

EN BANC

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

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

DECISION

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