

SECOND DIVISION

[A.M. No. MTJ-00-1250 [Formerly OCA IPI No. 97-332-MTJ], February 28, 2001]

RIMEO S. GUSTILO, COMPLAINANT, VS. HON. RICARDO S. REAL, SR., PRESIDING JUDGE, 2ND MUNICIPAL CIRCUIT TRIAL COURT OF VICTORIAS- MANAPLA, NEGROS OCCIDENTAL, RESPONDENT.

R E S O L U T I O N

QUISUMBING, J.:

In a verified complaint^[1] dated June 15, 1997, Rimeo S. Gustilo charged respondent Judge Ricardo S. Real, Sr., of the Municipal Circuit Trial Court of Victorias-Manapla, Negros Occidental with gross misconduct, gross incompetence, gross ignorance of the law, and violation of the Anti-Graft and Corrupt Practices Act relative to Civil Case No. 703-M entitled "*Weddy C. Libo-on v. Rimeo S. Gustilo, et al.*" for recounting of ballots of Precinct Nos. 27 and 27-A, Barangay Punta Mesa, Manapla, Negros Occidental.

Complainant avers that he was a candidate for *punong barangay* of Barangay Punta Mesa, Manapla, Negros Occidental in the May 12, 1997 elections. His lone opponent was Weddy C. Libo-on, then the incumbent *punong barangay* and the representative of the Association of Barangay Captains (ABC) to the *Sangguniang Bayan* of Manapla and the *Sangguniang Panlalawigan* of Negros Occidental. Both complainant and Libo-on garnered eight hundred nineteen (819) votes during the elections, resulting in a tie. The breaking of the tie by the Board of Canvassers was in complainant's favor and he was proclaimed duly elected *punong barangay* of Punta Mesa, Manapla.^[2]

On May 20, 1997, his opponent filed an election protest case, docketed as Civil Case No. 703-M, before the MCTC of Victorias-Manapla, Negros Occidental. Libo-on sought the recounting of ballots in two precincts, preliminary prohibitory injunction, and damages.

On May 21, 1997, respondent ordered the issuance of summons to the parties and set the hearing on June 6, 1997.^[3]

On May 27, 1997, however, Libo-on filed a motion to advance the hearing to May 29 and 30, 1997.

The next day, respondent granted Libo-on's motion. The hearing was advanced to May 29 and 30, 1997 cancelling the hearing for June 6, 1997.^[4] Complainant avers that he was not furnished a copy of this Order dated May 28, 1997.

On May 29, 1997, respondent judge issued a temporary restraining order (TRO) and annulled the proclamation of complainant as the duly elected *punong barangay* of

Punta Mesa, Manapla.^[5] Complainant declares that no copy of this Order dated May 29, 1997 was served on him. That same day, however, he was able to secure copies of the orders of respondent dated May 28 and May 29, 1997 from the COMELEC Registrar of Manapla, Negros Occidental and the Department of Interior and Local Government (DILG). Moreover, it was only in the afternoon of May 29, 1997 that complainant received a copy of Libo-on's petition in Civil Case No. 703-M and respondent's Order dated May 21, 1997.

On May 30, 1997, complainant took his oath of office as *punong barangay*.^[6] That same day, he also filed a petition for *certiorari* before the Regional Trial Court of Silay City, Negros Occidental, Branch 69 docketed as Special Civil Action No. 1936-69.

On June 5, 1997, the RTC lifted the TRO issued by respondent and declared as null and void the order nullifying complainant's proclamation as duly elected *punong barangay*.^[7]

Believing that respondent could not decide Civil Case No. 703-M impartially, complainant moved for his inhibition.

On June 11, 1997, respondent denied complainant's motion for inhibition and after hearing Libo-on's motion for permanent injunction, issued a second TRO "to maintain the status *quo* between the contending parties."^[8]

Complainant argues that by issuing the second TRO, respondent reversed the order of the RTC of Silay City dated June 5, 1997. He also claims that by preventing him from assuming office, he was excluded by the DILG from participating in the election of the *Liga ng Mga Barangay* on June 14, 1997.

In his Comment, respondent denied the allegations. He claimed that when Libo-on filed his motion to advance the hearing of the prayer for injunction on May 27, 1997 in Civil Case No. 703-M, complainant was served a copy by registered mail as shown by the registry receipts attached to said motion. Considering the urgency of the matter and since there was substantial compliance with due process, he issued the Order of May 28, 1997 which cancelled the hearing set for June 6, 1997 and advanced it to May 29 and 30, 1997.

Respondent claims that on May 29, 1997, Libo-on and his counsel appeared but complainant did not, despite due notice. The hearing then proceeded, with Libo-on presenting his evidence. As a result, he issued the TRO prayed for and annulled complainant's proclamation. Respondent admits that the Order of May 29, 1997, particularly the annulment of complainant's proclamation, was outside the jurisdiction of his court. But since the COMELEC ignored Libo-on's petition for correction of erroneous tabulation and Libo-on had no other remedy under the law, he was constrained to annul complainant's proclamation, which from the very beginning was illegal. He justified his action by our rulings in *Bince, Jr. v. COMELEC*, 312 Phil. 316 (1995) and *Tatlonghari v. COMELEC*, 199 SCRA 849 (1991), which held that a faulty tabulation cannot be the basis of a valid proclamation.

Respondent also faults the RTC of Silay City for issuing the Order dated June 5, 1997, which lifted the TRO he issued and declared void his nullification of

complainant's proclamation. Respondent contends that complainant should first have exhausted all remedies in his court before resorting to the special civil action for *certiorari* with the RTC. The latter court, in turn, should have dismissed the action for *certiorari* for failure to exhaust judicial remedies.

With respect to his Order of June 11, 1997, respondent explains that it was never meant to reverse the Order of the RTC of Silay City dated June 5, 1997. He points out that both parties in Civil Case No. 703-M were present during the hearing after due notice. After receiving their evidence, he found that unless a TRO was issued, Libo-on would suffer a grave injustice and irreparable injury. He submits that absent fraud, dishonesty, or corruption, his acts, even if erroneous, are not the subject of disciplinary action.

In its evaluation and recommendation report dated November 29, 1999, the Office of the Court Administrator (OCA) found that respondent's errors were not honest mistakes in the performance of his duties. Rather, his actions showed a bias in favor of Libo-on and "evinced a pattern to prevent the complainant from assuming office as the duly elected *punong barangay* despite his having been proclaimed as such by the Board of Canvassers." The OCA recommends that respondent be fined P20,000.00 and warned that a repetition of similar acts in the future will be dealt with more severely.

Supreme Court Administrative Circular No. 20-95 provides:

2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle (Emphasis supplied).

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4. With the exception of the provisions which necessarily involve multiple-sala stations, these rules shall apply to single-sala stations especially with regard to immediate notice to all parties of all applications for TRO.

The foregoing clearly show that whenever an application for a TRO is filed, the court may act on the application only after all parties have been notified and heard in a summary hearing. In other words, a summary hearing may not be dispensed with.

[9] In the instant case, respondent admits that he issued the injunctive writ sought on May 29, 1997 after receiving the applicant's evidence *ex parte*. His failure to abide by Administrative Circular No. 20-95 in issuing the first TRO is grave abuse of authority, misconduct, and conduct prejudicial to the proper administration of justice.

Worse, he compounded the infraction by annulling complainant's proclamation as the duly elected *punong barangay* of Punta Mesa, Manapla and prohibiting him from assuming office. Respondent admits that his court was not vested with the power or jurisdiction to annul the proclamation, but seeks to justify his action on the ground that the proclamation was void *ab initio*. In so doing, respondent wantonly usurped a power exclusively vested by law in the COMELEC.^[10] A judge is expected to know the jurisdictional boundaries of courts and quasi-judicial bodies like the COMELEC as