

EN BANC

[A.C. No. 6683, June 21, 2011]

RE: RESOLUTION OF THE COURT DATED 1 JUNE 2004 IN G.R. NO. 72954 AGAINST, ATTY. VICTOR C. AVECILLA, RESPONDENT.

DECISION

PEREZ, J.:

The present administrative case is based on the following facts:

Prelude

Sometime in 1985, respondent Atty. Victor C. Avecilla (Atty. Avecilla) and a certain Mr. Louis C. Biraogo (Mr. Biraogo) filed a petition before this Court impugning the constitutionality of *Batas Pambansa Blg. 883*, i.e., the law that called for the holding of a presidential snap election on 7 February 1986. The petition was docketed as **G.R. No. 72954** and was consolidated with nine (9) other petitions ^[1] voicing a similar concern.

On 19 December 1985, the Court *En banc* issued a Resolution dismissing the consolidated petitions, effectively upholding the validity of *Batas Pambansa Blg. 883*. ^[2]

On 8 January 1986, after the aforesaid resolution became final, the *rollo* ^[3] of G.R. No. 72954 was entrusted to the Court's Judicial Records Office (JRO) for safekeeping. ^[4]

The Present Case

On 14 July 2003, the respondent and Mr. Biraogo sent a letter ^[5] to the Honorable Hilario G. Davide, Jr., then Chief Justice of the Supreme Court (Chief Justice Davide), requesting that they be furnished several documents ^[6] relative to the expenditure of the Judiciary Development Fund (JDF). In order to show that they have interest in the JDF enough to be informed of how it was being spent, the respondent and Mr. Biraogo claimed that they made contributions to the said fund by way of the docket and legal fees they paid as petitioners in G.R No. 72954. ^[7]

On 28 July 2003, Chief Justice Davide instructed ^[8] Atty. Teresita Dimaisip (Atty. Dimaisip), then Chief of the JRO, to forward the *rollo* of G.R. No. 72954 for the purpose of verifying the claim of the respondent and Mr. Biraogo.

On 30 July 2003, following a diligent search for the *rollo* of G.R. No. 72954, Atty. Dimaisip apprised ^[9] Chief Justice Davide that the subject *rollo* could not be found

in the archives. Resorting to the tracer card ^[10] of G.R. No. 72954, Atty. Dimaisip discovered that the subject *rollo* had been borrowed from the JRO on 13 September 1991 but, unfortunately, was never since returned. ^[11] The tracer card named the respondent, although acting through a certain Atty. Salvador Banzon (Atty. Banzon), as the borrower of the subject *rollo*. ^[12]

The next day, or on 31 July 2003, Chief Justice Davide took prompt action by directing ^[13] Atty. Dimaisip to supply information about how the respondent was able to borrow the *rollo* of G.R. No. 72954 and also to take necessary measures to secure the return of the said *rollo*.

Reporting her compliance with the foregoing directives, Atty. Dimaisip sent to Chief Justice Davide a Memorandum ^[14] on 13 August 2003. In substance, the Memorandum relates that:

1. At the time the *rollo* of G.R. No. 72954 was borrowed from the JRO, the respondent was employed with the Supreme Court as a member of the legal staff of retired Justice Emilio A. Gancayco (Justice Gancayco). Ostensibly, it was by virtue of his confidential employment that the respondent was able to gain access to the *rollo* of G.R. No. 72954. ^[15]
2. Atty. Dimaisip had already contacted the respondent about the possible return of the subject *rollo*. ^[16] Atty. Dimaisip said that the respondent acknowledged having borrowed the *rollo* of G.R. No. 72954 through Atty. Banzon, who is a colleague of his in the office of Justice Gancayco. ^[17]

On 18 August 2003, almost twelve (12) years after it was borrowed, the *rollo* of G.R. No. 72954 was finally turned over by Atty. Avecilla to the JRO. ^[18]

On 22 September 2003, Chief Justice Davide directed ^[19] the Office of the Chief Attorney (OCAT) of this Court, to make a study, report and recommendation on the incident. On 20 November 2003, the OCAT submitted a Memorandum ^[20] to the Chief Justice opining that the respondent may be administratively charged, as a lawyer and member of the bar, for taking out the *rollo* of G.R. No. 72954. The OCAT made the following significant observations:

1. Justice Gancayco compulsorily retired from the Supreme Court on 20 August 1991. ^[21] However, as is customary, the coterminous employees of Justice Gancayco were given an extension of until 18 September 1991 to remain as employees of the court for the limited purpose of winding up their remaining affairs. Hence, the respondent was already nearing the expiration of his "extended tenure" when he borrowed the *rollo* of G.R. No. 72954 on 13 September 1991. ^[22]
2. The above circumstance indicates that the respondent borrowed the subject *rollo* not for any official business related to his duties as a legal researcher for Justice Gancayco, but merely to fulfill a personal agenda. ^[23] By doing so, the

respondent clearly abused his confidential position for which he may be administratively sanctioned. [24]

3. It must be clarified, however, that since the respondent is presently no longer in the employ of the Supreme Court, he can no longer be sanctioned as such employee. [25] Nevertheless, an administrative action against the respondent as a lawyer and officer of the court remains feasible. [26]

Accepting the findings of the OCAT, the Court *En banc* issued a Resolution [27] on 9 December 2003 directing the respondent to *show cause* why he should not be held administratively liable for borrowing the *rollo* of G.R. No. 72954 and for failing to return the same for a period of almost twelve (12) years.

The respondent conformed to this Court's directive by submitting his Respectful Explanation (Explanation) [28] on 21 January 2004. In the said explanation, the respondent gave the following defenses:

1. The respondent maintained that he neither borrowed nor authorized anyone to borrow the *rollo* of G.R. No. 72954. [29] Instead, the respondent shifts the blame on the person whose signature actually appears on the tracer card of G.R. No. 72954 and who, without authority, took the subject *rollo* in his name. [30] Hesitant to pinpoint anyone in particular as the author of such signature, the respondent, however, intimated that the same *might* have belonged to Atty. Banzon. [31]
2. The respondent asserted that, for some unknown reason, the subject *rollo* just ended up in his box of personal papers and effects, which he brought home following the retirement of Justice Gancayco. [32] The respondent can only speculate that the one who actually borrowed the *rollo* might have been a colleague in the office of Justice Gancayco and that through inadvertence, the same was misplaced in his personal box. [33]
3. The respondent also denounced any ill-motive for failing to return the *rollo*, professing that he had never exerted effort to examine his box of personal papers and effects up until that time when he was contacted by Atty. Dimaisip inquiring about the missing *rollo*. [34] The respondent claimed that after finding out that the missing *rollo* was, indeed, in his personal box, he immediately extended his cooperation to the JRO and wasted no time in arranging for its return. [35]

On 24 February 2004, this Court referred the respondent's Explanation to the OCAT for initial study. In its Report [36] dated 12 April 2004, the OCAT found the respondent's Explanation to be unsatisfactory.

On 1 June 2004, this Court tapped [37] the Office of the Bar Confidant (OBC) to conduct a formal investigation on the matter and to prepare a final report and recommendation. A series of hearings were thus held by the OBC wherein the

testimonies of the respondent, [38] Atty. Banzon, [39] Atty. Dimaisip [40] and one Atty. Pablo Gancayco [41] were taken. On 6 August 2007, the respondent submitted his Memorandum [42] to the OBC reiterating the defenses in his Explanation.

On 13 October 2009, the OBC submitted its Report and Recommendation [43] to this Court. Like the OCAT, the OBC dismissed the defenses of the respondent and found the latter to be fully accountable for taking out the *rollo* of G.R. No. 72954 and failing to return it timely. [44] The OBC, thus, recommended that the respondent be suspended from the practice of law for one (1) year. [45]

Our Ruling

We agree with the findings of the OBC. However, owing to the peculiar circumstances in this case, we find it fitting to reduce the recommended penalty.

The Respondent Borrowed The Rollo

After reviewing the records of this case, particularly the circumstances surrounding the retrieval of the *rollo* of G.R. No. 72954, this Court is convinced that it was the respondent, and no one else, who is responsible for taking out the subject *rollo*.

The tracer card of G.R. No. 72954 bears the following information:

1. The name of the respondent, who was identified as borrower of the *rollo*, [46] and
2. The signature of Atty. Banzon who, on behalf of the respondent, actually received the *rollo* from the JRO. [47]

The respondent sought to discredit the foregoing entries by insisting that he never authorized Atty. Banzon to borrow the subject *rollo* on his behalf. [48] We are, however, not convinced.

First. Despite the denial of the respondent, the undisputed fact remains that it was from his possession that the missing *rollo* was retrieved about twelve (12) years after it was borrowed from the JRO. This fact, in the absence of any plausible explanation to the contrary, is sufficient affirmation that, true to what the tracer card states, it was the respondent who borrowed the *rollo* of G.R. No. 72954.

Second. The respondent offered no convincing explanation how the subject *rollo* found its way into his box of personal papers and effects. The respondent can only surmise that the subject *rollo* may have been inadvertently placed in his personal box by another member of the staff of Justice Gancayco. [49] However, the respondent's convenient surmise remained just that--a speculation incapable of being verified definitively.

Third. If anything, the respondent's exceptional stature as a lawyer and former confidante of a Justice of this Court only made his excuse unacceptable, if not totally unbelievable. As adequately rebuffed by the OCAT in its Report dated 12 April