

## EN BANC

[ B.M. No. 2713, June 10, 2014 ]

**ATTY. AILEEN R. MAGLANA, COMPLAINANT, VS. ATTY. JOSE VICENTE R. OPINION, RESPONDENT.**

### RESOLUTION

**BRION, J.:**

Before the Court is the Appeal dated June 11, 2013<sup>[1]</sup> (with Urgent Motion to Prohibit Protestant-Appellee to Participate in the Election for Executive Vice President of the Integrated Bar of the Philippines [*IBP*] Set on June 15, 2013) filed by Atty. Aileen R. Maglana, President of IBP Samar Chapter, assailing the June 7, 2013 decision of the IBP Board of Governors (*BOG*).<sup>[2]</sup>

This *BOG* decision granted the election protest of Atty. Jose Vicente R. Opinion; declared Atty. Opinion as eligible to run for Governor of IBP Eastern Visayas for the 2013-2015 term; annulled the proclamation of Atty. Maglana as Governor of IBP Eastern Visayas; and proclaimed Atty. Opinion as the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term.<sup>[3]</sup>

#### The Antecedents

On May 25, 2013, thirteen (13) delegates of the IBP Eastern Visayas Region gathered at the Session Hall of the Regional Trial Court (RTC), Branch 24, Bulwagan ng Katarungan, Capitol Site, Maasin, Leyte, to elect the Governor of their region for the 2013-2015 term. Also present during the meeting were the Court's designated observer, Judge Bethany G. Kapili (Executive Judge of the RTC, Branch 24, Maasin, Leyte), other lawyers of the Southern Leyte Chapter and outgoing Governor Manuel Enage, Jr. Governor Enage presided over the election. He then called the election to order and opened the nominations for the position of Governor of IBP Eastern Visayas for the 2013-2015 term.<sup>[4]</sup>

Upon a motion duly seconded, Atty. Maglana - the incumbent President of IBP Samar Chapter - was nominated for the position of Governor. Atty. Maglana then moved that Governor Enage declare that only IBP Samar Chapter was qualified to be voted upon for the position of Governor for IBP Eastern Visayas, to the exclusion of all the other eight (8) chapters. Atty. Maglana cited the rotation rule under Bar Matter No. 491 and argued that since 1989 or the start of the implementation of the rotation rule, only IBP Samar Chapter had not served as Governor for IBP Eastern Visayas.<sup>[5]</sup>

Atty. Opinion, the candidate of the IBP Eastern Samar Chapter, thereafter, took the floor and manifested that before he decided to run for Governor, he sought the opinion of the IBP if he was still qualified to run considering that he also ran for

Governor and lost in the immediately preceding term. Atty. Opinion stated that he received an opinion dated April 2, 2013 from Governor Vicente M. Joyas, Chairman of the IBP Executive Committee, that pertinently stated:[6]

This has reference to your Letter dated March 15, 2013 addressed to former IBP President Roan I. Libarios seeking clarification on your Chapter's qualification to field a candidate for Governor on May 25, 2013.

Please be informed that your having lost the Governorship elections for Eastern Visayas in 2011 does not disqualify your Chapter from seeking an election for Governorship of Eastern Visayas Region. Thus, under the present set up, the IBP Chapters of Eastern Samar, Samar, and Biliran are qualified to field their respective candidate for the scheduled Regional Elections on May 25, 2013.[7]

Atty. Opinion also manifested that in the 2011 Regional Elections for IBP Eastern Visayas, the representative of IBP Samar Chapter, Judge Amanzar, waived "the votes as he cannot pursue an election at that time." Instead, Atty. Opinion was "asked to run." [8] The Chapter President of Samar in 2011, however, categorically denied the waiver and said, "I did not pursue my intentions, although I had one at that time to run for governor, because I was financially handicapped... but I did not categorically waive our right to the governorship, because I believe that waiver should be, - should not be implied. I categorically say that I did not waive my right, or the right of the chapter to run for governor." [9]

Atty. Jose Aguilar Grapilon, the delegate from Biliran, meanwhile pointed out that Governor Joyas as Chairman of the IBP Executive Committee had no authority to make the above-cited pronouncement; it is only the Supreme Court that has the authority to determine the qualified chapters in the region. [10]

After heated debates on the proper interpretation of the rotation rule to the present case, Governor Enage eventually ruled that Atty. Opinion was disqualified from running for the position of Governor of IBP Eastern Visayas. [11] Thereafter, some delegates protested the decision of Governor Enage which prompted him to call a recess. When the session resumed, Atty. Malig-on, Vice President of IBP Cebu Chapter, moved that the election be suspended and the issue of Atty. Opinion's objection to Governor Enage's ruling be resolved by the IBP BOG. Governor Enage, however, denied this motion and, thereafter, ordered the distribution of the ballots. [12]

The counting of the ballots revealed that only ten (10) out of the eleven (11) ballots cast were filled up. Governor Enage counted the votes, with six (6) votes in favor of Atty. Opinion considered as stray votes and four (4) votes in favor of Atty. Maglana. He then proceeded to proclaim Atty. Maglana as the duly elected Governor of IBP Eastern Visayas in view of the disqualification of the other nominee, Atty. Opinion. [13]

### ***The Protest***

On May 27, 2013, Atty. Opinion filed an election protest with the IBP BOG.<sup>[14]</sup> In support of his election protest, Atty. Opinion raised two points.

*First*, he noted that since its introduction in 1990, the rotation rule had not been followed in the elections for Governor of IBP Eastern Visayas since Cebu Province, Cebu City, Bohol and Northern Samar have had two elected governors each, as opposed to other chapters which only had one governor elected. Since the rotation rule was not followed, IBP Eastern Samar Chapter cannot be disqualified to run since it was merely exercising its right to run for the second time in the same manner as that of the other chapters that had elected two governors.<sup>[15]</sup>

*Second*, he emphasized that IBP Samar Chapter had waived its turn in the rotation when it did not field a candidate for Governor in the 2007, 2009 and 2011 elections. He notes that IBP Samar Chapter should not be allowed to assert its turn in the rotation at anytime; otherwise, it would disrupt the sequence considering it "follows Cebu City sequence wise." Thus, for the 2013 regional elections, both Eastern Samar and Samar should have been declared eligible to run for Governor of IBP Eastern Visayas.<sup>[16]</sup>

In her Comment,<sup>[17]</sup> Atty. Maglana argued three points.

*First*, IBP Samar Chapter did not waive its turn in the rotation. In fact, the former IBP Samar Chapter President, Atty. Cesar Mabansag, categorically denied, during the May 25, 2013 regional elections, that he had waived the right of IBP Samar Chapter to the governorship. Even if there was a waiver during the 2011 election, IBP Samar Chapter can reclaim its right to the governorship before the rotation is completed, pursuant to Section 39, Article VI, as amended, of the IBP By-Laws. Thus, for the 2013-2015 term, IBP Samar Chapter, which remains to be the only chapter that did not have its turn in the rotation, should be allowed to reclaim its right to the governorship.<sup>[18]</sup>

*Second*, she noted that since Bar Matter No. 586, dated May 14, 1991, mandated the strict implementation of the rotation rule, and based on IBP records, all chapters in the region, except IBP Samar Chapter, have already had their turn in the rotation. Thus, she argued that in order for the rotation cycle in the region to be completed, IBP Samar Chapter, which had not yet had its turn in the rotation, should be deemed the only qualified chapter to field its candidate for governor in the May 25, 2013 regional elections.<sup>[19]</sup>

*Third*, she contended that even if the rotation cycle is reckoned from 1973, it is still IBP Samar Chapter's turn in the rotation, pursuant to the rotation rule under Section 39, Article VI, as amended, of the IBP By-Laws. She notes that with the election of Governor Enage in the 2011-2013 term, the remaining chapters that have not served as governor are Samar, Biliran and Eastern Samar Chapters. Thus, pursuant to Section 39, IBP Samar Chapter should be able to field its candidate for governor first, ahead of Biliran and Eastern Samar Chapters.<sup>[20]</sup>

### ***The IBP BOG Decision***

In its June 7, 2013 decision, the IBP BOG granted the election protest of Atty.

Opinion and declared him the duly elected Governor of IBP Eastern Visayas for the 2013-2015 term.

*First*, the IBP BOG held that IBP Samar waived its turn in the first rotation cycle, from 1989 to 2007. It noted that under the rotation rule, the governorship of a region shall rotate once in as many as the number of chapters there are in the region, to give every chapter a chance to represent the region in the IBP BOG. In the case of IBP Eastern Visayas, the region consists of nine (9) chapters, thus the cycle consists of nine governorship terms (from 1989 to 2007). Based on the records, it is clear that four chapters have been represented twice; IBP Eastern Samar was represented once while IBP Samar was never represented at all.

Based on these considerations, the IBP BOG concluded that IBP Samar Chapter effectively waived its turn in the rotation order when it did not field any candidate from 1989 to 2007, as well as when it did not invoke the rotation rule to challenge the nominations of those candidates whose chapters had already been previously represented in the rotation cycle.<sup>[21]</sup>

*Second*, the IBP BOG ruled that the first rotation cycle had already terminated with the 2005 to 2007 term despite the lack of representation from Eastern Samar as it has effectively waived its turn in the first rotation cycle. It emphasized that the rotation rule is not absolute and is subject to waiver, such as when the chapters, in the order of rotation, opt not to file or nominate their own candidates for governor during the election regularly done for that purpose. It also held that Atty. Maglana's contentions that IBP Eastern Samar can reclaim the governorship at any time and that the first rotation cycle cannot be completed unless IBP Eastern Samar has had its turn are completely anathema to the concept of the rotation cycle; the rotation cycle should run its course and the rotation in the region cannot be held hostage by any one chapter.<sup>[22]</sup>

*Third*, the IBP BOG found that based on the rotation by exclusion rule (*i.e.*, once a member of the chapter is elected as governor, his or her chapter would be excluded in the next turn until all have taken turns in the rotation cycle), the six (6) remaining chapters in the region were actually qualified to field a candidate for governor in the May 25, 2013 regional elections. It also noted that the IBP Eastern Visayas region is actually already in its second rotation cycle with governors from Leyte (2007-2009), Bohol (2009-2011) and Southern Leyte (2011-2013) already having served the region. In the present case, both IBP Eastern Samar and IBP Samar were actually qualified to field their candidates for Governor, alongside IBP Cebu City, IBP Cebu Province, IBP Biliran and IBP Northern Samar Chapters.<sup>[23]</sup>

*Fourth*, the IBP BOG concluded that Atty. Opinion, who was actually a qualified candidate for Governor of IBP Eastern Visayas, should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term, considering that he garnered the majority six (6) votes, as opposed to the minority four (4) votes garnered by Atty. Maglana.<sup>[24]</sup>

### ***The Appeal***

On June 11, 2013, Atty. Maglana filed the present Appeal (With Urgent Motion to Prohibit Protestant-Appellee to Participate in the Election for Executive Vice

President of the Integrated Bar of the Philippines Set on June 15, 2013). In support of her Appeal, Atty. Maglana submits the following arguments:

*First*, IBP Samar Chapter is the only qualified chapter to field a candidate for governor for the 2013-2015 term, to the exclusion of all other chapters in the IBP Eastern Visayas region. She emphasizes that based on the records, IBP Samar Chapter clearly had never served as governor for IBP Eastern Visayas since the introduction of Bar Matter No. 491 in 1989.<sup>[25]</sup>

*Second*, IBP Samar Chapter never waived its turn in the rotation cycle because under the rotation by exclusion scheme, it does not know when its turn to serve as governor would be. Even assuming that there had been a waiver, Section 39, Article VI, as amended, of the IBP By-Laws allows the chapter that waived its turn in the rotation order to reclaim its right at any time before the rotation is completed.<sup>[26]</sup>

*Third*, the rotation cycle in the IBP Eastern Visayas region can only be completed once a nominee from IBP Samar Chapter had served as Governor for the 2013-2015 term. The rotation cycle cannot simply be deemed complete by just equating the number of terms with the number of chapters in the region. Atty. Maglana contends that the situation of IBP Samar Chapter is the same as that of Romblon Chapter in 2009 when the Court, in *In the Matter of the Brewing Controversies in the Election in the Integrated Bar of the Philippines*,<sup>[27]</sup> affirmed IBP Romblon Chapter's right to the 2009-2011 term despite the fact that there were other chapters in the Western Visayas region that had served more than one term.<sup>[28]</sup>

On July 2, 2013, the Court issued a Resolution denying Atty. Maglana's prayer to restrain Atty. Opinion from voting in the election on June 15, 2013, the same having become moot and academic. In the same Resolution, the Court also required Atty. Maglana to furnish the Court, within five (5) days from notice, a certified true copy of the IBP BOG decision dated June 7, 2013.<sup>[29]</sup>

On August 3, 2013, Atty. Maglana submitted her Compliance with the Court's directive in its July 2, 2013 Resolution.<sup>[30]</sup>

### **The Issues for Resolution**

The core issues raised by the present Appeal are the following:

1. Whether the first rotation cycle in IBP Eastern Visayas, since the implementation of Bar Matter No. 491, has been completed;
2. Whether IBP Samar Chapter waived its turn in the rotation order so that it can no longer claim its right to the governorship position for the 2013-2015 term;
3. Whether IBP Samar Chapter is the only qualified chapter to field a candidate for governor in IBP Eastern Visayas for the 2013-2015 term; and
4. Whether Atty. Opinion should be declared the duly elected Governor for IBP Eastern Visayas for the 2013-2015 term.