

## SECOND DIVISION

[ A.C. No. 7732, March 30, 2009 ]

**RODANTE D. MARCOLETA, COMPLAINANT, VS. RESURRECCION Z. BORRA AND ROMEO A. BRAWNER, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

A Complaint<sup>[1]</sup> for disbarment was filed by Atty. Rodante D. Marcoleta (complainant) against respondents Commissioners Resurreccion Z. Borra (Borra) and Romeo A. Brawner (Brawner) of the Commission on Elections (Comelec) charging them with violating Canons 1 (1.01, 1.02 and 1.03) and 3 (3.01, 3.02, 3.05 and 3.06) of the Code of Judicial Conduct<sup>[2]</sup> and Canons 4, 5, 6 and 17 of the Canons of Judicial Ethics.<sup>[3]</sup> Additionally, complainant charges respondents of violating Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>[4]</sup>

During the 2007 National and Local Elections, the warring factions of complainant and Diogenes S. Osabel (Osabel) each filed a separate list<sup>[5]</sup> of nominees for the party-list group *Alagad*.

With *Alagad* winning a seat in the House of Representatives, the two protagonists contested the right to represent the party. By Omnibus Resolution<sup>[6]</sup> of July 18, 2007, the dispute was resolved by the Comelec's First Division in favor of Osabel. Commissioner Borra wrote the *ponencia* while Commissioner Brawner concurred.

The dispute was elevated to the Comelec *En Banc* which, by Resolution<sup>[7]</sup> of November 6, 2007, **reversed** the First Division Resolution and reinstated the certificate of nomination of complainant's group. For failing to muster the required majority voting,<sup>[8]</sup> however, the Comelec ordered the re-hearing of the controversy. Notwithstanding the conduct of a re-hearing, the necessary majority vote could not still be obtained.<sup>[9]</sup> The Comelec's First Division's Omnibus Resolution was eventually affirmed.<sup>[10]</sup> Hence, arose the present complaint for disbarment, complainant alleging as follows:

8. x x x x respondents [Borra and Brawner] promulgated a highly questionable and irregular Omnibus Resolution [Annexes "F" and "F-1"], that was characterized by manifest partiality, evident bad faith, and gross inexcusable negligence as evidenced in the **TIMING** and **MANNER** by which the case was eventually disposed by herein respondents in their Division.

9. Respondents deliberately delayed the resolution of the case (from 5 days as mandated under Sec. 8, Rule 18 of the Comelec Rules of

Procedure) to nearly 4 months after the same was deemed submitted for decision on March 20, 2007. **The delay was intentional because if the case was resolved before May 14, 2007, [Osabel] will be left alone to campaign for the Party and considering that he is relatively unknown and without resources, certainly he cannot make the Party win. x x x x. Hence, in first making sure that ALAGAD wins a seat and, thereafter, resolved the case in favor of one who neither campaigned nor spent for it, both respondents subverted and/or frustrated the will of the 423,090 voters who supported ALAGAD and who have always believed that it was complainant who will represent them in the 14<sup>th</sup> Congress.** This is an extortionate act to say the least!

10. **Even the manner with which the case was disposed is fraught with gross deception and evident manipulation.** First of all, the respondents changed the sole and common issue stipulated by the parties: from one that is central to the complete and final resolution of the controversy, into one that was beyond the Comelec's jurisdiction.

x x x x

11. Respondents were evidently in bad faith in muddling the issue (which resulted in an erroneous ruling) x x x.

x x x x

13. The assailed 20-page Omnibus Resolution never cited a single law (in violation of Sec. 14, Art. VIII of the Philippine Constitution as well as Rule 18, Sec. 2, last par. of their own Rules) in erroneously ruling that petitioner's resignation cannot be considered because it was not in written form x x x x.

14. Both **respondents lied** in actually delving into the root of the parties' conflict despite their avowal to the contrary and in giving "*more credence to the Minutes submitted by [Osabel]*" (Annex "F-13.b") despite their declaration that said "**minutes partisan from the start x x x in a power struggle within the organization, cannot be upheld as faithful depiction of prevailing facts.**" They also lied in not relying on the Party's Constitution and By-Laws (CBL), contrary to what they declared to do, when compared to the En Banc ponencia [Annex "J"] that reversed their Omnibus Resolution x x x x.

x x x x

16. Respondent Borra's "dissenting opinion" (if it can be qualified as such) was a mere marginal note, written above his signature that reads: "*In conscience and judiciousness, I vote to affirm the 1<sup>st</sup> Div. Omnibus Resolution.*" x x x.

17. Respondent Borra knows only too well that all cases are decided and affirmed on the basis of evidence, not on conscience. For conscience is

that instantaneous perception of right or wrong that can only be summoned by the spirit being a part of the Divine Wisdom. x x x.

18. It was clearly evasive for respondent Borra to use the absurd excuse "*in conscience and judiciousness*" to free himself from the mandatory submission of a separate dissenting opinion x x x.

x x x x

20. Respondent Brawner's **Dissenting Opinion** [Ref. Annex "I"], on the other hand, only confirmed his leaning and partiality towards [Osabel] as clearly shown by his shallow disquisition, if not twisted, dissent. x x x.

21. Respondent Brawner's irresponsible claim (on page 4) that "all official records of ALAGAD's proceedings point out to Osabel's continuing as ALAGAD's President" and "the recent decision in SPA No. 04-153 dated June 12, 2007 prove the continuing stature of Osabel as ALAGAD President" is not supported by facts. x x x x. Thus, it was reckless, if not unthinkable, for Brawner to have ascribed "continuing stature" upon petitioner based on a "position" appearing in the title [Annex "O-1"] of a different and old case that was disposed only recently. This ruse is gobbledygook, plain and simple! [Padua v. Robles, 66 SCRA 488].

x x x x (Emphasis, underscoring and italics in the original)

Complainant filed a Supplemental Complaint<sup>[11]</sup> on February 12, 2008, this time charging respondent Brawner of "tamper[ing] the record of the proceedings in [SPA No. 07-020]" by falsely alleging in an Order dated February 5, 2008 that there had been a re-hearing; that both parties had agreed to simultaneously file their memoranda during the re-hearing; and that the parties filed their respective memoranda.

Respondent Brawner, in his Answer<sup>[12]</sup> dated April 2, 2008, asserted in the main that "the remedy of complainant is not to file a complaint for disbarment, but to file an appeal before [the Supreme Court] *via* [p]etition for [c]ertiorari," and that being members of a constitutional body enjoying presumption of regularity in the performance of their functions, he and co-respondent Borra "are supposed to be insulated from a disbarment complaint for being impeachable officers."

In his Comment,<sup>[13]</sup> respondent Borra contends that the Code of Judicial Conduct and Canons of Judicial Ethics cannot be made to apply to him and his co-respondent, they not being members of the judiciary; and that since they perform quasi-judicial functions as well as administrative duties, they are bound by the Comelec's own set of internal rules and procedure over and above a Code of Conduct that prescribes the norms and standards of behavior to be observed by the officials and employees of the Comelec, a constitutional body.

Respondent Borra further contends that the present complaint is premature as "the validity and legality of the resolutions are still subject to review;" and that the complaint is meant to "harass [him] and punish him for exercising his judgment on the case filed before him."

To respondents' Answer and Comment, complainant filed Replies,<sup>[14]</sup> alleging that respondents cannot take refuge in their being impeachable public officers to insulate them from any disbarment complaint. To complainant, "the insulation from disbarment complaint of impeachable public officers when referring particularly to the members of the [Comelec] applies only to the `majority' of its members who should all be members of the Philippine bar," citing Section 1 (1) of Article IX-C of the Constitution.<sup>[15]</sup>

Complainant goes on to charge respondent Borra of violating Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act for collecting his retirement benefits "hurriedly despite knowledge of the existence of criminal and administrative charges against him." Additionally, he charges respondents of culpable violation of the Constitution when they, together with the other members of the Comelec, adjusted their compensation scheme under Resolution No. 7685.<sup>[16]</sup>

The Court takes notice that respondent Borra retired from the Comelec on February 2, 2008 while respondent Brawner passed away on May 29, 2008.

As regards respondent Brawner then, the present case is already moot.

At the outset, the Court, guided by its pronouncements in *Jarque v. Ombudsman*,<sup>[17]</sup> *In Re: Raul M. Gonzales*<sup>[18]</sup> and *Cuenca v. Fernan*,<sup>[19]</sup> has laid down the rule that an impeachable officer<sup>[20]</sup> who is a member of the Bar cannot be disbarred without first being impeached. Complainant's avilment of Section 1 (1) of Article IX-C of the Constitution to skirt this rule is specious.

It bears emphasis that the provision that majority of Comelec members should be lawyers pertains to the *desired* composition of the Comelec. While the appointing authority may follow such constitutional mandate, the appointment of a full complement of lawyers in the Comelec membership is not precluded.

At the time the present complaint was filed, respondents and three other commissioners<sup>[21]</sup> were all lawyers. As an impeachable officer who is at the same time a member of the Bar, respondent Borra must first be removed from office via the constitutional route of impeachment before he may be held to answer administratively for his supposed errant resolutions and actions.

Respondent Borra having retired from the Comelec does not, of course, necessarily call for the dismissal of the complaint. At the heart, however, of the disbarment complaint is the issuance of Omnibus Resolution of July 18, 2007 penned by respondent Borra when he was still a member of the Comelec's First Division.

The supposed failure of respondent Borra to resolve the controversy between complainant's faction and the other faction of *Alagad* within the prescribed period does not render the Omnibus Resolution null and void. Prescribed periods partake of a directory requirement, given the Comelec's numerous cases and logistical limitations.<sup>[22]</sup>

The Court thus finds respondent Borra's contention that the grounds-bases of the