

**[ A.C. No. 9912, September 21, 2016 ]**

**DATU REMIGIO M. DUQUE JR., COMPLAINANT, VS. COMMISSION ON ELECTIONS CHAIRMAN SIXTO S. BRILLANTES, JR., COMMISSIONERS LUCENITO N. TAGLE, ELIAS R. YUSOPH, AND CHRISTIAN ROBERT S. LIM; ATTYS. MA. JOSEFINA E. DELA CRUZ, ESMERALDA A. AMORA-LADRA, MA. JUANA S. VALLEZA, SHEMIDAH G. CADIZ, AND FERNANDO F. COT-OM; AND PROSECUTOR NOEL S. ADION, RESPONDENTS.**

**D E C I S I O N**

**PERALTA, J.:**

Before this Court is a disbarment complaint filed by Datu Remigio M. Duque, Jr., (*Duque*) against former Commission on Elections (COMELEC) Chairman Sixto S. Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, and Christian Robert S. Lim; Attys. Ma. Josefina E. Dela Cruz, Esmeralda A. Amora-Ladra, Ma. Juana S. Valleza, Shemidah G. Cadiz, and Fernando F. Cot-om; and Prosecutor Noel S. Action for Conduct Unbecoming a Lawyer, Gross Ignorance of the Law and Gross Misconduct.

The case stemmed from a Complaint dated May 26, 2011 filed by Duque against respondents Sheila D. Mabutol, Cleotilde L. Balite, Camilo M. Labayne, Reynaldo P. Erese, Jr., Ruth Joy V. Gabor, Luzviminda V. Galanga, Esmeraldo Galanga, Jr., Gavino V. Rufino, Jr., Zenaida T. Rufino, Melanie M. Tagudin-Cordova, Alona D. Rocacorba, Alma P. Bunag, Joey G. Lomot and Nena G. Bactas, docketed as I.S. No. 111-18-INV-11-D-0390, for alleged violation of election laws, particularly Sections 223, 224, Article 19, Section 261 (y) (17), (z) (21), and Article 22 of *Batas Pambansa Blg. 881*.

Duque, who ran for *Punong Barangay* of Lomboy, La Paz, Tarlac but lost, filed a petition for recount contesting the results in a number of precincts where respondents were chairman and members of the Board or Election Tellers (*BETs*), respectively. Duque alleged that there were several irregularities in the canvassing of the ballots, *i.e.*, the discovery of alleged crumpled official ballots during the recount proceedings and unsigned election returns. Respondents, however, vehemently denied said allegations.

On June 13, 2011, Assistant Provincial Prosecutor Noel S. Adion recommended that the complaint for violation of *Batas Pambansa Blg. 881* be dismissed for lack of jurisdiction as the COMELEC has the exclusive power to conduct preliminary investigation of all election offenses, and to prosecute the same. Duque moved for reconsideration but was denied in a Resolution<sup>[1]</sup> dated September 21, 2011.

The records of the case were forwarded to the COMELEC.

On March 14, 2013, in its disputed Decision,<sup>[2]</sup> as recommended by the Law

Department of the COMELEC, the COMELEC *En Banc*<sup>[3]</sup> dismissed the complaint for lack of probable cause. It found no violation of any of the pertinent election laws. It likewise pointed out that Duque failed to substantiate the complaint by clear and convincing evidence.

Aggrieved, complainant filed the instant disbarment complaint against Commissioners Brillantes, *et al.*

On July 1, 2013, the Court resolved to require respondents to Comment on the complaint against them.<sup>[4]</sup>

Respondents, through the Office of the Solicitor General, in its Comment<sup>[5]</sup> dated October 24, 2013, pointed out that respondents, being COMELEC Commissioners may only be removed from office solely by impeachment. As impeachable officers who are at the same time members of the Bar, respondent Commissioners must be removed from office by impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.

Respondents likewise maintained that there exists no valid ground for their disbarment. While complainant insists that respondents conspired to deprive him of his constitutional rights by dismissing his complaint despite "voluminous evidence," complainant, however, failed to establish said allegation of conspiracy by positive and conclusive evidence. Other than his bare allegations of conspiracy, complainant failed to show how respondents acted in concert to deprive him of his constitutional rights or even specify the particular acts performed by respondents in the supposed conspiracy.

In his separate Comment<sup>[6]</sup> dated September 10, 2013, respondent Prosecutor Adion averred that the complaint against him has no legal and factual basis.

For his part, respondent Commissioner Lim, through his counsel, echoed the other Commissioners' contention that as an impeachable officer, he must first be removed from office through the constitutional route of impeachment before he may be held administratively liable for his participation in the disputed Resolution. He added that Duque miserably failed to allege, much less submit a clear, convincing and satisfactory proof of any act of Lim which may be construed as a ground for disbarment. Respondent further pointed out that the COMELEC *En Banc*, in dismissing the complaint of Duque, properly applied paragraph (m), Section 3, Rule 131 of the Rules of Court which states that "it is presumed that official duty has been regularly performed;" hence, the members of the BETs enjoy the presumption of regularity in the performance of their official duties unless a clear and convincing evidence is shown to the contrary.

### ***RULING***

To begin with, the Court takes notice that respondents Sixto S. Brillantes, Jr., Lucenito N. Tagle and Elias R. Yusoph, all retired from the COMELEC on February 2, 2015. However, it does not necessarily call for the dismissal of the complaint, considering that the very thrust of the instant disbarment complaint is the issuance of a Resolution dated March 14, 2013 which dismissed E.O. Case No. 12-003,<sup>[7]</sup> where respondents Brillantes, Tagle and Yusoph concurred in, when they were still

members of the COMELEC's *En Banc*.

Be that as it may, after a careful perusal of the facts of the case, the Court, however, finds no merit in the instant petition.

This Court, guided by its pronouncements in *Jarque v. Ombudsman*,<sup>[8]</sup> *In Re First Indorsement from Raul M. Gonzales*<sup>[9]</sup> and *Cuenco v. Hon. Fernan*,<sup>[10]</sup> has laid down the rule that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. At the time the present complaint was filed, respondents-commissioners were all lawyers. As impeachable officers who are at the same time the members of the Bar, respondents-commissioners must first be removed from office *via* the constitutional route of impeachment before they may be held to answer administratively for their supposed erroneous resolutions and actions.

Nevertheless, even if the Court were to look into the assailed actions of respondents-commissioners as well as respondents-lawyers under the Code of Professional Responsibility, We find no specific actuations and sufficient evidence to show that respondents did engage in dishonest, immoral or deceitful conduct in their capacity as lawyers.

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court.<sup>[11]</sup>

It must likewise be emphasized that the assailed actions of the respondents pertain to their quasi-judicial functions. The quasi-judicial function of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications.<sup>[12]</sup> Thus, the COMELEC, in resolving the subject complaint, was exercising its quasi-judicial power in pursuit of the truth behind the allegations in the complaint. The fact that the COMELEC's resolution was adverse to the complainant, in the absence of grave abuse of discretion, does not make a case for disbarment.

It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.<sup>[13]</sup> As we held in *Balsamo v. Judge Suan*:<sup>[14]</sup>