

**CIRILO I. MERCADO, ARSENIO L. CARPIO, PEDRO V. SORIANO AND
FLORDELIZA C. ALEJO, COMPLAINANTS, VS. JUDGE HECTOR F.
DYSANGCO, IN HIS CAPACITY AS ACTING JUDGE OF 2ND MUNICIPAL
CIRC...**

A.M. No. MTJ-00-1301. July 30, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

In an election, one vote can spell the difference between victory and defeat. Trial judges are, therefore, advised to exercise caution in granting petitions for inclusion of voters. Fealty to the procedures outlined in the Omnibus Election Code is imperative, lest not only the integrity of the judiciary but also that of the election process would be undermined.

In a sworn complaint^[1] dated May 29, 1997, complainants Flordeliza C. Alejo, Arsenio L. Carpio, Cirilo I. Mercado, and Pedro V. Soriano charged Judge Hector F. Dysangco, Acting Presiding Judge of the 2nd Municipal Circuit Trial Court of Natividad-Llanera, Nueva Ecija, and Teresita S. Esteban, Clerk of Court of the same court, with grave misconduct.

The complainants alleged that prior to the Barangay Elections of May 12, 1997, forty-eight (48) persons filed with the said court separate petitions for inclusion in the voters' list. Of these forty-eight (48) petitioners, nine (9) were supporters of complainant Cirilo I. Mercado, while thirty-nine (39) were supporters of his opponent Alejandro Gonzales. Mercado and Gonzales were candidates for the position of Barangay Chairman of Kabulihan, Gen. Natividad, Nueva Ecija. Consequently, Mercado and the other complainants filed an opposition to the petition of the thirty-nine (39) supporters of Gonzales.

The hearings of the petitions were set on April 17, April 28, May 6, May 8, and May 9, 1997. The first three scheduled hearings were cancelled due to the absence of either respondent judge or petitioners' counsel. The May 8 hearing proceeded but only the nine (9) petitioners supporting complainant Mercado presented their evidence. The thirty-nine (39) petitioners supporting Gonzales requested the postponement of the hearing to May 9. However, on that day, those petitioners and their counsel failed to appear in court. Thus, respondent judge dismissed their petitions in open court.

On May 10 (Saturday), respondent judge, when approached by herein complainants, assured them that he did not issue any order for the inclusion of the thirty-nine (39) petitioners in the voters' list of Barangay Kabulihan.

However, on the day of the election, complainants were surprised to find thirty-four (34) of the thirty-nine (39) petitioners with an Order signed by respondent judge and attested by respondent clerk of court,^[2] directing their inclusion in the voters' list of Barangay Kabulihan.

Complainants averred that the issuance of the Order by respondent judge was "highly anomalous, illegal, and patently of dubious origin" because not one of the thirty-nine (39) petitioners presented evidence or appeared in

the scheduled hearings. Respondents, therefore, aided and abetted thirty-four (34) flying voters in violating the Election Laws and in influencing the result of the Barangay Elections in Kabulihan, Gen. Natividad, Nueva Ecija.

Respondents filed separate comments on the complaint.

Respondent judge denied committing any anomaly in ordering the inclusion of the thirty-four (34) petitioners in the voters' list of Barangay Kabulihan. He explained that his Order was based on his interviews with those petitioners,[3] who registered as voters in the said barangay during the registration on June 14-15 and 21-22, 1997, per Certification issued by the Office of the Election Officer.[4]

In her comment, respondent clerk of court denied any hand in the issuance of the questioned Order, asserting that it was respondent judge's official and personal act. She claimed that, as a mere clerk of court, she could not coerce respondent judge into issuing the Order. Moreover, she did not have any personal reason or motive in aiding the thirty-four (34) petitioners. Lastly, she invoked the presumption of regularity in the performance of her duties as clerk of court and prayed for the dismissal of the complaint against her.[5]

In a Memorandum[6] dated March 17, 1999, the Office of the Court Administrator found respondents' comments unsatisfactory. Thus, on April 21, 1999, this Court resolved to refer the case to the Executive Judge of the Regional Trial Court, Cabanatuan City, for investigation, report and recommendation.[7]

On January 3, 2000, Executive Judge Johnson L. Ballutay submitted the following findings and recommendation:

"...in the memorandum of respondent Judge Hector F. Dysangco, he admitted that he conducted merely personal interviews, he did not categorically state as to whether during his interviews, the counsel for the petitioners as well as the counsel for the oppositors were present. Likewise, the respondent Teresita Esteban admitted that the thirty-four (34) petitioners for inclusion were included and allowed to vote merely on the strength of interview conducted by Judge Hector F. Dysangco and that there was no hearing conducted. Considering, however, that Atty. Ambrosio Matias, Jr. appeared for the thirty-nine (39) petitioners for inclusion and Atty. Ellis F. Jacoba appeared for the oppositors, fair play requires that during the interview of the thirty-nine (39) petitioners at least this (sic) two (2) counsel must have been present which, however, as admitted by the Clerk of Court, Teresita S. Esteban, they were not present. Such failure to wait for Attys. Ambrosio Matias, Jr. and Ellis F. Jacoba, as in fact, they were both absent when the interviews were conducted by the Municipal Judge, is a conduct which should have been avoided if a fair hearing should have been afforded the two (2) lawyers. Such act of the respondent Judge is not only reprehensible, but also denial of due process.

RECOMMENDATION

IN VIEW OF THE FOREGOING, recommendation is hereby made that for the said act of respondent Judge Hector F. Dysangco, he should be meted a fine of FIVE THOUSAND (P5,000.00) PESOS with warning that a repetition of the same will be dealt with more severely. On the part of respondent Teresita S. Esteban, she must be reprimanded and warned that she should be more careful in her actuation and she should act strictly in accordance with her duties as stated in her job description." [8]

In his Memorandum dated October 12, 2000, the Court Administrator found that respondent judge, in issuing the questioned Order, committed a lapse and recommended that he be fined in the amount of Five Thousand Pesos (P5,000.00) with a stern warning that a repetition of a similar offense will be dealt with more severely. The Court Administrator further recommended that the complaint against respondent clerk of court be dismissed for lack of merit. Thus:

"In order that a judge may be held liable for serious misconduct, there must be reliable evidence showing that the judicial acts complained for were corrupt or inspired by an intention to violate the law or were in persistent

disregard of well-known legal rules (Ang Kek Chen vs. Judge Amalia Andrade, A.M. No. RTJ-99-1504, November 16, 1999). The misconduct must imply wrongful intention and not a mere error of judgment. In the instant case, complainants failed to present evidence to show that respondents acted with corrupt and malicious intent to violate the law so as to warrant the imposition of penalty of dismissal for grave misconduct.

However, we concur with the observations of Executive Judge Ballutay that there appears to be a lapse in according herein complainant her right to due process when respondent judge interviewed the thirty-four (34) petitioners in the absence of counsels of both parties, sans a formal hearing. As to the liability of respondent Clerk of Court, this was not sufficiently established either in the complaint or the report of the investigating judge.”[9] (Emphasis supplied)

Accordingly, on February 11, 2002, this Court dismissed the complaint against respondent Clerk of Court Teresita S. Esteban.[10]

We find respondent judge guilty of gross ignorance of the law and grave misconduct constituting violation of the Code of Judicial Conduct under Section 8, Rule 140 of the Revised Rules of Court, as amended.[11]

Section 143 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, explicitly lays down the procedure governing petitions for inclusion, exclusion, and correction of names of voters, thus:

SEC. 143. Common rules governing judicial proceedings in the matter of inclusion, exclusion, and correction of names of voters. -

(a) Outside of regular office hours, no petition for inclusion, exclusion, or correction of names of voters shall be received.

(b) Notices to the members of the board of election inspectors and to challenged voters shall state the place, day and hour in which such petition shall be heard, and such notice may be made by sending a copy thereof by registered mail or by personal delivery or by leaving it in the possession of a person of sufficient discretion in the residence of the said person or, in the event that the foregoing procedure is not practicable, by posting a copy in a conspicuous place in the city hall or municipal building and in two other conspicuous places within the city or municipality, at least ten days prior to the day set for the hearing.

In the interest of justice and to afford the challenged voter every opportunity to contest the petition for exclusion, the court concerned may, when the challenged voter fails to appear in the first day set for the hearing, order that notice be effected in such manner and within such period of time as it may decide, which time shall in no case be more than ten days from the day the respondent is first found in default.

(c) Each petition shall refer to only one precinct.

(d) No costs shall be assessed in these proceedings. However, if the court should be satisfied that the application has been filed for the sole purpose of molesting the adverse party and causing him to incur expenses, it may condemn the culpable party to pay the costs and incidental expenses.

(e) Any candidate who may be affected by the proceedings may intervene and present his evidence.

(f) The decision shall be based on the evidence presented. If the question is whether or not the voter is real or fictitious, his non-appearance on the day set for hearing shall be prima facie evidence that the registered voter is fictitious. In no case shall a decision be rendered upon a stipulation of facts.

(g) These applications shall be heard and decided without delay. The decision shall be rendered within six hours after the hearing and within ten days from the date of its filing in court. Cases appealed to the regional trial court shall be decided within ten days from receipt of the appeal in the office of the clerk of court. In any case, the court shall decide these petitions not later than the day before the election and the decision rendered thereon shall be immediately final and executory, notwithstanding the provision of Section 138 on the finality

of decisions. (Emphasis supplied)

The clear mandate of the law is for the municipal judge a) to decide the petition on the basis of the evidence presented, b) to conduct a hearing thereon, and c) to render a decision within 10 days from the filing of the petition. Respondent judge, unfortunately, does not know the above legal provisions.

He did not decide the petition on the basis of petitioners' evidence. He could not have done so. Extant in the record is the fact that the thirty-nine (39) petitioners failed to attend any of the scheduled hearings. How then could they present evidence?

Respondent judge claimed that he personally interviewed the thirty-four (34) petitioners on April 25, 1997 and that this was the basis of his Order. We are hard put to treat such personal interview as corresponding to the "hearing" required by law. A hearing means that a party is given the chance to adduce evidence to support his side of the case.[12] The minutes of the interview merely show that it is a superficial and mechanical inquiry on each petitioner's age, citizenship, residence and years of residence in Barangay Kabulihan. The petitioners were not required to swear under oath or to present proof of their residence.[13] Their lawyers were not even notified. These incidents render the bare assertions of the thirty-four (34) petitioners doubtful and unreliable.

Significantly, despite respondent judge's allegation that the petition for inclusion was set for hearing on April 25, no notice of hearing was sent to the parties and their counsel. This was affirmed by Bonifacia C. Barcancel, the court stenographer, during the investigation conducted by Executive Judge Ballutay, thus:

Court:

x x x x x

Q So, actually here as per record of the case there was no notice to their lawyer, there was no notice to the counsels, to the oppositors as well as counsel for the oppositors?

A Yes, Your Honor, no notice.

Q So, what happened was just a moro-moro?

x x x x x

Q It was just like this. It was not just like a proper trial that is what you want the Court to understand?

A They were only interviewed, Your Honor.

Q No trial, no lawyer?

A Yes, Your Honor.[14] (Emphasis supplied)

That respondent judge did not conduct any hearing was confirmed by no less than respondent clerk of court, Teresita S. Esteban, thus:

Court:

x x x x x

Q Was there actual hearing on April 25, 1997 or merely interview which was conducted?

A Only interview, Your Honor.

Q No hearing?

A The petitioners were there, Your Honor.

Q Both counsels were not there?

A None, Your Honor, on May 8, Atty. Matias was there, Your Honor.

Q No, I am asking on April 25, 1997?

A No lawyers, Your Honor.

x x x x x

Q But there was actually no hearing, it was only/merely an interview which was conducted, there was no full blown hearing despite the opposition?

A Only interview, Your Honor.

Q So there was no hearing, interview merely?

A Yes, Your Honor.[15] (Emphasis supplied)

And, second, respondent judge issued the Order beyond the ten-day period required by Section 143. The petitions of the thirty-nine (39) Gonzales supporters were filed prior to April 17, 1997,[16] yet the Order granting them was issued only on May 9, 1997. In releasing the Order on a Friday and two days before the Barangay Elections, respondent judge effectively deprived the complainants of their right to appeal to the Regional Trial Court. Clearly, they were deprived of their right to due process.

Respondent judge's issuance of the controversial Order sans hearing and beyond the ten-day period constitutes gross ignorance of the law. His failure to observe the requirements of the Omnibus Election Code is inexcusable. As a judge of the Municipal Circuit Trial Court vested with the jurisdiction to hear and decide petitions for inclusion or exclusion of voters, he is expected to be familiar with these legal requirements because it can be assumed that these election cases were not the first cases he has decided.[17] Having accepted the exalted position of a judge, respondent judge must have the basic rules on the palm of his hand. He is expected to exhibit more than just a cursory acquaintance with the laws and rules of procedure.[18] The litigants will have faith in the administration of justice only if they believe that the occupants of the bench cannot be accused of deficiency in their grasp of legal principles.

Respondent judge likewise committed gross misconduct constituting violation of Canon 2, Rule 2.01 of the Code of Judicial Conduct, which provides that, "a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary." That respondent judge exhibited partiality in favor of candidate Gonzales, being supported by the thirty-four (34) petitioners, is shown by the fact that he granted their petitions despite their absence on the scheduled hearings and their failure to present evidence. Surely, he did not accord the same treatment to the petitioners supporting complainant Mercado.[19] Not to be glossed over is respondent judge's surreptitious issuance of the assailed Order, i.e. without furnishing the complainants with a copy thereof and after misleading them that no such Order was issued.

It needs to be reiterated over and over again, until it sinks into the consciousness of every judge, that litigants are entitled to nothing less than the cold neutrality of an impartial judge. The other elements of due process, like notice and hearing, would become meaningless if the ultimate decision is rendered by a partial or biased judge. Judges must not only render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity.[20]

The reminder applies all the more sternly to trial judges, like herein respondent, because they are the judicial front-liners. They have direct contact with the litigating parties. They are the intermediaries between conflicting

interests and the embodiments of the people's sense of justice. Thus, their official conduct should be beyond reproach.[21]

In fine, we hold that respondent judge has tainted the image of the judiciary to which he owes fealty and the obligation to keep it at all times unsullied and worthy of the people's trust.[22] He did not just commit a simple lapse. Section 8, Rule 140 of the Revised Rules of Court, as amended,[23] classifies administrative charges as serious, less serious, or light. Gross ignorance of the law or procedure and gross misconduct constituting violation of the Code of Judicial Conduct are subsumed under serious charges. Thus, the fine of Five Thousand Pesos (P5,000.00) recommended by both the investigating Executive Judge and the Court Administrator is not commensurate to the administrative offenses committed by respondent judge. Section 11 of the same Rule provides:

SEC. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00. (Emphasis supplied)

Considering the circumstances in this case, the penalty of suspension from office for four (4) months without salary and other benefits is deemed appropriate.

WHEREFORE, for gross ignorance of law or procedure and gross misconduct constituting violation of the Code of Judicial Conduct, respondent Judge HECTOR F. DYSANGCO, Presiding Judge of the Municipal Trial Court of Sta. Rosa, Nueva Ecija, then Acting Presiding Judge of the 2nd Municipal Circuit Trial Court, Natividad-Llanera, same province, is **SUSPENDED** for four (4) months without salary and other benefits. He is warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be attached to his records with this Court.

SO ORDERED.

Puno, (Chairman), Panganiban, and Carpio, JJ., concur.

[1] Rollo, pp. 3-10.

[2] Rollo, pp. 15-17.

[3] Rollo, pp. 21-22.

[4] Ibid., p. 23. Only twenty-one (21) of the thirty-four (34) petitioners were certified by the Office of the Election Officer as registered voters of Barangay Kabulihan, Gen. Natividad, Nueva Ecija. The Certification was given on August 28, 1997, long after the proceeding for inclusion.

[5] Rollo, pp. 19-20.

[6] Ibid., pp. 28-33.

[7] Ibid., p. 34.

[8] Report and Recommendation dated January 3, 2000, pp. 3-4.

[9] Memorandum, pp. 3-4.

[10] Resolution of the Third Division dated February 11, 2002, rollo, p. 83.

[11] Per Administrative Order No. 01-8-10-SC which took effect on October 1, 2001.

[12] Gonzales vs. Commission on Elections, 101 SCRA 752 (1980).

[13] Bonifacia C. Barcancel, Stenographer of MCTC, Natividad-Llanera testified:

Atty. Jacoba:

Q Mrs. Barcancel, in this Exhibit "9" the minutes of interview you took down faithfully everything that happened on April 25, 1997, is it not?

A Yes, sir.

Q I noticed here that all the interviewees, the person allegedly interviewed by Judge Dysangco on April 25, 1997 were not required to take an oath to tell the truth, is it not?

A Yes, sir.

Court:

Q That is why you did not include any oath taken by each of the applicants because there was no such oath because it was merely an interview that happened?

A Yes, Your Honor. TSN, December 20, 1999, pp. 7-8.

[14] TSN, December 20, 1999, pp. 9-10.

[15] TSN, December 7, 1999, pp. 7-8.

[16] This is the date of the first scheduled hearing.

[17] Siawan vs. Inopiquez, Jr., A.M. No. MTJ-95-1056, May 21, 2001.

[18] Malinao vs. Mijares, A.M. No. RTJ-99-1475, December 12, 2001; Chavez vs. Escañan, 343 SCRA 170 (2000).

[19] Two (2) of the nine (9) petitioners supporting complainant Mercado were absent on the scheduled hearings and their petitions were dismissed.

Notably, respondent judge granted the petitions of the thirty-nine (39) supporters of Gonzales notwithstanding the fact that he had also dismissed the said petitions in open court for failure of the petitioners to attend the hearing on May 9, 1997.

[20] Office of the Court Administrator vs. Sanchez, A.M. No. RTJ-99-1486, June 26, 2001; De la Cruz vs. Bersamira, 336 SCRA 353 (2000); Dacera, Jr. vs. Dizon, Jr., 337 SCRA 144 (2000) citing Rallos vs. Gako, Jr., 328 SCRA 324 (2000).

[21] Abundo vs. Manio, Jr., 312 SCRA 1 (1999)

[22] Huggland vs. Lantin, 326 SCRA 620 (2000), citing Garcia vs. Dela Peña, 229 SCRA 766 (1994).

[23] Supra.

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