393 Phil. 544

[A.C. No. 4680, August 29, 2000]

AQUILINO Q. PIMENTEL, JR., COMPLAINANT, VS. ATTYS. ANTONIO M. LLORENTE AND LIGAYA P. SALAYON, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a complaint for disbarment against respondents Antonio M. Llorente and Ligaya P. Salayon for gross misconduct, serious breach of trust, and violation of the lawyer's oath in connection with the discharge of their duties as members of the Pasig City Board of Canvassers in the May 8, 1995 elections. Salayon, then election officer of the Commission on Elections (COMELEC), was designated chairman of said Board, while Llorente, who was then City Prosecutor of Pasig City, served as its *ex oficio* vice-chairman as provided by law.[1] Complainant, now a senator, was also a candidate for the Senate in that election.

Complainant alleges that, in violation of R.A. No. 6646, §27(b),[2] respondents tampered with the votes received by him, with the result that, as shown in the Statements of Votes (SoVs) and Certificate of Canvass (CoC) pertaining to 1,263 precincts of Pasig City, (1) senatorial candidates Juan Ponce Enrile, Anna Dominique Coseteng, Gregorio Honasan, Marcelo Fernan, Ramon Mitra, and Rodolfo Biazon were credited with votes which were above the number of votes they actually received while, on the other hand, petitioner's votes were reduced; (2) in 101 precincts, Enrile's votes were in excess of the total number of voters who actually voted therein; and (3) the votes from 22 precincts were twice recorded in 18 SoVs. Complainant maintains that, by signing the SoVs and CoC despite respondents' knowledge that some of the entries therein were false, the latter committed a serious breach of public trust and of their lawyers' oath.

Respondents denied the allegations against them. They alleged that the preparation of the SoVs was made by the 12 canvassing committees which the Board had constituted to assist in the canvassing. They claimed that the errors pointed out by complainant could be attributed to honest mistake, oversight, and/or fatigue.

In his Consolidated Reply, complainant counters that respondents should be held responsible for the illegal padding of the votes considering the nature and extent of the irregularities and the fact that the canvassing of the election returns was done under their control and supervision.

On December 4, 1998, the Integrated Bar of the Philippines, to which this matter had been referred pursuant to Rule 139-B, §13, in relation to §20 of the Rules of Court, recommended the dismissal of the complaint for lack of merit.[3] Petitioner filed a motion for reconsideration on March 11, 1999, but his motion was denied in a resolution of the IBP Board of Governors dated April 22, 1999. On June 4, 1999, he filed this petition pursuant to Rule 139-B, §12(c).

It appears that complainant likewise filed criminal charges against respondents before the COMELEC (E.O. Case No. 96-1132) for violation of R.A. No. 6646, §27(b). In its resolution dated January 8, 1998, the COMELEC dismissed complainant's charges for insufficiency of evidence. However, on a petition for certiorari filed by complainant,[4] this Court set aside the resolution and directed the COMELEC to file appropriate criminal charges against respondents. Reconsideration was denied on August 15, 2000.

Considering the foregoing facts, we hold that respondents are guilty of misconduct.

First. Respondent Llorente seeks the dismissal of the present petition on the ground that it was filed late. He contends that a motion for reconsideration is a prohibited pleading under Rule 139-B, §12(c)[5] and, therefore, the filing of such motion before the IBP Board of Governors did not toll the running of the period of appeal. Respondent further contends that, assuming such motion can be filed, petitioner nevertheless failed to indicate the date of his receipt of the April 22, 1999 resolution of the IBP denying his motion for reconsideration so that it cannot be ascertained whether his petition was filed within the 15-day period under Rule 139-B, §12(c).

The contention has no merit. The question of whether a motion for reconsideration is a prohibited pleading or not under Rule 139-B, §12(c) has been settled in *Halimao v. Villanueva*,[6] in which this Court held:

> Although Rule 139-B, §12(c) makes no mention of a motion for reconsideration, nothing in its text or in its history suggests that such motion is prohibited. It may therefore be filed within 15 days from notice to a party. Indeed, the filing of such motion should be encouraged before resort is made to this Court as a matter of exhaustion of administrative remedies, to afford the agency rendering the judgment an opportunity to correct any error it may have committed through a misapprehension of facts or misappreciation of the evidence.[7]

On the question whether petitioner's present petition was filed within the 15-day period provided under Rule 139-B, §12(c), although the records show that it was filed on June 4, 1999, respondent has not shown when petitioner received a copy of the resolution of the IBP Board of Governors denying his motion for reconsideration. It would appear, however, that the petition was filed on time because a copy of the resolution personally served on the Office of the Bar Confidant of this Court was received by it on May 18, 1999. Since copies of IBP resolutions are sent to the parties by mail, it is possible that the copy sent to petitioner was received by him later than May 18, 1999. Hence, it may be assumed that his present petition was filed within 15 days from his receipt of the IBP resolution. In any event, the burden was on respondent, as the moving party, to show that the petition in this case was filed beyond the 15-day period for filing it.

Even assuming that petitioner received the IBP resolution in question on May 18, 1999, i.e., on the same date a copy of the same was received by the Office of the Bar Confidant, the delay would only be two days.[8] The delay may be overlooked, considering the merit of this case. Disbarment proceedings are undertaken solely for public welfare. The sole question for determination is whether a member of the bar is fit to be allowed the privileges as such or not. 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 generally has no interest in the outcome except as all good citizens may have in the proper administration of justice.[9] For this reason, laws dealing with double jeopardy[10] or prescription[11] or with procedure like verification of pleadings[12] and prejudicial questions[13] have no application to disbarment proceedings.

Even in ordinary civil actions, the period for perfecting appeals is relaxed in the interest of justice and equity where the appealed case is clearly meritorious. Thus, we have given due course to appeals even though filed six,[14] four,[15] and three[16] days late. In this case, the petition is clearly meritorious.

Second. The IBP recommends the dismissal of petitioner's complaint on the basis of the following: (1) respondents had no involvement in the tabulation of the election returns, because when the Statements of Votes (SoVs) were given to them, such had already been accomplished and only needed their respective signatures; (2) the canvassing was done in the presence of watchers, representatives of the political parties, the media, and the general public so that respondents would not have risked the commission of any irregularity; and (3) the acts dealt with in R.A. No. 6646, §27(b) are mala in se and not mala *prohibita*, and petitioner failed to establish criminal intent on the part of respondents.[17]

The recommendation is unacceptable. In disciplinary proceedings against members of the bar, only clear preponderance of evidence is required to establish liability.[18] As long as the evidence presented by complainant or that taken judicial notice of by the Court[19] is more convincing and worthy of belief than that which is offered in opposition thereto,[20] the imposition of disciplinary sanction is justified.

In this case, respondents do not dispute the fact that massive irregularities attended the canvassing of the Pasig City election returns. The only explanation they could offer for such irregularities is that the same could be due to honest mistake, human error, and/or fatigue on the part of the members of the canvassing committees who prepared the SoVs.

This is the same allegation made in *Pimentel v. Commission on Elections*.[21] In rejecting this allegation and ordering respondents prosecuted for violation of R.A. No. 6646, §27(b), this Court said:

> There is a limit, We believe, to what can be construed as an honest mistake or oversight due to fatigue, in the performance of official duty. The sheer magnitude of the error, not only in the total number of votes garnered by the aforementioned candidates as reflected in the CoC and the SoVs, which did not tally with that reflected in the election returns, but also in the total number of votes credited for senatorial candidate Enrile which exceeded the total number of voters who actually voted in those precincts during the May 8, 1995 elections, renders the defense of honest mistake or oversight due to fatigue, as incredible and simply unacceptable.[22]

Indeed, what is involved here is not just a case of mathematical error in the tabulation of votes per precinct as reflected in the election returns and the subsequent entry of the erroneous figures in one or two SoVs[23] but a systematic