

DOROTEO M. SALAZAR, COMPLAINANT, VS. JUDGE ANTONIO D. MARIGOMEN, REGIONAL TRIAL COURT, BRANCH 61, BOGO, CEBU, RESPONDENT.

A.M. NO. RTJ-06-2004 (Formerly OCA I.P.I. No. 04-2145-RTJ). October 19, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Complaint[1] dated November 10, 2004, Doroteo M. Salazar (complainant) charged Judge Antonio D. Marigomen (respondent), Presiding Judge of Branch 61, Regional Trial Court, Bogo, Cebu, with gross ignorance of the law, bias, conduct prejudicial to the interest of the service and rendering a decision violative of the Commission on Elections (COMELEC) Rules of Procedure and the Constitution in connection with Election SPC Case No. BOGO-00789.

Zenaida F. Salazar, wife of complainant, and a mayoralty candidate in the Municipality of Madridejos, Cebu in the May 2001 elections, filed on July 4, 2001 an election protest against the proclaimed winner Lety[2] Mancio (Mancio) before the Regional Trial Court, Bogo, Cebu where it was docketed as Election SPC Case No. BOGO-00789.

The election case was first heard by then Acting Presiding Judge Jesus S. dela Peña who, on April 1, 2002, issued an order directing the revision of the contested ballots in the premises of the House of Representatives Electoral Tribunal (HRET) where the ballot boxes were being kept. Respondent took over and started presiding over the election case on June 3, 2002.

By Decision[3] of August 8, 2003, respondent dismissed the election protest and declared Mancio as the duly elected municipal mayor of Madridejos, Cebu with total votes of 5,214.[4]

On appeal, the COMELEC First Division, by Resolution[5] of March 25, 2004, reversed and set aside the August 8, 2003 Decision of respondent and declared complainant's wife Zenaida Salazar as the duly elected mayor.[6]

Thus, spawned the filing of the complaint at bar.

By complainant's claim, respondent admitted in evidence uncertified photocopies of the contested ballots,[7] the original copies of which were in the custody of the HRET, contrary to Section 7, Rule 130 of the Rules of Court[8] which provides:

SEC. 7. Evidence admissible when original document is a public record. – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (*Italics in the original; emphasis and underscoring supplied*);

and respondent considered the uncertified photocopies-exhibits for Mancio in deciding the case. Hence, the charge of gross ignorance of the law.[9]

Respondent's partiality was, by complainant's claim, shown in several instances, viz: When protestant Zenaida Salazar objected to the presentation of the plain photocopies of the contested ballots, respondent ordered his Clerk of Court to coordinate with counsel for protestee and to testify for her; and respondent allowed Atty. Reinerio Roeles, the co-counsel for the protestee, to testify despite the protestant's objection on the ground that his testifying would be a violation of professional ethics[10] and despite respondent's citation of authorities on the matter.[11]

Complainant further claims that respondent was acting as if he were the counsel for the protestee, demonstrated during the testimony of the Clerk of Court when protestee's counsel had difficulty explaining the nature of the clerk's testimony and respondent laid the basis thereof.[12]

Complainant additionally claims that respondent was "too liberal and tolerant of the maneuverings and manipulations of the protestee,"[13] thereby dragging the proceedings which started on July 4, 2001 (when it was filed) up to August 8, 2003 (when it was decided), in violation of the period provided by the Omnibus Election Code.

Furthermore, complainant claims that despite the parties' agreement to follow the Memorandum on Policy Guidelines dated March 12, 2002 executed between the Office of the Court Administrator (OCA) and the Integrated Bar of the Philippines (IBP)[14] allowing the submission of affidavits of witnesses in lieu of their testifying in court, subject to cross examination, respondent allowed protestee to present witnesses to give oral testimonies.[15]

Finally, complainant claims that respondent violated the COMELEC Rules of Procedure as well as the Constitution for not clearly and distinctly stating the facts and the law on which his decision was based.[16]

In his Comment,[17] respondent proffers that complainant is not the real party in interest and, in any event, the complaint is moot and academic as the election protest had been decided on appeal by the COMELEC; and if errors were committed, "they pertain to the exercise of his adjudicative functions [which] cannot be corrected through administrative proceedings." [18]

As to the charge of gross ignorance of the law, respondent cites Section 5,[19] Rule 130 of the Rules of Court as his legal basis for the admission of the uncertified photocopies.

Denying complainant's claim that he was biased in favor of the protestee relative to the presentation of her counsel Atty. Roeles as a witness, respondent claims that despite the counsel for the protestant's commitment to submit a memorandum of authorities to support his objection to Atty. Roeles' presentation, no memorandum was submitted.[20]

Respecting his having propounded questions in the course of the testimony of the witnesses, respondent claims that he did so in good faith "in order to ascertain the falsity or truth of the subject matter." [21]

On the charge of conduct prejudicial to the interest of the service, respondent disclaims any intentional delay of the proceedings on his part. As for the non-observance of the Memorandum on Policy Guidelines, he argues that if the protestant had agreed to observe the memorandum, he could not compel the protestee to also observe the same as the policy guidelines are merely recommendatory and not compulsory.[22]

Finally, respondent maintains that his decision clearly stated the facts and the law on which it was based, and if there are errors therein, they are correctible by judicial remedies and not by administrative proceedings.[23]

The OCA, by Report[24] of April 4, 2006, found the complaint meritorious in light of the following evaluation:

. . . Administrative matter involves the exercise of the Court's power to discipline judges. It is undertaken and

prosecuted solely for the public welfare, that is, to maintain the faith and confidence of the people in the government. Thus, unlike in ordinary cases, there is no private offended party in administrative proceedings who may be entitled to judicial relief. The complainant need not be a real party in interest, as anyone may file an administrative complaint against a judge, the only requirement being that the complaint be verified and it “be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.”

The admission of the uncertified or plain photocopies of the contested ballots by respondent Judge in favor of Mancio betrays his ignorance of Section 7, Rule 130 of the Rules of Court. The Rule, otherwise known as the Best Evidence Rule, simply provides that as long as the original evidence can be had, the court should not receive in evidence that which is substitutionary in nature, such as photocopies, in the absence of any clear showing that the original writing has been lost or destroyed or cannot be produced in court. In this case, the original copies of the contested ballots have neither been lost nor destroyed. They are in the custody of the HRET, and had respondent judge wanted to examine them, he could have easily ordered the transfer of their custody to the court.

His invocation of Section 5, Rule 130 of the Rules of Court to justify his admission of the plain copies of the contested ballots is misplaced. The Rule allows the admission of secondary evidence when the original document has been lost or destroyed, or cannot be found. However, the offeror is burdened to prove the predicates thereof: (a) the loss or destruction of the original was without bad faith on the part of the proponent/offeror which can be shown by circumstantial evidence of routine practices of destruction of documents; (b) the proponent must prove by a fair preponderance of evidence as to raise a reasonable inference of the loss or destruction of the original copy; and (c) it must be shown that a diligent and bona fide but unsuccessful search has been made for the document in the proper place or places.

Verily, as the original copies of the contested ballots are in the custody of the HRET, which fact was known to respondent judge, there was no occasion to apply Section 5, Rule 130 of the Rules of Court. When the law is so elementary, not to know it constitutes gross ignorance of the law.

Respondent judge took special interest in the presentation of Atty. Caayon as a witness for Mancio. The purpose of Atty. Caayon’s testimony was to show that the photocopies of the ballots were the same as the original ballots in the custody of the HRET. When the counsel for Salazar, Atty. Manuel S. Paradela, refused to stipulate on the faithful reproduction of the original ballots, the counsel for Mancio declared that they could request HRET to bring the original ballots to the court for comparison. Respondent judge, however, ignored the manifestation, and proceeded to ask Atty. Paradela if the latter was represented during the photocopying of the original ballots. Nonetheless, the counsel for Mancio, Atty. Nathaniel Clarus, requested for the issuance of a subpoena duces tecum and ad testificandum to bring the original ballots to the court. Despite that manifestation, respondent judge allowed Atty. Caayon to affirm the veracity of the photocopies in his possession, thus:

x x x x

[Judge Marigomen]: We will present the Clerk of Court (Atty. Caayon) to affirm the veracity of those ballots in his possession of the tribunal copy and now existence (sic) in the possession of the Clerk of Court. x x x

Clearly, respondent judge was more interested in presenting Atty. Caayon as a witness than the party (Mancio) who would have benefited from the testimony. His actuations did not speak well of the cold neutrality required of an impartial judge, as he showed his manifest bias for one party over the other.

The bias of respondent judge for Mancio was further demonstrated when Atty. Caayon was being qualified as a witness. After every objection raised by Atty. Paradela to the questions propounded by Atty. Clarus to Atty. Caayon, respondent judge would always propound questions himself to Atty. Caayon, instead of ruling on the objections . . .

x x x x

Respondent judge's bias for Mancio was further shown by respondent judge when he allowed one of the counsels for Mancio, Atty. Reinerio Roiles, to testify despite the vigorous objection of Salazar through his counsel, as the testimony was in violation of Rule 12.08, Canon 12 of the Canons of Professional Responsibility. The Rule prohibits a lawyer from testifying in behalf of his client, except on formal matters such as the mailing, authentication or custody of an instrument, or on substantial matters, in cases where his testimony is essential to the ends of justice. In this case, Atty. Roeles was allowed to testify on matters not contemplated by the exceptions. As admitted by respondent judge, he allowed Atty. Roeles to testify "to prove that he is one of the legal panel (sic) of the protestee; that he was at the Municipality of Madridejos last May 12, 2001 to May [1]5, 2001; and that there was (sic) no goons, terrorism and other election activities as alleged by the protestant." Surely, the matters testified to by Atty. Roeles are neither formal matters nor essential to the ends of justice; rather, they were self-serving declarations intended to strengthen Mancio's cause.

In his attempt at justifying his act in allowing Atty. Roeles to testify, respondent judge committed falsehood when he declared in his comment that he allowed Atty. Roeles to testify over the objection of Salazar after the latter, through counsel, failed to submit a memorandum in support of her objection. However, the records of this case belie that claim. It appears that Salazar through Atty. Paradela filed a Manifestation dated February 24, 2003, calling attention to the unethical presentation of Atty. Roeles as a witness for his own client, Mancio. The manifestation was filed with, and received by, the court on the same day, as evidenced by the stamp "RECEIVED" appearing on the upper right hand corner of the first page of the Manifestation.

There is also merit in the complaint that respondent judge failed to abide by the express mandate of the COMELEC Rules and Procedure and the Constitution to state clearly and distinctly in every decision the facts and the law on which it is based.

The questioned decision dismissing for lack of merit the election protest filed by Salazar against Mancio, and declaring the latter to be the duly elected municipal mayor of Madridejos, Cebu, with a total votes of 5,214 as against the 5,144 votes garnered by Salazar, or a difference of 70 votes. The final tabulation of votes came about after the respondent judge declared on the penultimate page of the 22-page decision, thus:

After reviewing or re-appreciating the ballots of the contested precincts, the Court invalidated ninety (90) votes of the protestant and has not validated stray votes in her favor as she has not formally offered the claimed stray votes or ballots. The court shall only consider ballots which are presented and formally offered.

After a thorough examination of the questioned decision, it became obvious that the invalidation of the 90 votes against Salazar was made without indicating in the decision the factual and legal bases therefor. Expectedly, the COMELEC First Division, in its Resolution promulgated on March 25, 2004, reversed and set aside the August 8, 2003 Decision of respondent judge, and declared Salazar as the duly elected mayor of Madridejos, Cebu.

Time and again, the Court had instructed judges to exert effort to ensure the decisions would present a comprehensive analysis or account of the factual and legal findings that would substantially address the issues raised by the parties. Respondent failed in this respect.

x x x x

In fine, respondent judge is guilty of gross ignorance of the law, manifest bias and deliberate falsehood or dishonesty. Under Section 8, Rule 140 of the Rules of Court, gross ignorance of the law is considered a serious charge. Similarly, bias and deliberate falsehood, which are tantamount to grave misconduct, are considered serious charges under the same Rule. The penalty imposable for serious charges ranges from fine to dismissal.[25] (*Italics in the original, emphasis supplied; and underscoring partly in the original and partly supplied*)

The OCA recommended that respondent be found guilty of (a) gross ignorance of the law and fined in the amount

of P20,000, and (b) bias and dishonesty, amounting to grave misconduct and suspended for six months without pay.[26]

In compliance with this Court's Resolution[27] of June 19, 2006 requiring them to manifest whether they are willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, complainant and respondent manifested in the affirmative.

The Court finds the evaluation of the case by the OCA in order. Respondent's questioned acts do not conform to the following pertinent canons of the New Code of Judicial Conduct for the Philippine Judiciary which took effect on June 1, 2004.

CANON 3
IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 1. Judges shall perform their judicial duties without favor, bias or prejudice.

SEC. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

x x x x

CANON 5
EQUALITY

x x x x

SEC. 2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

x x x x (Emphasis supplied)

And respondent indeed committed falsehood, as found by the OCA. Respondent's claim that he allowed the protestee's counsel, Atty. Roeles, to testify over the objection of the protestant's counsel because the latter failed to submit a memorandum in support of the objection, is belied by the records of the case. Thus, in a pleading captioned "Manifestation," the protestant's counsel submitted a memorandum of authorities on the matter.

In Re: Compliance of Judge Maxwell S. Rosete, Municipal Trial Court in Cities (MTCC), Santiago City, Isabela,[28] this Court observed:

... [T]he lack of candor he has shown by the misrepresentation which he made before the Court is incongruent with the primordial character which a magistrate must possess, especially so in this case where the act of dishonesty was committed against the Court. A member of the bar owes candor, fairness, and good faith to the Court. He must not do any falsehood or consent to the doing of any in court; neither shall he mislead or allow the Court to be misled by any artifice. The moral standard of honesty is equally, if not much more, expected from members of the Judiciary, as they are the agents through which the Court ensures that the end of justice is served. Dishonesty is anathema to the very nature of functions which a magistrate performs.[29] (Emphasis and underscoring supplied)

Respondent also indeed failed to state in his decision why he invalidated 90 ballots in favor of the protestant and to specify the ballots being set aside, thereby violating the Constitution.[30]

This Court modifies the recommendation of the OCA, however, given the number of infractions committed by

respondent. Instead of suspension, it imposes on respondent a fine of Twenty Five Thousand (P25,000) Pesos for manifest bias and dishonesty. And it increases the recommended fine of Twenty Thousand (P20,000) Pesos for gross ignorance of law or procedure to Twenty Five Thousand (P25,000) Pesos.

WHEREFORE, this Court finds respondent, JUDGE ANTONIO D. MARIGOMEN, GUILTY of 1) gross ignorance of the law or procedure and is FINED in the amount of Twenty Five Thousand (P25,000) Pesos, and 2) manifest bias and dishonesty amounting to grave misconduct and is FINED in the amount of Twenty Five Thousand (P25,000) Pesos.

SO ORDERED.

Puno, C.J., Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Tinga, Chico-Nazario, Garcia, Nachura, and Reyes, JJ., concur.

Ynares-Santiago, and Azcuna, JJ., on official leave.

Corona, and Velasco, Jr., JJ., no part.

[1] Rollo, pp. 1-32.

[2] Also spelled Letty.

[3] Rollo, pp. 33-54.

[4] Id. at 54.

[5] Id. at 63-79.

[6] Id. at 77.

[7] Id. at 2.

[8] Id. at 1-2.

[9] Id. at 7.

[10] Id. at 7-8.

[11] Id. at 55-58.

[12] Id. at 9.

[13] Id. at 22.

[14] Id. at 59-61.

[15] Id. at 24.

[16] Id. at 29-31.

[17] Id. at 170-181.

[18] Id. at 173.

[19] SEC. 5. When original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents by a

copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

[20] Rollo, p. 176.

[21] Ibid.

[22] Id. at 178.

[23] Id. at 179.

[24] Id. at 311-326.

[25] Id. at 317-325.

[26] Id. at 325.

[27] Id. at 327.

[28] A.M. No. 04-5-118-MTCC, July 29, 2004, 435 SCRA 363.

[29] Id. at 367.

[30] Article VIII of the 1987 Constitution provides:

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

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