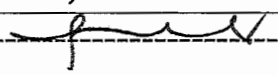


*EN BANC*

G.R. No. 264661 – CLARYLYN A. LEGASPI, ROMEO R. DOMONDON, JR., BARTOLOME F. DULATRE, ALEJANDRO J. SISON, NESTOR M. JOVELLANOS, JERRYSON T. ICO, ROEL P. DINONG, FERNANDO D. BAUTISTA, BABYLAINÉ C. AQUÍ, GRACE U. DULATRE, OMAR G. VALDEZ, REYNALDO A. SOQUILA, CRESENCIO I. BELAMIDE, CARLO M. CABAObAO, CRISTY R. REYNADO, JHON PAUL E. CAYABYAB, RUPERTO P. BOTON, THELMA P. VELANO, ADELAlDA V. BOTON, MARIE CYNARA PANAY, ONEIL C. JOVERO, SHEKINAH TOLENTINO, MARIO JIMENEZ, VERGEL T. PEREZ, RACHELLE ANNE PEREZ, CHRISTOPHER R. MILANES, LAUDEMÉR I. FABIA, IRISH CHERRY T. BUSTO, JANLEE REY F. SABADO, KENNETH B. GOTOc, IMELDA A. CUEVA, and MARICEL B. GOTOc, *petitioners*, v. COMMISSION ON ELECTIONS, *respondent*.

Promulgated:

July 30, 2024

X----------X

**CONCURRING OPINION**

**SINGH, J.:**

The present Petition for *Certiorari* and *Mandamus* seeks support from this Court to enforce the petitioners' request for a manual recount of votes in the province of Pangasinan during the May 9, 2022 National and Local Elections. The *ponencia* found that the crux of the issue in this case is that petitioners are in fact pursuing the exercise of their right to information, albeit through the wrong remedy or medium.

I fully concur with the *ponencia* in finding that the Petition for *Certiorari* and *Mandamus* should be dismissed based on the rationale expounded in the Decision.

However, I wish to make of record my position in regard to the following statement in the *ponencia*:

Subject to certain exceptions and limitations, a citizen whose right to FOI has either been denied or violated by a government agency may bring forth a suit for *mandamus* for the vindication of said right and the judicial compulsion of disclosure and/or grant of access to the State's troves and



inventories that hold information crucial to the public discourse and welfare.<sup>1</sup>

Relatedly, I would also like to cite the *ponencia*'s proposition that *mandamus* should be reexamined as an "appropriate remedy to enforce and recognize the people's constitutional right to FOI in light of government agencies such as COMELEC having crafted and promulgated FOI procedures that now appear to be quasi-judicial in nature."<sup>2</sup>

The FOI pertained to in the *ponencia* is the Freedom of Information (FOI) which is grounded on Article III, Section 7 of the 1987 Philippine Constitution:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The *ponencia* found, and I fully agree, that the ultimate right petitioners wish to enforce in this case is their right to information regarding the true results of the May 9, 2022 elections, as they doubt the manner and accuracy in which their votes and ballots were counted by the vote-counting machines. As such, they filed their Petition for *Certiorari* and *Mandamus* hoping that the Court would grant their prayer for a manual recount of the said votes.

Jurisprudence has provided that a petition for *mandamus* will lie in cases involving the right to information. In one of the earlier FOI cases decided upon by the Court, *Legaspi v. Civil Service Commission (Legaspi)*,<sup>3</sup> the Court held that the Constitutional provision on the right to information is self-executing and that there is no need for any ancillary act of the Legislature, though the Legislature may impose conditions and limitations upon the access to be afforded. "However, it cannot be overemphasized that whatever limitation may be prescribed by the Legislature, the right and the duty under Art. III, Sec[ti]on 7 have become operative and enforceable x x x. Therefore, the right may be properly invoked in a *Mandamus* proceeding such as this one."<sup>4</sup>

Section 3, Rule 65 of the Rules of Court covers petitions for *mandamus*:

Section 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance

<sup>1</sup> *Ponencia*, p. 35.

<sup>2</sup> *Ponencia*, p. 41-42.

<sup>3</sup> 234 Phil. 521 (1987) [Per J. Cortes, En Banc].

<sup>4</sup> *Id.* at 529.



of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.<sup>5</sup>

Jurisprudence explains that “[*m*]andamus is of two (2) types: first, in order to compel the performance of a clear legal duty; and second, to rectify the unlawful exclusion from a right or office to which the petitioner is entitled.”<sup>6</sup> In either case, the requisites for *mandamus* to lie are:

- (a) the plaintiff has a clear legal right to the act demanded;
- (b) it must be the duty of the defendant to perform the act, because it is mandated by law;
- (c) the defendant unlawfully neglects the performance of the duty enjoined by law;
- (d) **the act to be performed is ministerial, not discretionary;** and
- (e) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.<sup>7</sup> (Emphasis supplied)

In the present case, the *mandamus* sought by the petitioners is of the first type, as it seeks to compel the Commission on Elections (COMELEC) to manually recount the votes in the province of Pangasinan during the May 9, 2022 National and Local Elections. I opine that such demand, while an exercise of their right to information, is not one that can be granted by a petition for *mandamus* as the COMELEC does not have the ministerial duty to simply order a recount of the votes during the May 9, 2022 elections.

In fact, I do not agree that the exercise of the right to information is compellable by *mandamus* to begin with. I believe it is discretionary because it involves an assessment on the part of the requested agency of the propriety of the release of information. It is not ministerial such that every request must be granted. At best, I submit that the remedy of *mandamus* is only to compel government agencies to examine the request for information or to act upon such, but it cannot lie as an absolute remedy to compel the disclosure of information.

Jurisprudence defines “ministerial duty” as one which is “so clear and specific that it leaves no room for the exercise of discretion in its

<sup>5</sup> Rules of Court, 1997 Rules of Civil Procedure, as amended (April 8, 1997).

<sup>6</sup> *Municipality of Payao, Zamboanga Sibugay v. Municipality of Imelda, Zamboanga Sibugay*, 905 Phil. 1046 (2021) [Per J. Lopez, J., Third Division].

<sup>7</sup> *Del Rosario v. Shaikh*, 867 Phil. 731, 740 (2019) [Per J. Reyes, J. Jr., First Division].



performance.”<sup>8</sup> On the other, a “discretionary duty” is one which “by its nature requires the exercise of judgment.”<sup>9</sup> Thus, as explained in *Symaco v. Aquino*:<sup>10</sup>

A purely ministerial act or duty, in contradistinction to a discretionary act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.<sup>11</sup>

As mentioned in the *ponencia*, the COMELEC has promulgated its FOI Manual under Resolution No. 10685.<sup>12</sup> This FOI Manual provides for the proper procedure in accessing needed information. Among its provisions is that there shall be a COMELEC FOI Decision Maker, who shall be responsible for granting or denying an FOI request after a thorough evaluation,<sup>13</sup> and a COMELEC Appeals and Review Committee, which shall review the denial of an FOI request when so appealed by the requesting party.<sup>14</sup> Upon exhaustion of these administrative remedies, the requesting party may file the appropriate judicial action in accordance with the Rules of Court.<sup>15</sup>

These FOI provisions are only some of the provisions echoed in other government agencies in their own FOI Manuals. Key to the review of the request for information, is a thorough review of the information requested and whether it falls among the Inventory of Exceptions to Executive Order No. 2 (Series of 2016),<sup>16</sup> which is periodically updated to reflect changes in existing law and jurisprudence.<sup>17</sup>

The rules created by the Executive Department require a thorough review of requests for information. This implies that the act of granting or denying said requests is not purely ministerial in character as the requests are first evaluated before they can be granted. While true, it is the right of every citizen to have their requests for information entertained, the grant thereof,

<sup>8</sup> *Mateo v. Court of Appeals*, 273 Phil. 507, 513 (1991) [Per J. Sarmiento, Second Division].

<sup>9</sup> *Id.* 1135.

<sup>10</sup> 106 Phil. 1130 (1960) [Per J. Barrera, First Division].

<sup>11</sup> *Id.* at 1135.

<sup>12</sup> Promulgated on December 16, 2020.

<sup>13</sup> Section 27 of COMELEC Resolution No. 10685, promulgated on December 16, 2020.

<sup>14</sup> Section 35 of COMELEC Resolution No. 10685, promulgated on December 16, 2020.

<sup>15</sup> Section 37 of COMELEC Resolution No. 10685, promulgated on December 16, 2020.

<sup>16</sup> Operationalizing in the Executive Branch the People’s Constitutional Right to Information and the State Policies to Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor.

<sup>17</sup> Memorandum Circular No. 49, Creating an Inter-Agency Freedom of Information Exceptions Policy Committee, promulgated on October 10, 2018.



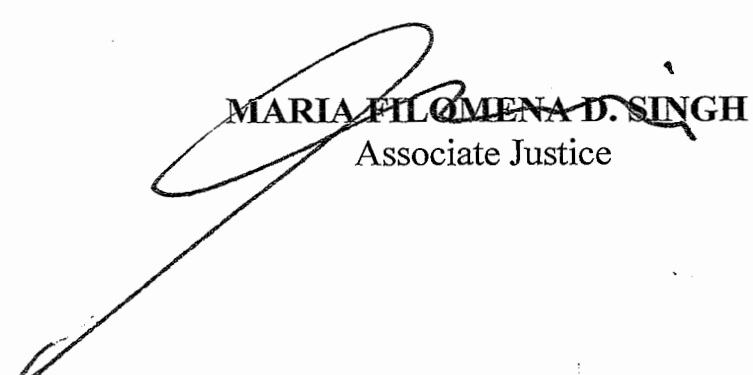
however, is not an automatic outcome. A government official's discretion is still needed before a request may be properly processed and the information released to the public. As such, the fourth requisite in petitions for *mandamus* is not met.

Thus, although in *Legaspi*, it was stated that access to public records cannot simply be discretionary to government agencies, the pronouncements therein cannot be taken to mean that the grant of the request for information is ministerial in nature. The right to information is not absolute.

I opine that with the developments in our laws and rules and regulations, it is an opportune time for the Court to clarify that the right to information, while inherent in every citizen of the Philippines, is still subject to regulations imposed by the government agency or authority from whom petitioners seek information. As such, where a petition for *mandamus* does not lie, a petition for *certiorari* may still be availing where grave abuse of discretion is a ground to overturn any decision made by government officials on a request for information.

In the present case, the petitioner failed to prove that the COMELEC has the ministerial duty to automatically grant the call of the petitioner for the manual recount of votes in the Province of Pangasinan considering that, to reiterate, the remedy of *mandamus* is only to compel government agencies to examine the request for information or to act upon such request. Further, petitioners failed to prove any grave abuse of discretion on the part of the COMELEC on its request. As such, in this instance, the remedy of *certiorari* must also fail.

As a final note of emphasis, the State's policy of full public disclosure is restricted to transactions involving public interest and is further subject to reasonable conditions prescribed by law.<sup>18</sup> Without showing how the manual recount of votes in the Province of Pangasinan is protected by these constitutional guarantees, and not covered by the limitations provided by law, the Petition for *Certiorari* and *Mandamus* must fail.

  
MARIA FILOMENA D. SINGH  
Associate Justice

<sup>18</sup> *Belgica v. Pulido-Tan*, G.R. No. 212576, January 5, 2021.