

RE: RESOLUTION OF THE COURT DATED 1 JUNE 2004 IN G.R. NO. 72954 AGAINST, ATTY. VICTOR C. AVECILLA, RESPONDENT.

A.C. No. 6683. June 21, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

The present administrative case is based on the following facts:

Prelude

Sometime in 1985, respondent Atty. Victor C. Avecilla (Atty. Avecilla) and a certain Mr. Louis C. Biraogo (Mr. Biraogo) filed a petition before this Court impugning the constitutionality of Batas Pambansa Blg. 883, i.e., the law that called for the holding of a presidential snap election on 7 February 1986. The petition was docketed as G.R. No. 72954 and was consolidated with nine (9) other petitions [1] voicing a similar concern.

On 19 December 1985, the Court En banc issued a Resolution dismissing the consolidated petitions, effectively upholding the validity of Batas Pambansa Blg. 883. [2]

On 8 January 1986, after the aforesaid resolution became final, the rollo [3] of G.R. No. 72954 was entrusted to the Court's Judicial Records Office (JRO) for safekeeping. [4]

The Present Case

On 14 July 2003, the respondent and Mr. Biraogo sent a letter [5] to the Honorable Hilario G. Davide, Jr., then Chief Justice of the Supreme Court (Chief Justice Davide), requesting that they be furnished several documents [6] relative to the expenditure of the Judiciary Development Fund (JDF). In order to show that they have interest in the JDF enough to be informed of how it was being spent, the respondent and Mr. Biraogo claimed that they made contributions to the said fund by way of the docket and legal fees they paid as petitioners in G.R. No. 72954. [7]

On 28 July 2003, Chief Justice Davide instructed [8] Atty. Teresita Dimaisip (Atty. Dimaisip), then Chief of the JRO, to forward the rollo of G.R. No. 72954 for the purpose of verifying the claim of the respondent and Mr. Biraogo.

On 30 July 2003, following a diligent search for the rollo of G.R. No. 72954, Atty. Dimaisip apprised [9] Chief Justice Davide that the subject rollo could not be found in the archives. Resorting to the tracer card [10] of G.R. No. 72954, Atty. Dimaisip discovered that the subject rollo had been borrowed from the JRO on 13 September 1991 but, unfortunately, was never since returned. [11] The tracer card named the respondent, although acting through a certain Atty. Salvador Banzon (Atty. Banzon), as the borrower of the subject rollo. [12]

The next day, or on 31 July 2003, Chief Justice Davide took prompt action by directing [13] Atty. Dimaisip to supply information about how the respondent was able to borrow the rollo of G.R. No. 72954 and also to take

necessary measures to secure the return of the said rollo.

Reporting her compliance with the foregoing directives, Atty. Dimaisip sent to Chief Justice Davide a Memorandum [14] on 13 August 2003. In substance, the Memorandum relates that:

- At the time the rollo of G.R. No. 72954 was borrowed from the JRO, the respondent was employed with the Supreme Court as a member of the legal staff of retired Justice Emilio A. Gancayco (Justice Gancayco). Ostensibly, it was by virtue of his confidential employment that the respondent was able to gain access to the rollo of G.R. No. 72954. [15]

- Atty. Dimaisip had already contacted the respondent about the possible return of the subject rollo. [16] Atty. Dimaisip said that the respondent acknowledged having borrowed the rollo of G.R. No. 72954 through Atty. Banzon, who is a colleague of his in the office of Justice Gancayco. [17]

On 18 August 2003, almost twelve (12) years after it was borrowed, the rollo of G.R. No. 72954 was finally turned over by Atty. Avecilla to the JRO. [18]

On 22 September 2003, Chief Justice Davide directed [19] the Office of the Chief Attorney (OCAT) of this Court, to make a study, report and recommendation on the incident. On 20 November 2003, the OCAT submitted a Memorandum [20] to the Chief Justice opining that the respondent may be administratively charged, as a lawyer and member of the bar, for taking out the rollo of G.R. No. 72954. The OCAT made the following significant observations:

- Justice Gancayco compulsorily retired from the Supreme Court on 20 August 1991. [21] However, as is customary, the coterminous employees of Justice Gancayco were given an extension of until 18 September 1991 to remain as employees of the court for the limited purpose of winding up their remaining affairs. Hence, the respondent was already nearing the expiration of his "extended tenure" when he borrowed the rollo of G.R. No. 72954 on 13 September 1991. [22]

- The above circumstance indicates that the respondent borrowed the subject rollo not for any official business related to his duties as a legal researcher for Justice Gancayco, but merely to fulfill a personal agenda. [23] By doing so, the respondent clearly abused his confidential position for which he may be administratively sanctioned. [24]

- It must be clarified, however, that since the respondent is presently no longer in the employ of the Supreme Court, he can no longer be sanctioned as such employee. [25] Nevertheless, an administrative action against the respondent as a lawyer and officer of the court remains feasible. [26]

Accepting the findings of the OCAT, the Court En banc issued a Resolution [27] on 9 December 2003 directing the respondent to show cause why he should not be held administratively liable for borrowing the rollo of G.R. No. 72954 and for failing to return the same for a period of almost twelve (12) years.

The respondent conformed to this Court's directive by submitting his Respectful Explanation (Explanation) [28] on 21 January 2004. In the said explanation, the respondent gave the following defenses:

- The respondent maintained that he neither borrowed nor authorized anyone to borrow the rollo of G.R. No. 72954. [29] Instead, the respondent shifts the blame on the person whose signature actually appears on the tracer card of G.R. No. 72954 and who, without authority, took the subject rollo in his name. [30] Hesitant to pinpoint anyone in particular as the author of such signature, the respondent, however, intimated that the same might have belonged to Atty. Banzon. [31]

- The respondent asserted that, for some unknown reason, the subject rollo just ended up in his box of personal

papers and effects, which he brought home following the retirement of Justice Gancayco. [32] The respondent can only speculate that the one who actually borrowed the rollo might have been a colleague in the office of Justice Gancayco and that through inadvertence, the same was misplaced in his personal box. [33]

- The respondent also denounced any ill-motive for failing to return the rollo, professing that he had never exerted effort to examine his box of personal papers and effects up until that time when he was contacted by Atty. Dimaisip inquiring about the missing rollo. [34] The respondent claimed that after finding out that the missing rollo was, indeed, in his personal box, he immediately extended his cooperation to the JRO and wasted no time in arranging for its return.[35]

On 24 February 2004, this Court referred the respondent's Explanation to the OCAT for initial study. In its Report [36] dated 12 April 2004, the OCAT found the respondent's Explanation to be unsatisfactory.

On 1 June 2004, this Court tapped [37] the Office of the Bar Confidant (OBC) to conduct a formal investigation on the matter and to prepare a final report and recommendation. A series of hearings were thus held by the OBC wherein the testimonies of the respondent, [38] Atty. Banzon, [39] Atty. Dimaisip [40] and one Atty. Pablo Gancayco [41] were taken. On 6 August 2007, the respondent submitted his Memorandum [42] to the OBC reiterating the defenses in his Explanation.

On 13 October 2009, the OBC submitted its Report and Recommendation [43] to this Court. Like the OCAT, the OBC dismissed the defenses of the respondent and found the latter to be fully accountable for taking out the rollo of G.R. No. 72954 and failing to return it timely. [44] The OBC, thus, recommended that the respondent be suspended from the practice of law for one (1) year. [45]

Our Ruling

We agree with the findings of the OBC. However, owing to the peculiar circumstances in this case, we find it fitting to reduce the recommended penalty.

The Respondent Borrowed The Rollo

After reviewing the records of this case, particularly the circumstances surrounding the retrieval of the rollo of G.R. No. 72954, this Court is convinced that it was the respondent, and no one else, who is responsible for taking out the subject rollo.

The tracer card of G.R. No. 72954 bears the following information:

- The name of the respondent, who was identified as borrower of the rollo, [46] and
- The signature of Atty. Banzon who, on behalf of the respondent, actually received the rollo from the JRO. [47]

The respondent sought to discredit the foregoing entries by insisting that he never authorized Atty. Banzon to borrow the subject rollo on his behalf. [48] We are, however, not convinced.

First. Despite the denial of the respondent, the undisputed fact remains that it was from his possession that the missing rollo was retrieved about twelve (12) years after it was borrowed from the JRO. This fact, in the absence of any plausible explanation to the contrary, is sufficient affirmation that, true to what the tracer card states, it was the respondent who borrowed the rollo of G.R. No. 72954.

Second. The respondent offered no convincing explanation how the subject rollo found its way into his box of personal papers and effects. The respondent can only surmise that the subject rollo may have been inadvertently placed in his personal box by another member of the staff of Justice Gancayco. [49] However, the respondent's convenient surmise remained just that--a speculation incapable of being verified definitively.

Third. If anything, the respondent's exceptional stature as a lawyer and former confidante of a Justice of this Court only made his excuse unacceptable, if not totally unbelievable. As adequately rebuffed by the OCAT in its Report dated 12 April 2004:

x x x However, the excuse that the rollo "inadvertently or accidentally" found its way to his personal box through his officemates rings hollow in the face of the fact that he was no less than the confidential legal assistance of a Member of this Court. With this responsible position, Avecilla is expected to exercise extraordinary diligence with respect to all matters, including seeing to it that only his personal belongings were in that box for taking home after his term of office in this Court has expired. [50]

Verily, the tracer card of G.R. No. 72954 was never adequately controverted. We, therefore, sustain its entry and hold the respondent responsible for borrowing the rollo of G.R. No. 72954.

Respondent's Administrative Liability

Having settled that the respondent was the one who borrowed the rollo of G.R. No. 72954, We next determine his administrative culpability.

We begin by laying the premises:

- The respondent is presently no longer in the employ of this Court and as such, can no longer be held administratively sanctioned as an employee. [51] However, the respondent, as a lawyer and a member of the bar, remains under the supervisory and disciplinary aegis of this Court. [52]
- The respondent was already nearing the expiration of his "extended tenure" when he borrowed the rollo of G.R. No. 72954 on 13 September 1991. [53] We must recall that Justice Gancayco already retired as of 20 April 1991. Hence, it may be concluded that for whatever reason the respondent borrowed the subject rollo, it was not for any official reason related to the adjudication of pending cases. [54]
- The respondent's unjustified retention of the subject rollo for a considerable length of time all but confirms his illicit motive in borrowing the same. It must be pointed out that the subject rollo had been in the clandestine possession of the respondent for almost twelve (12) years until it was finally discovered and recovered by the JRO.

Given the foregoing, We find that there are sufficient grounds to hold respondent administratively liable.

First. Taking judicial records, such as a rollo, outside court premises, without the court's consent, is an administratively punishable act. In *Fabiculana, Sr. v. Gadon*, [55] this Court previously sanctioned a sheriff for the wrongful act of bringing court records home, thus:

Likewise Ciriaco Y. Forlales, although not a respondent in complainant's letter-complaint, should be meted the proper penalty, having admitted taking the records of the case home and forgetting about them. Court employees are, in the first place, not allowed to take any court records, papers or documents outside the court premises. It is clear that Forlales was not only negligent in his duty of transmitting promptly the records of an appealed case to the appellate court but he also failed in his duty not to take the records of the case outside of the court and to subsequently forget about them. [56] (Emphasis supplied)

Second. The act of the respondent in borrowing a rollo for unofficial business entails the employment of deceit not becoming a member of the bar. It presupposes the use of misrepresentation and, to a certain extent, even abuse of position on the part of the respondent because the lending of rollos are, as a matter of policy, only limited to official purposes.

As a lawyer then employed with the government, the respondent clearly violated Rule 6.02, Canon 6 of the Code

of Professional Responsibility, to wit:

Rule 6.02 - A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties. (Emphasis supplied).

Third. However, We find the recommended penalty of suspension from the practice of law for one (1) year as too harsh for the present case. We consider the following circumstances in favor of the respondent:

- G.R. No. 72954 was already finally resolved when its rollo was borrowed on 13 September 1991. Thus, the act of respondent in keeping the subject rollo worked no prejudice insofar as deciding G.R. No. 72954 is concerned.
- It was never established that the contents of the rollo, which remained confidential despite the finality of the resolution in G.R. No. 72954, were disclosed by the respondent.
- After his possession of the subject rollo was discovered, the respondent cooperated with the JRO for the return of the rollo.

We, therefore, temper the period of suspension to only six (6) months.

WHEREFORE, in light of the foregoing premises, the respondent is hereby **SUSPENDED** from the practice of law for six (6) months. The respondent is also **STERNLY WARNED** that a repetition of a similar offense in the future will be dealt with more severely.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Mendoza, and Sereno, JJ., concur.

[1] The other petitions were docketed as G.R. Nos. 72915, 72922, 72923, 72924, 72927, 72935, 72954, 72957, 72968 and 72986.

[2] G.R. Nos. 72915, 72922, 72923, 72924, 72927, 72935, 72954, 72957, 72968 and 72986, 19 December 1985, 140 SCRA 453, 454.

[3] Refers to the folder containing the entire records of a case. The rollo is the official repository of the all pleadings, communications, documents and other papers filed by the parties in a particular case. (See Section 1 of Rule 9 of the Internal Rules of the Supreme Court).

[4] Rollo, p. 51.

[5] Temporary rollo, pp. 88-89.

[6] The documents requested were: (1) Report of disbursement of the Judiciary Development Fund, (2) Report of collection by the Supreme Court of the said Fund, (3) List of cash advances, (4) List of outstanding cash advances, (5) Report of checks issued for the fund, (6) Disbursement vouchers and subsidiary ledgers of accounts involving the Fund, and (7) Pertinent audit reports of the Commission on Audit. Id. at 88.

[7] Id. at 89.

[8] Memorandum. Id. at 96.

[9] Id. at 97-98.

[10] Refers to the index card that monitors the movement of a given rollo. Rollo, p. 51.

[11] Temporary rollo, p. 98.

[12] Id.

[13] Memorandum. Id. at 103.

[14] Id. at 104-105.

[15] Id. at 104.

[16] Id.

[17] Id.

[18] See Memorandum of Atty. Teresita Dimaisip to Chief Justice Hilario G. Davide, Jr. dated 19 August 2003. Id. at 109.

[19] Memorandum. Id. at 84-85.

[20] Id. at 71-83.

[21] Id. at 77.

[22] Id.

[23] Id.

[24] Id. at 77-78.

[25] Id. at 77.

[26] Id.

[27] Id. at 29.

[28] Id. at 125-128.

[29] Id.

[30] Id.

[31] Id.

[32] Id.

[33] Id.

[34] Id.

[35] Id.

[36] Id. at 5-18.

[37] Id. at 1.

[38] Rollo, pp. 237-331.

[39] Id. at 226-236.

[40] Id. at 106-183

[41] Id. at 184-225.

[42] Id. at 750-773.

[43] Sealed Report and Recommendation of the OBC.

[44] Id.

[45] Id.

[46] Rollo, p. 51.

[47] Id.

[48] Temporary rollo, pp. 127-129.

[49] Id.

[50] Id. at 17.

[51] Id. at 8.

[52] See Section 5(5), Article VIII of the CONSTITUTION.

[53] Temporary rollo, p. 8.

[54] Id.

[55] A.M. No. P-94-1101, 29 December 1994, 239 SCRA 542.

[56] Id. at 545.

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