its procurement are, namely, collusion and lack of competition, wide discretion given to certain officials or members of the Bids and Awards Committee, the lack of transparency and, of course, delays. Now, to counter all these problems, we've come up with a single bill which would standardize the procurement process in the government. So meaning to say, *isa na lang ho ang procurement process na susundan ng ating gobyerno.*

You would notice at the present practice *na ang* procurement process *ng*, let's say, Dep Ed would be different from the rules as practiced by the DOTC. *Wala na ho yan* if this bill comes to life. *We will only have one set of rules which would be applied not only to the national government, not only to the executive, to the judiciary but likewise it would apply to the local government units as well as the GOCCs.*

So *yong* major features *ho ng* bill *na ito, unang-una ang problema is the lack of competition and collusion.* To counter this, we have incorporated in the bill a streamlined pre-qualification process *na we are now veering away from yong pre-qualification and we are now emphasizing a post qualification process.* *Ibig sabihin ho* in layman's terms, *dahil at present ho*, we noticed that *sa* pre-qualification *pa lang eh nagkakatalo-talo na tayo.* Allow me to speak frankly, bluntly. So *minsan ho sa* pre-qualification *pa lang, pag-submit pa lang yong* documents, sometimes we encounter a lot of delays and corruption. So *dito sa* bill *na ito*, we are veering away from pre-qualification and we will emphasize eligibility check. *So that if a prospective bidder would want to join or would like to bid for a particular project, all he has to do is submit certain documents which the government would post.* So *alam na ho nun lahat ng* prospective bidders *kung ano yung kailangan nilang documents na i-submit at pagna-meet ho nila yon, na-submit nila lahat ang kailangan na dokumento, automatically, they are qualified to bid.*<sup>149</sup> (Emphasis supplied)

The practice of the GPPB confirms that the evaluation of bids must be based solely on non-discretionary criterion applied to the bidding documents in order to minimize the exercise of discretion by the procuring entity.

<sup>148</sup> Committee on Constitutional Amendments, Revision of Codes and Laws, August 12, 2002, pp. 9-10.

<sup>149</sup> Committee on Appropriations, April 30, 2002, pp. 12-13.

Under the contemporaneous construction rule, the practice and interpretive regulations by officers, administrative agencies, departmental heads, and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute.<sup>150</sup> As the GPPB is the executive agency charged with the duty of administering and enforcing the GPRA, its administrative opinions carry great weight with the Court in understanding the post-qualification regime prescribed by the GPRA.

Explaining the import of Section 23 of the GPRA, the GPPB has described the BAC's duty to determine the bidders' eligibility and qualifications as follows:

*[T]he BAC shall use non-discretionary pass/fail criterion in determining the bidder's eligibility and qualifications to participate and be awarded a contract. It means that such determination shall be based solely on the requirements and conditions indicated in the IRR of RA 9184 and the corresponding Bidding Documents. The purpose is to remove any form of discretion on the part of the BAC and thereby promote fairness and equality among all bidders. Essentially, the BAC, in determining the eligibility of the bidders, cannot act whimsically, capriciously or arbitrarily out of malice, ill will or personal bias as this would be tantamount to grave abuse of discretion.<sup>151</sup> (Emphasis supplied, citation omitted)*

The GPPB also opined that an accreditation system, which limits participation in bids to an agency's "accredited suppliers," is contrary to the GPRA, as such an accreditation system contradicts the basic principles of competitive bidding. In GPPB NPM No. 033-2011, the GPPB stated:

*[T]he enactment of RA 9184 brought about major reforms in the procurement system, the most significant of which is the use of competitive bidding in all government procurement as a matter of policy. Consequently, the creation of an accreditation system is not in accordance with the mandate of the present procurement law because it in fact contravenes the very basic principles of competitive bidding. As it was previously discussed in Non-Policy Matter 28-2005, the establishment of an accreditation system within the agency would limit the participation of bidders only to the accredited suppliers, to the exclusion and prejudice of the bidders in the market.<sup>152</sup> (Emphasis supplied, citation omitted)*

In GPPB NPM No. 054-2017, the GPPB made a similar statement regarding the incompatibility of a pre-qualification regime with the GPRA's open competition policy:

*[A]ccreditation, or even a pre-qualification exercise, is not a requisite to participate in Government Procurement as it contravenes the very basic principles of competitive bidding. The pre-qualification regime or*

<sup>150</sup> *St. Anthony College of Roxas City, Inc. v. Commission on Elections*, G.R. No. 258805, October 10, 2023 [Per J. Marquez, *En Banc*] at 21. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. Citing J. Kho, Concurring and Dissenting Opinion in *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, *En Banc*] at 17. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

<sup>151</sup> GPPB NPM No. 107-2015 (2015).

<sup>152</sup> GPPB NPM No. 033-2011 (2011).

*accreditation brings about a situation where only those who are pre-qualified or accredited will be allowed to bid, which is antithetical to the concept of competition, where all eligible market operators will be allowed to participate whether they have been pre-qualified/accredited or not, thereby opening the procurement opportunity to wider market participation to bring forth the best quality goods and services at the best price.*<sup>153</sup>  
(Emphasis supplied)

While the foregoing opinions speak of accreditation or pre-qualification systems and not disqualification of a prospective bidder prior to bid submission, they emphasize that under the GPRA, *eligibility may be determined based solely on the documents submitted by a bidder*, and not on any pre-qualification procedure or accreditation or any other factor or consideration prior to such bid submission.

In choosing to disregard the procedures prescribed by the GPRA and its 2016 Revised IRR and disqualifying Smartmatic *before the latter had submitted any bid*, without any reference to the applicable eligibility requirements and non-discretionary pass/fail criteria prescribed by the SBAC, the COMELEC implemented a discretionary pre-qualification regime *antithetical to the very essence of the GPRA*. In doing so, the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The COMELEC's argument that its constitutional mandate permits non-compliance with the GPRA and its 2016 Revised IRR is fallacious.

In *Querubin*,<sup>154</sup> the Court expressly held that the COMELEC is mandated to comply with the GPRA in its procurement of supplies, equipment, materials, software, facilities, and other services in relation to the implementation of the AES. In that case, the Court was tasked to interpret Republic Act No. 8436,<sup>155</sup> or the Automated Elections Law, as amended by Republic Act No. 9369,<sup>156</sup> or the Election Automation Law of 2007, authorizing the COMELEC to adopt the AES for NLE. To this end, the law authorizes the COMELEC to procure, "in accordance with existing laws,"<sup>157</sup> supplies, equipment, materials, software, facilities, and other services.<sup>158</sup>

Citing *Pabillo v. COMELEC*,<sup>159</sup> the Court also held that the requirement to comply with "existing laws" under the Automated Elections Law refers to the GPRA, which is:

... designed to govern *all cases of procurement of the national government, its departments, bureaus, offices and agencies*, including state universities and colleges, government-owned and/or-controlled corporations, government financial institutions and local government units. It mandates that *as a general rule, all government procurement must undergo*

<sup>153</sup> GPPB NPM No. 054-2017 (2017).

<sup>154</sup> 774 Phil. 766 (2015) [Per J. Velasco, Jr., *En Banc*].

<sup>155</sup> Republic Act No. 8436 (1997), Automated Elections Law.

<sup>156</sup> Republic Act No. 9369 (2007), Election Automation Law of 2007.

<sup>157</sup> Automated Elections Law, sec. 12, as amended.

<sup>158</sup> Automated Elections Law, sec. 12, as amended.

<sup>159</sup> 758 Phil. 806 (2015) [Per J. Perlas-Bernabe, *En Banc*].

*competitive bidding* and for purposes of conducting the bidding process, the procuring entity convenes a BAC.<sup>160</sup> (Emphasis supplied)

This express judicial admonition further underscores the gravity of the COMELEC's error in choosing to disqualify Smartmatic, in defiance of the procedures under the GPRA and its 2016 Revised IRR. Indeed, the COMELEC's duty to comply with the GPRA and its 2016 Revised IRR in its procurement activities has already been recognized by the Court, and the COMELEC cannot cite its constitutional mandate to justify non-compliance with existing procurement laws and regulations.

The COMELEC also insists that "it would be the height of negligence for the COMELEC to simply await Smartmatic's possible disqualification, suspension, or blacklisting."<sup>161</sup>

Contrary to the COMELEC's protestations, however, compliance with a statutory duty is not negligence. In any event, and to allay the COMELEC's concerns regarding the need to protect the integrity of elections, the GPRA and its 2016 Revised IRR permit a procuring entity to disqualify a bidder at any stage of the procurement process for several reasons, *including misrepresentation in its bidding documents*.

Section 25.3, 2016 Revised IRR, requires every bidder or its duly authorized representative to execute an Omnibus Sworn Statement stating, among others, that the bidder "did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity."

On the other hand, Section 23.6, 2016 Revised IRR, provides:

Notwithstanding the eligibility of a bidder, *the Procuring Entity concerned reserves the right to review the qualifications of the bidder at any stage of the procurement process if the Procuring Entity has reasonable grounds to believe that a misrepresentation has been made by the said bidder, or that there has been a change in the bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the Procuring Entity shall consider the said bidder as ineligible and shall disqualify it from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR. (Emphasis supplied)*

It is clear from these provisions that a procuring entity has a remedy when it has reasonable grounds to believe that a bidder misrepresented its qualifications in its bidding documents and obtained a government contract through corrupt practices.

<sup>160</sup> *Querubin v. Commission on Elections*, 774 Phil. 766, 800–801 (2015) [Per J. Velasco, Jr., *En Banc*].

<sup>161</sup> *Rollo*, p. 844.

If Smartmatic had been permitted to submit a bid, its bidding documents would have included an Omnibus Sworn Statement stating that it “did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.” The COMELEC, as the procuring entity, could have disqualified Smartmatic *if*, in its view, it had reasonable grounds to believe that Smartmatic’s declaration in its Omnibus Sworn Statement was a misrepresentation, and that it is one of the unnamed corporations mentioned in the criminal complaint against Bautista. *However*, the COMELEC’s knowledge of the said criminal complaint does not, in itself, give the COMELEC *carte blanche* to disqualify Smartmatic in violation of the procedure under the GPRA and its 2016 Revised IRR. Article IX-C, Section 2(1) of the Constitution authorizes the COMELEC to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda, and recall—it does not permit the COMELEC to cast aside the GPRA and its 2016 Revised IRR in favor of its own discretionary procurement process.

In so ruling, the Court does not weigh the merits of the US DOJ’s allegations against Bautista. The Court merely notes that under the GPRA and its 2016 Revised IRR, the *COMELEC would not have been compelled to accept the bid of a bidder which it has reasonable grounds to believe committed misrepresentation in its bidding documents and engaged in corrupt activities to secure a previous government contract.*

Having declared that the COMELEC acted with grave abuse of discretion in disqualifying Smartmatic, We now determine the effects of this declaration.

To recall, the SBAC has completed the bidding process for the lease of FASTrAC for the 2025 NLE and the COMELEC has awarded the 2025 FASTrAC Contract to Miru Systems.<sup>162</sup> Thus, an order requiring the COMELEC to instruct the SBAC to accept Smartmatic’s bid would be an exercise in futility, as there is no ongoing public bidding for FASTrAC in which Smartmatic may participate.

For reasons of equity, justice, and practicality, neither can the Court nullify the procurement activities carried out by the SBAC and order the COMELEC to conduct public bidding anew. The COMELEC’s assailed Resolution has produced consequences that the Court simply cannot ignore, and the prospective application of the Court’s Decision is the more prudent recourse under the circumstances.

Relying on the assailed Resolution, the SBAC prevented Smartmatic and its related entities from submitting a bid for the lease of FASTrAC and proceeded with the procurement process, eventually determining that Miru Systems was the bidder with the Single Calculated Responsive Bid and recommending that the COMELEC award Miru Systems the 2025 FASTrAC

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<sup>162</sup> *Id.* at 1018–1020, 1057.

Contract.<sup>163</sup> As a result, the COMELEC issued the Notice of Award to Miru Systems, and executed the 2025 FASTrAC Contract with Miru Systems.<sup>164</sup>

Notably, the records are bereft of any allegation of irregularity in the SBAC's conduct of the public bidding other than its refusal to accept the bid of Smartmatic's related entities. For the Court to turn a blind eye to the proceedings subsequent to the COMELEC *En Banc*'s assailed Resolution would result in an unjust outcome for Miru Systems, which was awarded the 2025 FASTrAC Contract after the SBAC reviewed its bidding documents and conducted post-qualification in accordance with the GPRA.

It is also worth noting that details of the bid submitted by Miru Systems are publicly available.<sup>165</sup> If another round of public bidding were to be conducted, Smartmatic and other prospective bidders would no longer be on equal footing. Such a situation is contrary to the GPRA's requirement of competitive public bidding.

In addition, nullification of the SBAC's proceedings and the 2025 FASTrAC Contract would gravely undermine the COMELEC's preparations for the 2025 NLE.

The COMELEC's Implementation Calendar for the May 12, 2025 National and Local Elections<sup>166</sup> provides the following timeline:

ACTIVITIES	START	END
.....		
11. Testing of systems/Application or laboratory test (including corrections and modifications by provider and VAPT for OVCS	01 Apr 2024 (Mon)	31 Oct 2024 (Thu)
12. Delivery of final systems for FASTrAC and OVCS	01 Aug 2024 (Thu)	30 Oct 2024 (Wed)
13. Conduct of Local Source Code Review (Starting with Base Code)	01 Aug 2024 (Thu)	15 Jan 2025 (Wed)
14. TEC Systems Certification for FASTrAC, OVCS, and SETS	01 Aug 2024 (Thu)	11 Feb 2025 (Tue)
15. Filing of COC and CONA of Candidates, Con-Can of Party-List Groups and Preparation of the List of Candidates for All Positions	01 Oct 2024 (Tue)	07 Oct 2024 (Mon)
16. Finalization of the Project of Precincts (POP)	16 Dec 2024 (Mon)	

<sup>163</sup> *Id.* at 973, 1018–1019.

<sup>164</sup> *Id.* at 1020, 1057.

<sup>165</sup> *Comelec, Korea's Miru to sign 2025 AES contract Monday*, PHILIPPINE NEWS AGENCY, March 9, 2024, available at <https://www.pna.gov.ph/articles/1220432> (last accessed on April 2, 2024).

<sup>166</sup> *Rollo*, pp. 1053–1054.

ACTIVITIES	START	END
17. Execution of Secure Electronic Transmission System (SETS)	01 Oct 2024 (Tue)	30 Dec 2024 (Mon)
19. [sic] Random Manual Audit – Preparatory Activities until Actual RMA	01 Oct 2024 (Tue)	30 June 2025 (Mon)
20. Conduct of Field Test (AES, OVCS, and SETS)	30 Nov 2024 (Sat)	
21. Conduct public demonstrations of the ACMs, OVCS and SETS	18 Dec 2024 (Wed)	30 Apr 2025 (Wed)
22. Recruitment and Conduct of Trainings for FASTrAC, OVCS and SETS	28 Oct 2024 (Mon)	09 May 2025 (Fri)
23. Conduct of Mock Election (AES, OVCS and SETS)	28 Dec 2024 (Sat)	
24. Preparation of Packing Lists for Election Forms and Supplies	18 Dec 2024 (Wed)	30 Apr 2025 (Wed)
25. Installation of FTB version of the ACM System, CCS, OVCS, SETS Application	18 Dec 2024 (Wed)	10 Feb 2025 (Mon)
26. Creation of Digital Ballots, Ballot Faces and Machines configuration and testing for FASTrAC and OVCS	20 Dec 2024 (Fri)	21 Apr 2025 (Mon)
27. Printing of Accountable and Non-Accountable Forms	01 Aug 2024 (Thu)	25 Apr 2025 (Fri)
28. Election Period	01 Oct 2024 (Tue)	11 June 2025 (Wed)
29. Constitution of Electoral Boards, and BOCs, SBRCGs, SBEIs and SBOCs	02 Jan 2025 (Thu)	31 Jan 2025 (Fri)
30. Pre-Election Logic & Accuracy Test (PRE-LAT)	27 Jan 2025 (Mon)	30 Apr 2025 (Wed)
31. Pre-registration of overseas voters for OVCS	12 Feb 2025 (Wed)	12 May 2025 (Mon)
32. Deployment of equipment, forms and paraphernalia for Overseas and Local	15 Feb 2025 (Sat)	5 May 2025 (Mon)
33. Final Testing and Sealing		
34. Sealing and lockdown of servers in the data center	10 Jan 2025 (Fri)	05 May 2025 (Mon)
35. Voting Period for Overseas	13 Apr 2025 (Sun)	12 May 2025 (Mon)
36. Election day	12 May 2025 (Mon)	

ACTIVITIES	START	END
37. Count precinct results	12 May 2025 (Mon)	13 May 2025 (Tue)
38. Canvass precinct results	13 May 2025 (Tue)	25 May 2025 (Sun)
39. Post Election Activities	13 May 2025 (Tue)	31 Dec 2025 (Wed)

As shown above, preparing for the NLE is a complex and time-consuming endeavor, and the COMELEC's procurement of the AES is only one component of its preparations for the 2025 NLE. As stated by Senior Associate Justice Marvic M.V.F. Leonen in his Concurring Opinion in *Macalintal v. Commission on Elections*:<sup>167</sup>

*The conduct of elections requires meticulous assessment and logistical planning, such as the preparing and procuring election paraphernalia and services, registering voters, processing certificates of candidacies of those seeking to run for public office, installing polling booths, training personnel, and monitoring election offenses, among others. The conduct of elections entails expenditures and therefore, the release of public funds to various stakeholders ahead of the date of elections.*<sup>168</sup>  
(Emphasis supplied)

To require the COMELEC to conduct another round of public bidding for the FASTrAC would seriously disrupt its preparations and potentially jeopardize the conduct of the 2025 NLE. While the COMELEC committed grave abuse of discretion in disqualifying Smartmatic from participating in any public bidding for elections, the Court will not compound the COMELEC's error just to enable Smartmatic to submit a bid for the 2025 FASTrAC. Considerations of equity, justice, and practicality forestall such a pronouncement.

In this regard, the doctrine of operative fact applies by analogy to the present controversy.

Generally, a void or unconstitutional law produces no legal effect. The doctrine of operative fact serves as an exception to the general rule and applies only in situations where the nullification of the effects of a law prior to its declaration of invalidity will result in inequity and injustice.<sup>169</sup> This doctrine exhorts that until the judiciary declares the invalidity of a certain legislative or executive act, such act is presumed constitutional and valid.<sup>170</sup>

<sup>167</sup> G.R. Nos. 263590 & 263673, June 27, 2023 [Per J. Kho, *En Banc*].

<sup>168</sup> J. Leonen, Separate Concurring Opinion in *Macalintal v. COMELEC*, G.R. Nos. 263590 & 263673, June 27, 2023 [Per J. Kho, *En Banc*] at 2. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

<sup>169</sup> *Saint Wealth Ltd. v. Bureau of Internal Revenue*, G.R. Nos. 252965 & 254102, January 10, 2023 [Unsigned Resolution, *En Banc*].

<sup>170</sup> J. Caguioa, Separate Concurring Opinion in *Sadain v. Office of the Ombudsman*, G.R. No. 253688, February 8, 2023 [Per J. Inting, Third Division] at 3. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

The doctrine of operative fact applies to both legislative and executive acts. In *Araullo v. Aquino*,<sup>171</sup> the Court declared unconstitutional the Disbursement Acceleration Program (DAP), which included the declaration of unutilized appropriations (in the form of unobligated allotments and unreleased appropriations) as savings, the transfer of savings from the Executive branch to other offices outside the Executive branch, and the use of unprogrammed funds without a Treasury certification of windfall revenue collections. However, the Court applied the doctrine of operative fact to programs, activities, or projects funded through the DAP that could no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP. In so doing, the Court described the doctrine of operative fact as follows:

*The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect. But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play. It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.*<sup>172</sup> (Emphasis supplied, citations omitted)

In *Macalintal*,<sup>173</sup> petitioners challenged the validity of Republic Act No. 11935,<sup>174</sup> which scheduled synchronized barangay and sangguniang kabataan elections on the last Monday of October 2023 and every three years thereafter. In that case, the Court declared Republic Act No. 11935 unconstitutional for violating the constitutional prohibition on the transfer of appropriations and for arbitrarily overreaching the exercise of the rights of suffrage, liberty, and expression. However, the Court applied the doctrine of operative fact, recognizing that Republic Act No. 11935 had consequences and effects relating to the holding of elections that could not simply be ignored:

Simply put, *the operative fact doctrine operates on reasons of practicality and fairness. It recognizes the reality that prior to the Court's exercise of its power of judicial review that led to the declaration of nullity, the combined acts of the legislative and executive branches carried the presumption of constitutionality and regularity that everyone was obliged to observe and follow. And, in pursuance thereof, certain actions, private and official, may have been done which would be unjust and impractical to reverse.*

....

<sup>171</sup> 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

<sup>172</sup> *Id.* at 620–621.

<sup>173</sup> G.R. Nos. 263590 & 263673, June 27, 2023 [Per J. Kho, *En Banc*].

<sup>174</sup> Republic Act No. 11935 (2022), An Act Postponing the December 2022 Barangay and Sangguniang Kabataan Elections, Amending for the Purpose Republic Act No. 9164, as Amended, Appropriating Funds Therefor, and For Other Purposes.

Proceeding from the foregoing premises, *the Court is of the view that the actual existence of RA 11935, prior to the judicial declaration of its unconstitutionality, is an operative fact which has consequences and effects that cannot be ignored and reversed as a matter of equity and practicality.*

*For one*, the declaration of unconstitutionality of RA 11935 results in the revival of RA 11462. The *proviso* of Section 1 thereof states that the BSKE “shall be postponed to December 5, 2022” with the subsequent synchronized BSKE to be “held on the first Monday of December 2025 and every three (3) years thereafter.” Since December 5, 2022 has already lapsed, it is evident that the BSKE previously scheduled under RA 11462 can no longer proceed as such. Following Section 1 of RA 11462, therefore, it is apparent that the BSKE will have to be conducted “on the first Monday of December 2025” or close to seven years from the date of the last BSKE — which was held in May 2018.

....

*Another*, December 5, 2022 had already lapsed without the BSKE scheduled under RA 11462 having been held. Moreover, the COMELEC had taken steps towards the preparation for the BSKE based on the schedule provided under RA 11935, *i.e.*, in October 2023. Certainly, it cannot be denied that the consequences of the postponement of the December 2022 BSKE pursuant to RA 11935 extend beyond the mere change in the date of the said elections. In the interim, the BSKE officials elected in May 2018 pursuant to RA 11462 continued to discharge the duties and responsibilities of the office in a hold-over capacity pursuant to the provisions of RA 11935. *In turn, the people have relied on the actions undertaken by them in the discharge of their functions as such officials, and have dealt with the latter in good faith, believing in their authority to act.*

Based on these circumstances, it is evident that a refusal to recognize the consequences and effects of the existence of RA 11935 prior to its nullity — and absolutely demand a return to the *status quo* as if the law had never existed — will lead to an unnecessary and unwarranted application of the provisions of RA 11462 beyond the legislative intent.<sup>175</sup> (Emphasis supplied, citations omitted)

In *Film Development Council of the Philippines v. Colon Heritage Realty Corp.*,<sup>176</sup> the Court laid down the following guidelines to determine the propriety of applying the doctrine of operative fact:

[I]n applying the doctrine of operative fact, *courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand.* It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law.<sup>177</sup> (Emphasis supplied)

<sup>175</sup> *Macalintal v. Commission on Elections*, G.R. Nos. 263590 & 263673, June 27, 2023 [Per J. Kho, *En Banc*] at 70–72. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>176</sup> 865 Phil. 384 (2019) [Per J. Perlas-Bernabe, *En Banc*].

<sup>177</sup> *Id.* at 395.

In *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*,<sup>178</sup> the Court rejected the contention that the doctrine of operative fact is limited to invalid or unconstitutional laws and executive issuances that are accorded the status of law or quasi-legislative in nature. Instead, the Court forwarded a broader understanding of the doctrine:

Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. *This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified.* This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness.

Significantly, *a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws.* Prior to the nullification or recall of said decision, *it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected.* It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.<sup>179</sup> (Emphasis supplied)

While *Hacienda Luisita, Inc.* refers to decisions of the President or executive agencies, the same reasoning applies with equal force to the COMELEC's assailed Resolution. The COMELEC is an independent constitutional commission, and as such, its decisions "[have] to be complied with because [they have] the force and effect of law, springing from the powers of the [COMELEC] under the Constitution and existing laws," and these decisions "may have produced acts and consequences in conformity to and in reliance of said decision[s], which must be respected."<sup>180</sup>

In this case, the assailed Resolution led to the SBAC's conduct of the public bidding for the FASTrAC without Smartmatic's participation, an act that must be respected. The grave abuse of discretion committed by COMELEC is not, in itself, sufficient basis to nullify the proceedings of the SBAC. Application of the doctrine of operative fact is therefore proper, and the Court's Decision shall be prospective in application.

A final note. The present disposition is limited solely to the reversal of the COMELEC's assailed Resolution on the ground that the COMELEC gravely abused its discretion in violating the procedure for public bidding under the GPRA and its 2016 Revised IRR. The Court does not weigh, much less resolve, the merits of the charges against Bautista and Smartmatic's alleged involvement in those charges. The Court's ruling in this case is

<sup>178</sup> 676 Phil. 518 (2011) [Per J. Velasco, Jr., *En Banc*].

<sup>179</sup> *Id.* at 571.

<sup>180</sup> *Id.*

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without prejudice to the outcome of any disqualification or blacklisting procedure that the COMELEC or any other procuring entity might see fit to initiate against Smartmatic in the future, *in accordance with the procedures prescribed by the GPRA and its 2016 Revised IRR.*

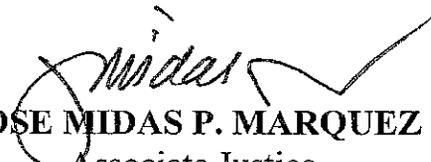
**ACCORDINGLY**, the instant Petition is **GRANTED**. The Resolution of the Commission on Elections *En Banc* dated November 29, 2023 is **REVERSED**.

This ruling shall be **PROSPECTIVE** in application from the date of finality of this Decision.

The prayer of petitioners Smartmatic TIM Corporation and Smartmatic Philippines, Inc. for a temporary restraining order and/or writ of preliminary injunction and status *quo ante* order is **DENIED**.

The Manifestation of *Profuse Apology* and Motion filed by the Commission on Elections is **NOTED**.

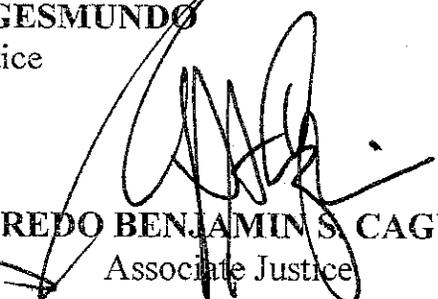
**SO ORDERED.**

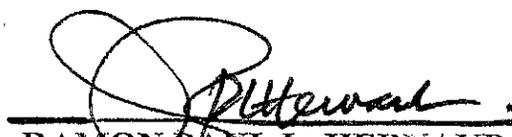
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

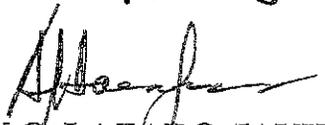
**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

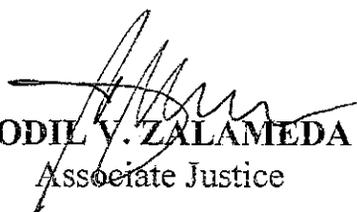
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

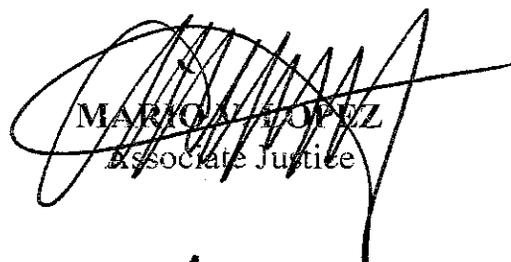
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

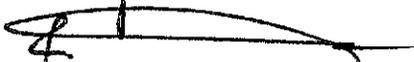
  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**MARICEL LOPEZ**  
Associate Justice

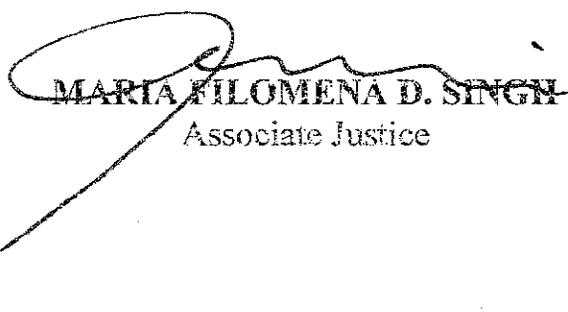
  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP V. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

*with Separate Concurring Opinion.*  
  
**ANTONIO T. KHO, JR.**  
Associate Justice

  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

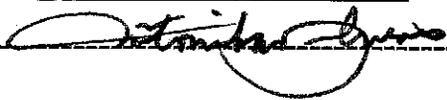
  
**ALEXANDER G. GESMUNDO**  
Chief Justice

*EN BANC*

**G.R. No. 270564 – SMARTMATIC TIM CORPORATION and SMARTMATIC PHILIPPINES, INC.,** Petitioners, v. **COMMISSION ON ELECTIONS EN BANC, ELISEO MIJARES RIO, JR., AUGUSTO CADELIÑA LAGMAN, FRANKLIN FAYLOGA YSAAC, and LEONARDO OLIVERA ODOÑO,** Respondents.

Promulgated:

April 16, 2024

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**SEPARATE CONCURRING OPINION**

**KHO, JR. J.:**

The move to disqualify petitioners Smartmatic TIM Corporation and Smartmatic Philippines, Inc. (collectively, Smartmatic) in participating in our elections as the automated election system provider started when private respondents Eliseo Mijares Rio, Jr., Augusto Cadelina Lagman, Franklin Fayloga Ysaac, and Leonardo Olivera Odoño (respondents) filed a petition, supplemental petition, and second supplemental petition with the Commission on Elections (COMELEC). The respondents prayed that the COMELEC review the qualifications of Smartmatic as a prospective bidder for the bidding of the 2025 Automated Election System (AES) for the 2025 National and Local Elections (NLE) and thereafter, disqualify Smartmatic for the latter's failure to comply with minimum system capabilities for the 2022 NLE that resulted in serious and grave irregularities in the transmission and receipt of election returns.<sup>1</sup>

In its Resolution dated November 29, 2023 disqualifying Smartmatic, the COMELEC nevertheless debunked the allegations of respondents that there were irregularities in the conduct of the 2022 NLE attributable to the 2022 AES provided by Smartmatic. In fact, the COMELEC, apparently confident with the performance of the 2022 AES, challenged respondents that, upon proper motion, it may authorize a recount of the votes by opening the ballot boxes of every region of the country utilizing for said purpose either the physical ballot, or the ballot images which are the functional equivalent of the physical ballot, at no cost to respondents.<sup>2</sup> I laud the COMELEC for this declaration, as it is consistent to the right of the public to be informed on all matters concerning elections.

<sup>1</sup> *Ponencia*, pp. 2-3.

<sup>2</sup> *Id.* at 3-5.

*AK*

In addition, the COMELEC admitted in its Resolution that the procurement process for the 2025 AES has yet to commence and that the Special Bids and Awards Committee for the 2025 AES does not have yet the authority to decide on the qualification or disqualification of the prospective bidders;<sup>3</sup> thus, the COMELEC, as head of the procuring entity, cannot pass upon judgment on the disqualification of Smartmatic,<sup>4</sup> as what respondents prayed for.

Nevertheless, the COMELEC, invoking its administrative power to decide all matters affecting elections, resolved to disqualify and disallow Smartmatic to participate in any public bidding process for elections due to the grounds not cited or raised by respondents, explaining as follows:

As early as October 2022, the Commission (*En Banc*), through the Department of Justice[,] received requests for official documents relative to an ongoing investigation from the United States government against former COMELEC Chairman Juan Andres D. Bautista (Bautista) and other individuals and entities for violation of US criminal laws.<sup>5</sup>

....

Pursuant to the treaty between the Government of the Philippines and the Government of the United States on Mutual Legal Assistance in Criminal Matter (PH-US MLAT), an investigation was conducted for the alleged violation of U.S. criminal laws, including the Foreign Corrupt Practices Act, conspiracy, wire fraud, and money laundering. The U.S. prosecutor sought assistance in obtaining official records from the Commission as part of the efforts to establish a case.

The evidence requested is deemed crucial for tracking the flow of suspected bribe payments and identifying other individuals involved in the alleged scheme. It is noteworthy that Bautista, who served as the Chairman of the Commission, was formally charged in September 2023, in connection with allegations of receiving bribes in exchange for awarding a contract for election machines to Smartmatic Corp. Bautista and others are alleged to have laundered the bribe money through multiple entities. It was revealed that Bautista established a foreign shell company, which was used to receive bribe payments from Smartmatic. The charges against Smartmatic and former Chairman Bautista are of public knowledge and tend to cause speculation and distrust in integrity of the election process.<sup>6</sup>

....

Given the gravity of allegations related to bribery and compromised procurement processes, as independently determined by foreign bodies, the Commission recognizes the imminent threat to the strength and integrity of our democratic processes. In light of these findings, the Commission acknowledges the imminent peril to the integrity and robustness of our democratic institutions. These allegations, not only undermine and cast a

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> Petition, p. 25.

<sup>6</sup> *Ponencia*, pp. 4-5.

*KAC*

shadow over the procurement protocols but also threaten to erode the public's confidence in the electoral system. Consequently, pursuant to administrative powers which covers all aspects of election, the Commission is compelled to take decisive action to disallow Smartmatic from participating in the procurement process forthwith.<sup>7</sup>

In this connection, I agree with the *ponencia* that the COMELEC gravely abused its discretion when it totally disregarded the provisions of the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations (IRR) in disqualifying and disallowing Smartmatic from participating in any public bidding process for elections.<sup>8</sup>

As eloquently explained by the *ponencia*, the GPRA and its IRR essentially provide that a prospective bidder must first be allowed to submit its bidding documents; and that it is only upon evaluation thereof that the procuring entity may determine said bidder's eligibility. Here, the COMELEC erroneously disregarded the GPRA and its IRR when it issued the aforesaid Resolution *even before* Smartmatic had the opportunity to submit its bidding documents.<sup>9</sup> Clearly, the assailed act of the COMELEC constitutes grave abuse of discretion.

In addition to the foregoing discussion, I opine that even assuming *arguendo* that the COMELEC allows Smartmatic to submit its bidding documents and thereafter, scrutinizes the same, there is still, *at least for the time being*, no sufficient ground to disqualify and disallow Smartmatic from participating in any public bidding process for elections.

I expound.

The ground cited by the COMELEC in disqualifying and disallowing Smartmatic from participating in any public bidding process for elections is the ongoing criminal investigation by the United States Department of Justice (US DOJ) of former COMELEC Chairperson Juan Andres D. Bautista (Bautista) concerning the latter's act of receiving bribes in exchange for awarding a contract for election machines to Smartmatic.<sup>10</sup> This investigation led to the US DOJ unsealing the complaint against Bautista, which states that "*there is probable cause to issue a criminal complaint and arrest warrant charging [Bautista] with conspiring to launder monetary instruments and conspiring to engage in monetary transactions in property derived from specified unlawful activity*"<sup>11</sup> in connection with Bautista's purported receipt

<sup>7</sup> Petition, p. 37.

<sup>8</sup> *Ponencia*, pp. 20-21.

<sup>9</sup> *Id.* at 19-26.

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 9; emphasis supplied.

of several payments from a group of related unnamed corporations to secure the award of the AES contract for the 2016 NLE.<sup>12</sup>

While it appears that the US DOJ had completed its investigation as evinced by the unsealing of the complaint against Bautista, it however bears stressing that the findings of such investigation and the allegations in the complaint are, at best, *merely preliminary*, and in due course, would still undergo scrutiny by the US courts through a criminal trial—where, like in the Philippines, an accused is accorded the presumption of innocence.<sup>13</sup> Furthermore, should there be definitive findings against Smartmatic and/or Bautista in the proceedings before the US, it is opined that said adverse findings have, at best, persuasive effect only in our jurisdiction.

Lest it be misunderstood, like the *ponencia*, this disquisition “*does not weigh, much less resolve, the merit of the charges against Bautista and Smartmatic’s alleged involvement in these charges.*”<sup>14</sup> Such matter may, in due time, be resolved by an appropriate forum in our country. In the meantime, this disquisition seeks to highlight that, absent any definitive findings regarding Smartmatic’s purported complicity in the accusations thrown against Bautista, it is premature to use this as a ground for the COMELEC to disqualify and disallow Smartmatic from participating in any public bidding process for elections.

As a former COMELEC Commissioner, I know that the Chairperson, Commissioners, officers, and employees of the COMELEC are zealous in their task of ensuring electoral integrity and maintaining public confidence in the elections. However, disqualifying and disallowing Smartmatic to participate in our electoral processes on the basis of mere allegations of bribery, money laundering, etc., while admittedly are grave and serious charges, are not sufficient grounds to disqualify Smartmatic at this stage of the process. In fact, the COMELEC was very adamant in its Resolution that no irregularities attended the conduct of the 2022 NLE where the 2022 AES of Smartmatic was used.

While the Court found that the COMELEC have acted with grave abuse of discretion in disqualifying Smartmatic that would necessarily annul and set aside the award of the 2025 Full Automation System with Transparency Audit/Count (FASTrAC) Contract to Miru Systems Co. Ltd., Integrated Computer Systems, St. Timothy Construction Corporation, and Centerpoint Solution Technologies, Inc. (Miru Systems), and would require the COMELEC to conduct another procurement process for the 2025 AES where

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> *See Taylor v. Kentucky*, 436 U.S. 478 (1978) [United States of America]. *See also* CONST., art. III, sec. 14(1).

<sup>14</sup> *Ponencia*, p. 33; emphasis supplied.

Smartmatic may participate, I agree with the *ponencia* that for reason of practicality, the “nullification of the SBAC’s proceedings and the 2025 FASTrAC Contract would gravely undermine the COMELEC’s preparation for the 2025 NLE.”<sup>15</sup> Thus, I agree with the *ponencia* that this situation calls for the application of the operative fact doctrine,<sup>16</sup> citing as its jurisprudential support, among others, my *ponencia* in *Macalintal v. Commission on Elections*,<sup>17</sup> and to make the effects of the Court’s Decision herein prospective in application.<sup>18</sup>

However, speaking as a former COMELEC Commissioner, I wish to urge the COMELEC to not unduly constrain itself with severely rigid and constricted timetables in preparing for the elections. This is the second time in recent memory that the doctrine of operative act was applied affecting the conduct of elections, the first one being the recently conducted barangay elections, pursuant to *Macalintal*. In this connection, the COMELEC should seriously consider scheduling an earlier date for the filing of the certificates of candidacy that would allow it to arrange with enough legroom its timetable for all the activities related to elections, including the bidding processes for the procurement of election systems, equipment, materials and supplies, approval of the ballot face for all elective positions, printing of ballots and election forms, training of teachers and election personnel, accreditation of party-list groups, resolution of disqualification cases of candidates and other cases, and other varied election activities that need the undivided attention of the COMELEC.

As the Constitutional body created primarily to ensure the conduct of free and fair elections, the COMELEC should adequately plan for any contingencies that could result in the hampering of its preparations for the elections—such as what happened in this case. As noted by the *ponencia*, if not for the application of the operative fact doctrine, the preparations for and ultimately, the very conduct of the 2025 NLE could have been severely jeopardized.<sup>19</sup> However, the repeated application of the operative fact doctrine should not be the norm in the conduct of elections. Thus, in its preparation for future elections, the COMELEC should be more flexible in its timetables so as to avoid instances such as this to happen again.

As a final note of the *ponencia*, it stated, to which I also agree, that “[t]he Court’s ruling in this case is without prejudice to the outcome of any disqualification or blacklisting procedure that the COMELEC or any other procuring entity might see fit to initiate against Smartmatic in the future, in accordance with the procedure prescribed by the GPRA and its IRR.”<sup>20</sup> I

<sup>15</sup> *Id.* at 28; emphasis supplied.

<sup>16</sup> *Id.* at 30–33.

<sup>17</sup> G.R. Nos. 263590 and 263673, June 27, 2023 [Per J. Kho, *En Banc*].

<sup>18</sup> *Ponencia*, p. 33.

<sup>19</sup> *Id.* at 30.

<sup>20</sup> *Id.* at 34.

would like to further add that the application of the operative fact doctrine in this case that would in effect allow the use of the AES provided by Miru Systems for the 2025 NLE is also without prejudice to any appropriate petition that may be filed that would directly challenge the award of the 2025 AES to Miru Systems.

**ACCORDINGLY, I VOTE to GRANT** the instant Petition.



**ANTONIO T. KHO, JR.**  
Associate Justice