

**NICOLAS FECUNDO, PETITIONER, VS. HON. RAMON BERJAMEN,
PRESIDING JUDGE RTC, BRANCH 20 AND JULIUS SALCEDO,
RESPONDENTS.**

G.R. No. 88105. December 18, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

Before the Court is a petition for certiorari with prayer for a restraining order seeking to inhibit respondent judge, Hon. Ramon Berjamen, of the Regional Trial Court, Branch 20, Mambusao, Capiz from continuing with the trial of an election protest (Election Case No. M-944) filed by here-in private respondent Julius Salcedo against herein petitioner. The grounds invoked for the inhibition of respondent judge are his alleged partiality and bias against petitioner. Said acts of alleged partiality and bias maybe summarized as follows:[1]

a) Use of unbecoming language in the order dated 10 February 1988 stating therein ... "that the implementation of the order of this Court is being vehemently opposed by the municipal mayor (herein petitioner) and his cohorts. Ours is a government of laws and not a government of rascals. To give in to this kind of behavior of the respondent and his cohorts, we are just like savages in the jungle where might is might [sic right]." (emphasis supplied)

b) Severely reprimanding and scolding in open court petitioner's secretary when the latter filed on behalf of the petitioner a motion to dismiss the election protest, then angrily adding that non-lawyers/couriers are not entertained by the court, thereby subjecting the petitioner's representative to the mockery and ridicule of private respondent's supporters who jam-packed the courtroom.

c) Personal interest of respondent judge shown by inquiring from Arcadio Hernandez (one of the commissioners in the revision of ballots) about the procedural maneuvers of petitioner's counsel.

d) Respondent judge, beholden to Congressman Villareal whose life size (half body) picture is displayed in the former's office. Villareal is a known supporter of private respondent who engaged the services of the Villareal law office in the election protest before the respondent judge. Congressman Villareal allegedly had worked for Judge Berjamen's appointment to the Bench.

e) Statement of respondent judge in open court that a motion for reconsideration (of the denial of the motion to inhibit him) to be filed by petitioner will be denied.

Petitioner's recourse to this Court is basically founded on the contention that public respondent's above-described conduct, particularly in the election case pending before him, involving petitioner (as protestee) and private respondent (as protestant) is not in consonance with the standard of cold neutrality of an impartial judge and thus he cannot render a fair and impartial decision in the case.

The incidents leading to this petition started when petitioner, Nicolas Fecundo, mayoralty candidate in the Municipality of Dumalag, Capiz, during the 1988 local elections, won over private respondent Julius Salcedo with a margin of 100 votes. On 29 January 1988, private respondent Salcedo filed an election protest docketed as

Election Case No. M-944; a supplemental petition followed on 4 February 1988. The case was assigned to Branch 20, RTC of Mambusao, Capiz presided over by respondent judge, Hon. Ramon Berjamen. After the filing of the answer with counter protest, respondent judge issued an order, dated 1 February 1988, directing the Municipal Treasurer of Dumalag, Capiz to deliver to the court the ballot boxes subject of the protest. On 10 February 1988, the Municipal Treasurer of Dumalag addressed a letter to respondent judge stating:

"S i r:

This is to inform you that I cannot execute the order of this court dated February 1, 1988, because the Municipal Mayor of Dumalag, Capiz, and his cohorts are preventing and threatening me if I insist to bring the ballot boxes mentioned in your order to your court. My life is presently in danger so I ask your assistance.

In view of this circumstance, I would like to request that the Provincial Commander of the Philippine Constabulary, Loctugan Hills, Roxas City, be ordered to secure me or to get by them-selves the ballot boxes in question.

Thank you."[2]

The same day, 10 February 1988, respondent judge issued the order already adverted to. On 3 March 1988, petitioner filed a motion to withdraw his counter protest. Another order dated 23 February 1988 was issued for delivery of the ballot boxes and keys covered by the supplemental petition.[3]

After several hearings before three (3) commissioners, and based on the view that a protestant must first be required to present and mark his evidence before the opening and revision of ballots involved in protestee's counter protest, a special civil action for certiorari, prohibition and mandamus was filed by petitioner with this Court on 27 June 1988[4] seeking to prohibit the respondent court from proceeding with the election case. A temporary restraining order was issued on 13 July 1988 by the First Division of this Court but the petition was ultimately dismissed in a resolution dated 25 January 1989 for failure to show grave abuse of discretion or lack or excess of jurisdiction, the questioned order of respondent court being in accordance with law and conducive to the expeditious disposition of the election contest.[5]

Hearings were resumed before respondent judge.

Petitioner filed a motion for inhibition before the same judge on 18 April 1989 with notice of hearing set on 20 April 1989. Both parties failed to indicate in the records of this case whether a hearing actually took place on the motion but an order of 2 May 1989 issued by respondent judge, denied the motion for non-compliance with the three (3) day notice rule. No motion for reconsideration was filed by petitioner due to respondent judge's statement in open court on 8 May 1989 that:

"If you intend to file another pleadings, [sic] you can do and the Court will cross the bridge when it comes to it, without considering the merits and demerits of this motion, the Court resolved to deny said motion. So, if you file another one, the Court will just deny when it received (sic) it."[6]

These manifestations of alleged partiality to private respondent (or, perhaps, antipathy to petitioner) and the fact that petitioner's counsel was not allegedly furnished a copy of the 10 February 1988 order, having accidentally discovered the same from the records of the case only sometime in May 1989,[7] are cited in support of the present petition.

As prayed for, a temporary restraining order was issued by the Court in its resolution of 23 May 1989 ordering the respondent judge to cease and desist from hearing Election Case No. M-944, until further orders from the Court, simultaneously requiring respondents to file their comments to the petition[8].

Private respondent Julius Salcedo contends that petitioner is guilty of deliberately delaying the resolution of the election contest. This petition, according to private respondent, is his (petitioner's) second attempt. The first was also thru a petition for certiorari (G.R. No. 83779) which was ultimately dismissed by the Court's First Division. Now that the probability of his losing the election case is apparent, petitioner moves for the disqualification of the judge.

Petitioner's charges are moreover pure inventions, according to private respondent. The incidents constituting alleged bias or prejudice of respondent judge occurred prior to the filing of the first petition before the Supreme Court; the present petition is thus a violation of the omnibus motion rule. Furthermore, according to private respondent, in bad faith, petitioner has concealed from the respondent judge the procedural remedies he has availed of.

Respondent judge, for his part, denies all the accusations, imputing them to petitioner's wild imagination, political immaturity and childish mentality. Some words used in the order (10 February 1988) were merely taken from the letter of the municipal treasurer; the others were reminders and advice to petitioner to respect and recognize the authority of the court. This petition, according to respondent judge, is part of a scheme to delay the disposition of the election case in violation of the Election Law, which respondent judge is seeking to uphold. He disclaims any utang na loob (debt of gratitude) to Congressman Villareal, and almost proudly states:

"x x x. If this fact is true, Cong. Villa-real was just paying the favors he owed the undersigned so that Cong. Villareal could not influence this representation as to how to decide a case no matter who the parties are. With the almost three years in office of this representation, not even one case could the petitioner cite an instance where Cong. Villareal had influenced the undersigned in his decisions. x x x." [9]

Petitioner's reply and supplement to the reply insist that his first petition for certiorari with this Court had a valid reason, i.e. to prevent private respondent from fishing for evidence with the tolerance and support of the respondent judge. The present petition arises from the conviction that there is partiality and bias of respondent judge. There is no objection to the speedy disposition of the election case provided that due process is observed, according to the petitioner.

A motion to allow petitioner to file a reply to the comment of public respondent was received on 16 September 1989; the reply was filed on 12 October 1989. Without requiring other pleadings, the Court treated the comments as answers and gave due course to the petition.

The filing of a previous petition for certiorari with this Court (ultimately dismissed) is raised by private respondent as an affirmative defense to the present petition. An examination of the records is thus unavoidable. The prayer of the petition in G.R. No. 83779 reads:

"WHEREFORE, premises considered it is respectfully prayed that Restraining Order as prayed, be issued and after hearing an Order be issued declaring the Order dated June 21, 1988 of the public respondent as null and void, ordering him to require private respondent to formally mark or identify as exhibits those ballots subject of the protest, present evidence in support of the petitioner (sic) and further ordering the public respondent, to defer the opening of the ballot boxes of the counter protested precincts until the private respondent has presented its (sic) evidence and has rested its [sic] case on the basis of his Petition."

The present petition, on the other hand, moves for inhibition of the respondent judge, on grounds of bias and partiality, invoking an alleged gross disregard of the Rules of Court.

Rule 137, Sec. 2 states:

Rules 137 - DISQUALIFICATION OF JUDICIAL OFFICERS.

x x x

SEC. 2. Objection that judge disqualified, how made and effect. - If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case.

Petitioner submits that respondent judge should have met the issues raised by him, one by one, in his motion to inhibit, instead of rejecting said motion on a technicality (non-compliance with three (3) day notice rule).

We do not, however, find any grave abuse of discretion or excess of jurisdiction in respondent judge's denial of the motion to inhibit for non-compliance with the three (3) day notice rule. Section 4, Rule 15 of the Rules of Court requires that notice of a motion be served by the movant on all parties concerned at least three (3) days before the hearing thereof. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon.[10] Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement.[11]

Further, we have to correct the statement of petitioner's counsel in the supplement to his reply which reads:

"Petitioner is also aware of the fact that although there are several election protests pending in the various Regional Trial Courts in the four Provinces of Panay, it is only in this election contest where the revision of the protested ballots were already finished and has reached the stage of presentation of evidence. In short the proceedings so far reached is way ahead as compared with the other election contests." [12]

This contention or observation is a non-sequitur. Tardiness or delay in the disposition of election cases in other courts does not connote partiality of the presiding judge in election cases speedily disposed of.

Sec. 258 of the Omnibus Election Code (BP Blg. 881) provides for the preferential disposition of election contests within six (6) months after filing. If judges in the four (4) provinces of Panay island hearing election cases are indeed taking their time in deciding such election cases, as alluded to by counsel, then they are not, certainly complying with the election law.

Moving to the issue of bias and partiality as grounds for disqualification, recently, in *Genoblazo v. CA*, [13] it was enunciated:

"While it is true that partiality and pre-judgment may constitute a just or valid reason for the trial judge to voluntarily inhibit himself from hearing the case, it is not enough that the same be merely alleged. It is now settled that mere suspicion that a judge is partial to one of the parties to the case is not enough; there should be evidence to prove the charge (*Beltran v. Garcia*, G.R. No. L-30868, September 31, 1971, 41 SCRA 158.)"

But, we still have to heed the sound admonition in *Santos v. Gutierrez*: [14]

"Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law stated in general terms-that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent (30 Am. Jur. Supra) because--

'* * * However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed ex-parte may still linger to affect

unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or cannot under the rules of evidence. No effort of the will can shut out memory; there is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process.'" (Ann. Cas. 1917 A, p. 1235)

In the concurring opinion of Mr. Justice Teehankee in *Beltran vs. Garcia*,^[15] he said:

"This case should impress upon respondents the intangible imperatives of not only being actually impartial but also maintaining the appearance of strict impartiality, so as not to arouse needlessly the suspicions of either of the parties, as in the case of herein petitioners.

While bias and prejudice are not to be presumed especially if weighed against a judge's sacred obligation under his oath of office to administer justice without respect to person, the Court has at the same time admonished judges to so conduct themselves and exercise their discretion in a way that the peoples' and litigants' 'all-important confidence in the impartiality of the judiciary' is ever nurtured and upheld."

While the procedural tactics and/or motives of petitioner's counsel may not be all too laudable, as it was, for instance, impossible for him to be unaware of the 10 February 1988 order, until sometime in May 1989, because on p. 3, par. 1 of his petition in G.R. No. 83779 filed on 27 June 1988, he already alleged:

"The aforementioned Orders for the delivery of the ballot boxes of the 11 precincts subject of the protest were duly implemented and as a result of which the officials mentioned in the aforesaid Orders delivered those ballot boxes and the public respondent took custody of the same."

yet, the language employed by the respondent judge in his 10 February 1988 order and even in his comment on the petition at bar, manifests at the very least an exasperation bordering on indignation at petitioner and his tactics, which may unnecessarily cloud his impartiality in deciding the election case at hand. A spotless dispensation of justice requires not only that the decision rendered be intrinsically fair but that the judge rendering it must, at all times, maintain the appearance of fairness and impartiality. His language, both written and spoken, must be guarded and measured, lest the best of intentions be misconstrued.

To erase any doubt whatsoever as to the judge's bias and/or prejudice against petitioner in Election Case No. M-944, the Court believes it prudent and better to serve the ends of justice to transfer the said case to Branch 21, Mambusao, Capiz, presided over by the newly appointed Judge thereof, Hon. Julius L. Abella.

Considering also that this is an election contest, Judge Abella is hereby directed to terminate the proceedings and decide the case within three (3) months from notice of this decision.

WHEREFORE, the petition is GRANTED. The restraining order issued on 23 May 1989 is made permanent. Let election case No. M-944 be transferred from Branch 20 to Branch 21, Mambusao, Capiz, presided over by Judge Julius L. Abella who shall terminate proceedings therein and decide the case within three (3) months from notice of this decision.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Petition, pp. 3-5, Rollo at 4-6

- [2] Rollo at 72
- [3] Records of G.R. No. 83779, Rollo at 38 and 39
- [4] First Division - docketed as G.R. No. 83779
- [5] Per records of G.R. No. 83779
- [6] Rollo at 81
- [7] Rollo at 98
- [8] Ibid., p. 64
- [9] Rollo, pp. 132-133, G.R. No. 88105
- [10] Philippine Virginia Tobacco Administration v. de los Angeles, G.R. No. L-27829, 19 August 1988
- [11] Sembrano v. Ramirez, G.R. No. L-45447, 28 September 1988
- [12] Rollo at 138
- [13] G.R. No. 79303, 20 June 1989
- [14] 112 Phil. 184, G.R. No. L-15824, May 30, 1961
- [15] Beltran v. Garcia, G.R. No. L-30868, September 31, 1971, 41 SCRA 158

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