

**EDUARDO C. DE VERA PETITIONER, VS. HON. COMMISSIONER
ERNESTO L. PINEDA; NATIONAL COMMISSION ON BAR
INVESTIGATION AND DISCIPLINE OF THE INTE-GRATED BAR OF
THE PHILIPPINES; THE HO...**

G.R. No. 96333. September 02, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari, prohibition and injunction with a prayer for the issuance of a restraining order and/or preliminary prohibitory injunction, premised upon the following facts:

Sometime in 1984, respondent Rosario P. Mercado filed with the RTC of Davao City, Branch 14, presided over by Judge Jose R. Bandalan, a complaint for dissolution of conjugal partnership, support, recovery of conjugal share, damages, etc. against Jesus K. Mercado, J.K. Mercado & Sons Agricultural Enterprises, Inc. and Stanfilo, docketed as Civil Case No. 17215.

Petitioner herein Eduardo C. De Vera was the counsel of respondent Rosario P. Mercado in the aforesaid civil case.

On 15 December 1986, Judge Bandalan rendered a decision in favor of respondent Rosario P. Mercado, awarding to the latter some P9 million more or less. Thereafter, said respondent through her counsel, petitioner herein, filed a motion for execution pending appeal which Judge Bandalan granted in his order dated 5 January 1987 (p. 131, rollo).

On 12 January 1987, a writ of execution pending appeal (p. 43, rollo) was issued, after which, notices of garnishment under execution pending appeal (p. 146, rollo) were served on 14 January 1987 on the Manager of RCBC, Claveria St., Davao City and RCBC, Tagum, Davao del Norte; and on the Manager, Traders Royal Bank, City Hall Drive, Davao City and on Traders Royal Bank, R. Magsaysay Ave., Davao City, by RTC Deputy Sheriff Aquillo Angon thereby garnishing the bank deposits of Dr. Jesus K. Mercado and the family corporation and Stanfilo, in the total amount of P1,270,734.56 (p. 213, rollo).

Sometime thereafter, the respondent Rosario P. Mercado terminated the legal services of petitioner, and offered to the latter the sum of P350,000.00 as his attorney's fees. The petitioner refused, claiming that under the decision of the RTC, he is entitled to 25% or P2,254,217.00. Respondent Rosario P. Mercado in turn demanded from petitioner the "excess" of P350,000.00 of the garnished funds still in his custody. The petitioner refused and told his former client that he had already applied the demanded amount in partial satisfaction of his attorney's fees.

In the meantime, Judge Jose R. Bandalan's courtesy resignation was accepted by the President of the Philippines.

On or about 8 June 1987, respondent Rosario P. Mercado, together with other respondents in this case, filed with

this Court a complaint for disbarment against petitioner herein and former Judge Jose R. Bandalan, docketed as A.C. No. 3066. The complaint alleges, among others, that petitioner, in alleged breach of legal ethics, was trying to “extort unconscionable” attorney’s fees from Mrs. Mercado, by refusing to “return” the excess P350,000.00 in his custody and that said Mrs. Mercado did not know how the garnished funds had been spent or disbursed and therefore, asked petitioner herein to render an accounting of the funds; that respondent Rosario P. Mercado saw petitioner giving a “supot”, allegedly containing P100,000.00 to Judge Bandalan at the latter’s house, after the garnishment on 14 January 1987; and that petitioner told respondent Rosario P. Mercado that it was he (petitioner) who wrote the decision of Judge Jose R. Bandalan in Civil Case No. 17215 (pp. 216-217, rollo).

Initially, the complaint for disbarment (A.C. No. 3066) was referred to the Office of the Solicitor General for investigation, report and recommendation. However, upon the approval and implementation of Rule 139-B, amending Rule 139 of the Rules of Court on disbarment and discipline of attorneys, disbarment cases pending in the Office of the Solicitor General were transferred to the Integrated Bar of the Philippines (IBP) through its Commission on Bar Discipline. Administrative Case No. 3066 was among the cases transferred to the IBP and it was assigned to respondent Commissioner Ernesto L. Pineda for investigation.

Thereafter, the case was set for investigation on 10 and 11 April 1989, but on motion of petitioner, the investigation was reset to 26 May and 8 June 1989. However, Jose R. Bandalan (co-respondent in said administrative case) moved for the resetting of the investigation set on 26 May and 8 June 1989. Hence, on 26 April 1989, respondent Commissioner issued a Notice of Hearing (p. 169, rollo) setting the investigation to 13 and 14 June 1989, copies of which notice were received by petitioner and respondent Jose R. Bandalan on 9 May 1989 (pp. 170, 171, rollo).

On 6 June 1989, or just a week before the scheduled investigation, petitioner filed by registered air mail an urgent motion for postponement of the scheduled investigation on 13 and 14 June 1989, and sent a telegram to respondent Commissioner informing him of such motion. The telegram was received by respondent Commissioner on 12 June 1989, or one day before the scheduled investigation, while the written motion was received by him on 27 June 1989, or 14 days after 13 June 1989 (pp. 10-11, 268-269, rollo).

At the scheduled investigation on 13 June 1989, respondent Commissioner denied the telegraphic motion for postponement and proceeded with the investigation wherein respondent Rosario P. Mercado took the witness stand and testified as a witness for the complainants. After the 14 June 1989 investigation, the complainants rested their case. Thereafter, respondent Commissioner issued an order considering the petitioner and his co-respondent Bandalan as having waived their right to present their evidence and the case submitted for decision.

Upon receipt of the orders dated 13 June 1989 and 14 June 1989, petitioner filed a motion for reconsideration (p. 38, rollo) dated 28 June 1989. The complainants filed an opposition thereto. On 21 July 1989, respondent Commissioner issued an order (p. 268, rollo) granting the motion for reconsideration by reopening the investigation and allowing the petitioner and his co-respondent Bandalan to present their evidence on 26, 27 and 28 July 1989, with a warning that no further postponement shall be allowed.

At the investigation held on 26 July 1989, petitioner proceeded to present his evidence. Thereafter, subsequent investigations were conducted for the reception of petitioner’s evidence.

During the investigation of 21 October 1989, respondent Commissioner Pineda, in consultation with the parties, adopted a modified form of procedure in conducting the investigation with respect to “out-of-Manila” witnesses by directing that the petitioner and his co-respondent Bandalan could take down the affidavits of their witnesses who are in Davao City or outside Manila, and that the said affidavits could be used by them as “direct testimonies” of the affiants, but subject to cross-examination by any adverse party, namely, the complainants, and

such cross-examination would be done in Davao City. The text of respondent Commissioner Pineda's order reads as follows:

"With regard to the Motion to Take Deposition of Witnesses filed by Atty. De Vera and Atty. Bandalan, instead of deposition said respondents will just present the respective affidavits of their announced witnesses to be sent to the Commission copy-furnished the complainants through counsels within five days from receipt of said copies of the said affidavits. The complainants shall comment or file any counter-affidavit within a period of ten days. If the complainants shall desire to cross-examine the affiants orally, the cross-examination shall be held in Davao City before any authorized representative of the Commission as may be allowed at the proper time. In the event that no oral cross-examination is desired, then the affidavits will just be submitted as the direct testimony of the said witnesses subject to the comments or opposition of the complainants. (TSN, pp. 78-79, Oct. 21/89 hearing)." (p. 13, rollo)

When petitioner's co-respondent Atty. Bandalan's turn to present his evidence came up, the latter presented the affidavit (p. 41, rollo) of Roberto Esguerra, an incumbent deputy sheriff of the RTC of Davao City, Branch 14, wherein the said affiant absolved petitioner and respondent Bandalan from the charges in the disbarment case.

Subsequently, in one of the hearings that followed, complainants orally moved that they be allowed to cross-examine said Roberto Esguerra in Manila, which respondent Commissioner granted, despite the petitioner's objections as it was contrary to the order of 21 October 1989 which directed that the cross-examination would be done in Davao City where the witnesses executed the affidavits.

At the investigation held on 30 June 1990, Roberto Esguerra partially recanted his affidavit.

Thereafter, petitioner filed a MOTION dated 9 July 1990 for leave to take Janet Unzon's testimony in Davao City thru deposition (p. 15, rollo). The petitioner also filed with the Board of Governors, Integrated Bar of the Philippines a MOTION (a) to declare a mis-trial in the on-going investigation and invalidate proceedings thus far taken and to disqualify or inhibit Commissioner Ernesto L. Pineda from further investigating this case; (b) to transfer venue of re-investigation to Davao City, under strict compliance with Rule 139-B; and (c) to suspend further investigation in this case until final resolution, including that of the Supreme Court, if necessary, of issues therein raised, likewise dated 9 July 1990 (p. 49, rollo).

On 9 October 1990, the Board of Governors, Integrated Bar of the Philippines issued an order (p. 64, rollo), the pertinent portion of which reads:

"The records of the case do not show any valid ground for a mistrial. Respondent Atty. De Vera and his co-respondent were granted full opportunities to present their respective defenses. Due process was fully accorded to them, hence, a mis-trial is not in order.

"Respondent Atty. de Vera likewise failed to show, and the records are bereft of facts indicating that Commissioner Ernesto Pineda is biased and partial in the conduct of the investigation. The motion to disqualify Commissioner Pineda from further conducting the investigation in this case, is also DENIED for lack of basis.

"The matter of transferring venue of further investigation to be conducted herein to Davao City is likewise DENIED. Transfer of venue at this later stage in the proceedings will only further delay the investigation in this case.

"However, in the highest interest of justice, respondent Atty. Eduardo C. de Vera is hereby granted another opportunity to present additional evidence in his behalf. Re-opening of about to be terminated investigation, however, should not be construed as having allowed any party to rebut the testimony of his own witness, which is not permitted under the law, prevailing rules of procedure and pertinent jurisprudence

“In view of the adoption of the New Rules of Procedure of the National Commission on Bar Investigation and Discipline (NCBID), this case is reassigned to the Second Division of the NCBID composed of Justice Venicio T. Escolin as Chairman and Judge Concepcion B. Buencamino and Comm. Ernesto L. Pineda as Members.

“The Second Division of the Commission is hereby directed to resume the investigation of this case without further delay.” (Rollo, pp. 65-66)

Conformably with the order of the Board of Governors dated 9 October 1990, respondent Commissioner Pineda set the resumption of the investigation for the reception of petitioner’s additional evidence on 27 and 28 November 1990.

Upon receipt of the order dated 9 October 1990 of the Board of Governors, petitioner filed a motion for reconsi-deration dated 13 November 1990 (p. 68, rollo). Petitioner also filed a motion (a) to suspend or defer resumption of investigation; (b) to clarify procedure; and (c) for voluntary inhibition of Commissioner Ernesto L. Pineda, dated 13 November 1990 (p. 75, rollo).

On 23 November 1990, the Board of Governors issued an order (p. 79, rollo) denying the petitioner’s motion for reconsideration of the order dated 9 October 1990, reading as follows:

“Pursuant to Section 6, Rule IV of the newly adopted Rules of Procedure of the National Commission on Bar Investigation and Discipline, to wit:

‘Section 6. No interlocutory order shall stay the progress of an action nor shall be the subject of appeal to the Board of Governors until the investigation is terminated by the investigating Commissioner or panel of Commissioners whose report and recommendation shall be submitted to the Board of Governors for final resolution thereof. Multiple appeal to or review by the Board shall be avoided, unless ordered otherwise by the Board upon request of the Commission.’

the Board hereby denies your Urgent Motion for Reconsideration of Order dated November 13, 1990.”

At the resumption of the investigation on 27 November 1990 for the reception of petitioner’s additional evidence, the petitioner manifested that, although he was ready to present his additional evidence, he could not as yet do so, because: (a) he had not yet received the formal written order denying his motion for reconsideration of the order dated 9 October 1990; and (b) that respondent Commissioner himself had not yet resolved his pending motions for leave to take Janet Unzon’s testimony in Davao City thru deposition and motion for the voluntary inhibition of respondent Commissioner Pineda, and that his additional evidence would consist of the testimony of Janet Unzon, his sur-rebuttal testimony to refute the rebuttal evidence of complainants and his further testimony on the circumstances of the recantation of Esguerra. Nonetheless, respondent Commis-sioner Pineda issued an order (p. 78, rollo) the pertinent portion of which reads:

“The records shows that respondent Eduardo De Vera received a copy of the Order of the Board of Governors dated October 9, 1990 on October 22, 1990. Further, the record shows that the same respondent received on October 22, 1990 the Order of October 16, 1990 setting the case on November 27, and 28, 1990 both at 9:00 A.M. and in that Order it is indicated that the hearing is intransferrable in nature.

“Considering that the respondent is not ready to present his evidence despite notice of the aforementioned Order, he is hereby deemed to have waived his right to present further evidence.

“Further, the parties if they so desire may file their respective memorandum within a period of fifteen (15) days from today, afterwhich, the case is deemed submitted for report and recommen-dation.”

Hence, the petitioner filed the present petition for CERTIORARI to annul and set aside (a) the proceedings and/or

investigation conducted by respondent Commissioner Ernesto L. Pineda in A.C. No. 3066, beginning from 13 June 1989 to 27 November 1990 and the order of respondent Commissioner dated 17 November 1990; (b) the order dated 9 October 1990 of the Board of Governors and its subsequent order dated 23 November 1990, alleging that respondent Commissioner Ernesto L. Pineda acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying his telegraphic motion for the resetting of the scheduled investigation on 13 and 14 June 1989 and in proceeding and conducting the said investigation ex-parte; in allowing respondent Rosario Mercado to use her affidavit as a substitute for her question-and-answer type of direct testimony; in directing Roberto Esguerra to appear before him (Commissioner Pineda) in Manila for cross-examination by the complainants in violation of the modified procedure of investigation as provided in the order dated 21 October 1989; in failing to resolve petitioner's motions for leave to take Janet Unzon's testimony in Davao City and the motion for his voluntary inhibition; and in issuing the Order dated 27 November 1990; and that the respondent Board of Governors also acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the orders dated 9 October 1990 and 23 November 1990, and PROHIBITION to enjoin the respondents Commissioner Pineda and Board of Governors from enforcing the order dated 27 November 1990; from closing or terminating the investigation in A.C. No. 3066; and/or from making any evaluation, report and/or recommendation with respect to the said case until further order from this Court.

The petition is devoid of merit. The issues raised are procedural questions regarding the conduct of the investigation in A.C. No. 3066. It is now well-settled that certiorari is not available to correct errors of procedure or mistakes in the judge's findings and conclusions (*Pacis v. Averia*, 18 SCRA 907, 915, citing *Regala v. CFI of Bulacan*, 77 Phil. 684; *Ong Sit v. Piccio*, 78 Phil. 785; *Icutamin v. Hernandez*, 81 Phil., 161; *Verhomal v. Tan*, 88 Phil. 450; *Matute v. Macadaeg*, 99 Phil. 340), and that certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact.

As long as a court or administrative agency acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction, will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari (*Gold City Integrated Port Services, Inc. [INPORT] v. The Hon. Intermediate Appellate Court, et al.*, 171 SCRA 579, 584, citing *Santos, Jr. vs. Court of Appeals*, G. R. No. 56114, July 28, 1987, 152 SCRA 378).

Moreover, the petition is premature. The respondent Commissioner has not yet submitted his Report to the IBP Board of Governors; and such report is subject to review by the latter. Thus, Section 12 of Rule 139-B provides that "(e)very case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence submitted to it by the Investigator with his report" and that "(i)f the Board, by a vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action."

At this juncture, it may well be re-stated that "proceedings for the disbarment of members of the bar are not in any sense a civil action where there is a plaintiff and the respondent is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice." (*Tajan vs. Hon. Vicente Cusi, Jr.*, G.R. No. L-28899, 30 May 1974, 57 SCRA 154).

Since disciplinary actions against members of the bar are impressed with public interest, they should be resolved with dispatch. The filing of the instant petition has served no purpose other than to delay the proceedings in A.C. No. 3066.

ACCORDINGLY, the Court RESOLVES to DISMISS the petition. This resolution is IMMEDIATELY EXECUTORY. The respondent investigator is hereby ordered TO RENDER and SUBMIT his report and recommendation to the IBP Board of Governors, within ten (10) days from notice hereof.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

Feliciano, J., on official leave.

Medialdea, J., on leave.

Melo, J., took no part in the deliberations.

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