RAMON M. CALO, COMPLAINANT, VS. JUDGE GODOFREDO B. ABUL, JR., REGIONAL TRIAL COURT, BRANCH 4, BUTUAN CITY, RESPONDENT.

A.M. NO. RTJ-06-1996 (OCA-IPI No. 05-2285-RTJ). July 25, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Complainant Ramon M. Calo charges respondent Judge Godofredo B. Abul, Jr. of the Regional Trial Court of Butuan City, Branch 4, with serious misconduct, gross ignorance of the law, grave abuse of discretion and for knowingly rendering an unjust interlocutory order relative to Civil Case No. 1242 entitled Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI) v. Philippine Ports Authority (PPA).

Complainant, who represents NIASSI in the said case, alleges that on March 18, 2005, respondent issued a Resolution[1] granting NIASSI's prayer for a Writ of Preliminary Mandatory Injunction. PPA filed a Motion for Reconsideration[2] which was initially set for hearing on April 1, 2005 but was moved to March 31, 2005. However, the hearing on said date was cancelled, instead, respondent conducted the hearing on April 1, 2005 as originally scheduled and made it on record that NIASSI's counsels were absent in the said hearing.[3]

On April 11, 2005, respondent issued a resolution[4] dissolving the Writ of Preliminary Mandatory Injunction effective immediately without requiring PPA to post a counter bond. Complainant contends that respondent's act of precipitately dissolving the writ of preliminary injunction on doubtful grounds and without requiring PPA to post a counter bond makes him guilty of gross ignorance of the law and procedures, knowingly rendering an unjust interlocutory order, and serious misconduct.

Complainant alleges that respondent had succumbed to undue influence and pressure from politicians who were instrumental in his appointment to the bench and who are now interested in the stevedoring business in the Port of Nasipit.

In his Comment,[5] respondent denies that he showed bias and partiality in favor of PPA. He explains that the hearing of PPA's Motion for Reconsideration scheduled on March 31, 2005 was cancelled because the lawyers of NIASSI were not available. Likewise, no hearing was conducted on April 1, 2005. Instead, he verbally informed the lawyers of PPA who were then present of the resetting of the hearing on April 6, 2005. It was actually on April 6, 2005 when the Motion for Reconsideration of PPA was heard; that there is no truth to the allegation that the scheduling was intended for the benefit of PPA.

Respondent also contends that the lifting of the writ was not done in bad faith, nor was it with intent to cause damage to NIASSI. He asserts that under Section 6, Rule 58 of the Rules of Court, a judge can validly dissolve the writ if there is a valid ground to do so. After reviewing PPA's Motion for Reconsideration, he noted that the Holdover Authority/Permit of NIASSI would expire on April 13, 2005, afterwhich there would be no more basis for the continued enforcement of the writ. He did not require PPA to post a counter bond due to the permit's expiration.

In the meantime, NIASSI, through complainant, filed a Petition for Certiorari with the Court of Appeals, and a Motion for the Voluntary Inhibition of respondent.

In its Report,[6] the Office of the Court Administrator (OCA) found the complaint to be bereft of merit, thus:

> A circumspect scrutiny of the records at hand fails to support the allegations in the complaint. The acts of respondent pertain to his judicial functions and, as such, are not subject to disciplinary power unless they are committed with fraud, dishonesty, corruption or bad faith, which complainant has not proven nor shown. Besides, complainant, representing NIASSI, had availed of the judicial remedy of certiorari assailing the 11 April 2005 Order of respondent wherein complainant raised substantially the same issues subject of the instant administrative complaint.
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> Anent the 1 April 2005 Order resetting the hearing to 6 April 2005, such does state that the setting that day was for the hearing on the Manifestation and Omnibus Motion for Reconsideration filed by PPA. However, it is clear that there was no set hearing that day, as admitted by respondent in his comment, for he merely met the lawyers of PPA and reset the hearing. Thus, the 1 April 2005 Order stating the set hearing that day was certainly misleading or not entirely true since the 1 April 2005 hearing was cancelled and moved to 31 March 2005, which was subsequently moved to 6 April 2005, as originally requested by PPA in the motion for reconsideration. Respondent must be more circumspect in issuing orders that must reflect the actual facts it represents to obviate engendering views of partiality among party litigants, particularly complainant in the instant case who was not logically present. Nevertheless, NIASSI and complainant's rights were not prejudiced since a hearing was indeed conducted on PPA's motion for reconsideration on 6 April 2005.[7]

The OCA recommends that respondent be sternly warned to be more circumspect in issuing orders which must truly reflect the actual facts it represents and for the dismissal of the instant administrative complaint for lack of merit.

We agree with the findings and recommendation of the OCA.

The grant or denial of a writ of preliminary mandatory injunction is discretionary on the part of the trial court. The matter is judicial in nature, as such, the party's remedy if prejudiced by the orders of a judge given in the course of a trial, is the proper reviewing court, and not with the OCA by means of an administrative complaint. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[8]

In the present case, the records are bereft of evidence showing bad faith, fraud, dishonesty, and corruption of the respondent judge. Thus, it is improper for complainant to file an administrative complaint to challenge the exercise of respondent's judicial discretion. Besides, NIASSI has filed a petition for certiorari with the Court of Appeals based on the same set of acts allegedly committed by respondent which are likewise being assailed in the instant administrative complaint. As such, any grave abuse of discretion, gross ignorance of the law, or serious misconduct allegedly committed by respondent judge should be discussed and resolved in the said petition for certiorari.

Likewise, there exists no evidence as to the alleged bias and partiality of respondent towards PPA. As held in Mamerto Maniquiz Foundation, Inc. v. Pizarro:[9]

> In administrative proceedings, the complainant bears the onus of establishing, by substantial evidence, the averments of his complaint. Notatu dignum is the presumption of regularity in the performance of a judge's functions, hence bias, prejudice and even undue interest cannot be presumed, specially weighed against a

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> judge's sacred allegation under oath of office to administer justice without respect to any person and do equal right to the poor and to the rich. In a long line of cases decided by this Court, it was held that bare allegations of bias are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. In Sinnott v. Barte, it was further held, mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality. x x x

WHEREFORE, the instant administrative complaint filed against respondent Judge Godofredo B. Abul, Jr. of the Regional Trial Court of Butuan City, Branch 4, is DISMISSED for lack of merit. Respondent, however, is STERNLY WARNED to be more circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality among litigants.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 13-19.

[2] Id. at 20-39.

[3] Id. at 48.

[4] Id. at 49-52.

[5] Id. at 60-66.

[6] Id. at 157-162.

[7] Id. at 161.

[8] Dadula v. Ginete, A.M. No. MTJ-03-1500, March 18, 2005, 453 SCRA 575, 587.

[9] A.M. No. RTJ-03-1750, January 14, 2005, 448 SCRA 140, 155-156.

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