

## EN BANC

[ A.M. No. 08-8-11-CA, September 09, 2008 ]

**RE: LETTER OF PRESIDING JUSTICE CONRADO M. VASQUEZ, JR.  
ON CA-G.R. SP NO. 103692 [ANTONIO ROSETE, ET AL. V.  
SECURITIES AND EXCHANGE COMMISSION, ET AL.]**

### D E C I S I O N

#### PER CURIAM:

The Judiciary, which is acclaimed as the firmest pillar of our democratic institutions, is vested by the Constitution with the power to settle disputes between parties and to determine their rights and obligations under the law. For judicial decisions, which form part of the law of the land, to be credible instruments in the peaceful and democratic resolution of conflicts, our courts must be perceived to be and, in fact be, impartial, independent, competent and just. To accomplish this end, it is imperative that members of the Judiciary from its highest magistrates to its humblest employees adhere to the strictest code of ethics and the highest standards of propriety and decorum. Indeed, it is unfortunate that one of the country's second highest courts, the Court of Appeals, should be presently embroiled in scandal and controversy. It is this Court's bounden duty to determine the culpability or innocence of the members of the Judiciary involved in the said controversy and to discipline any one whose conduct has failed to conform to the canons of judicial ethics, which uphold integrity, independence, impartiality, competence and propriety in the performance of official functions.

The present administrative matter arose from the Letter dated August 1, 2008 of Court of Appeals Presiding Justice Conrado M. Vasquez, Jr. (Presiding Justice Vasquez), referring to this Court for appropriate action the much publicized dispute and charges of impropriety among the justices of the Court of Appeals (CA) involved in CA-G.R. SP No. 103692 entitled "*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*"

To assist in its investigation of this sensitive matter, the Court in its Resolution dated August 4, 2008 constituted a three-person panel (the "Panel of Investigators") composed of retired Justices of the Court; namely, Mme. Justice Carolina Griño-Aquino as Chairperson, Mme. Justice Flerida Ruth P. Romero and Mr. Justice Romeo J. Callejo, Sr. as Members. The Panel of Investigators was tasked to investigate the (a) alleged improprieties of the actions of the Justices of the Court of Appeals in CA-G.R. SP No. 103692 (*Antonio V. Rosete, et al. v. SEC, et al.*); and (b) alleged rejected offer or solicitation of bribe disclosed respectively by Mr. Justice Jose Sabio and Mr. Francis de Borja.

A narration of relevant events and facts, as found by the Investigating Panel, follows:

On April 15, 2008, Justice Bienvenido L. Reyes (Justice Reyes), then Chairperson of the Ninth Division of the CA, filed an application for leave from May 15, 2008 to June 5, 2008.<sup>[1]</sup>

In Office Order No. 149-08-CMV dated May 14, 2008 issued by Presiding Justice Vasquez, Justice Jose C. Mendoza (Justice Mendoza) was designated by the Raffle Committee as Acting Chairman of the Ninth Division during the absence of Justice Reyes. Apart from his duties as regular senior member of the Fifth Division, Justice Mendoza was authorized "to act on all cases submitted to the Ninth Division for final resolution and/or appropriate action, except ponencia, from May 15, 2008 to June 5, 2008 or until Justice Reyes reports back for duty." The said office order likewise applied to the other Division(s) where Justice Reyes had "participated or took part as regular member or in an acting capacity."<sup>[2]</sup>

On May 29, 2008, Antonio V. Rosete, Manuel M. Lopez, Felipe B. Alfonso, Jesus P. Francisco, Christian S. Monsod, Elpidio L. Ibañez, and Francis Giles B. Puno, as officers, directors and/or representatives of the Manila Electric Company (hereinafter to be collectively referred to as "Meralco"), filed with the Court of Appeals a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and temporary restraining order (TRO) against the Securities and Exchange Commission (SEC), Commissioner Jesus Enrique G. Martinez, Commissioner Hubert B. Guevarra, and the Government Service Insurance System (GSIS).<sup>[3]</sup> Aside from the application for immediate issuance of a TRO, petitioners prayed for the issuance of a preliminary injunction that should thereafter be declared permanent, as well as a declaration of nullity of the cease and desist and show cause orders issued by the SEC through Commissioner Martinez. The petition was received by the CA at 10:49 a.m. on May 29, 2008 and docketed as CA-G.R. SP No. 103692.

On the same day, petitioners simultaneously filed at 10:48 a.m. an urgent motion for a special raffle. Presiding Justice Vasquez granted the motion in a handwritten note on the face of the urgent motion,<sup>[4]</sup> and CA-G.R. No. 103692 was raffled to Justice Vicente Q. Roxas (Justice Roxas).<sup>[5]</sup> At 3:10 p.m., the Office of Presiding Justice Vasquez received a letter from Atty. Estrella C. Elamparo (Atty. Elamparo), Chief Legal Counsel of the GSIS, requesting the re-raffling of the case "in the presence of the parties in the interest of transparency and fairness."<sup>[6]</sup> At 4:10 p.m. on that day, the GSIS filed an *ex-parte* motion to defer action on any incident in the petition pending the resolution of their motion for the re-raffle of the case.<sup>[7]</sup>

Atty. Elamparo, accompanied by Atty. Orlando P. Polinar, also of the GSIS Law Office, personally filed the urgent motion to defer action on the petition pending the resolution of their motion to re-raffle the case. Since the receiving clerk of the Court of Appeals could not assure them that the motion would be transmitted to the Court of Appeals Division, Attys. Elamparo and Polinar allegedly went to the office of Justice Roxas "for the sole purpose of personally furnishing him a copy" of the motion.<sup>[8]</sup> They initially talked to a male clerk who referred them to one of the lawyers, who, however, told them that it was not possible for them to personally hand a copy of the motion to Justice Roxas. Thus, Attys. Elamparo and Polinar left a copy of the motion to the staff but no one wanted to sign and acknowledge receipt of the copy.<sup>[9]</sup>

On May 30, 2008, Justice Reyes filed an application for the extension of his leave until June 6, 2008.<sup>[10]</sup> In the meantime, Justice Mendoza, who had been designated to replace Justice Reyes during the latter's absence, informed Justice Roxas through a letter that he (Justice Mendoza) was inhibiting from the case on the ground that he used to be a lawyer of the Meralco.<sup>[11]</sup> Hence, in an "Emergency Request for Raffle," Justice Roxas informed the Raffle Committee about the inhibition.<sup>[12]</sup>

Justice Jose L. Sabio, Jr. (Justice Sabio) was assigned as Acting Chairman of the Ninth Division by raffle, "in lieu of Justice Mendoza."<sup>[13]</sup> At 11:30 a.m., the office of Justice Myrna Dimaranan-Vidal (Justice Dimaranan-Vidal) received a notice of emergency deliberation with the new Acting Chairman of the Special Ninth Division, apparently sent by Justice Roxas, stating that her presence and that of Justice Sabio, Jr. were "indispensable" on account of the "national interest" involved in CA-G.R. SP No. 103692.<sup>[14]</sup>

Meanwhile, Atty. Elamparo "received a telephone call from somebody who did not identify herself but (who) said that she had important information regarding the Meralco case." The unidentified caller told Atty. Elamparo that "a TRO was already being prepared and that certain Meralco lawyers had in fact been talking to Justice Roxas." The caller warned Atty. Elamparo against Justice Roxas who had "administrative cases and was `very notorious,'" but when prodded, the caller would not disclose more details.<sup>[15]</sup>

At about 1:30 p.m. also on May 30, 2008, Justice Sabio received a telephone call in his chambers from his older brother, Chairman Camilo Sabio (Chairman Sabio) of the Presidential Commission on Good Government (PCGG).<sup>[16]</sup> Chairman Sabio informed his brother that he (Justice Sabio) had been named the "third member" of the division to which the MERALCO-GSIS case had been raffled. Justice Sabio was surprised as he had not yet been "officially informed" about the matter. Chairman Sabio likewise informed him that a TRO had been prepared. Chairman Sabio then tried to convince Justice Sabio "of the rightness of the stand of the GSIS and the SEC," and asked his brother to help the GSIS, which "represents the interest of the poor people." Justice Sabio told his brother that he would "vote according to [his] conscience" and that the most that he could do was "to have the issuance of the TRO and the injunctive relief scheduled for oral arguments," at which the respondents "must be able to convince" him that the TRO indeed had no legal basis.

In his signed testimony,<sup>[17]</sup> which he read before the Panel of Investigators, Chairman Sabio narrated the circumstances of this call to his brother on May 30, 2008. It appears to have been prompted by a call from a member of the Board of Trustees of GSIS. To quote from Chairman Sabio's testimony:

Last May 30, 2008 I was in Davao City Airport with my wife, Marlene, waiting for our 1:25 P.M. PAL flight to Manila. xxx xxx xxx.

As we were boarding, I received a call from Atty. Jesus I. Santos, a Member of the Board of Trustees of GSIS. We had known each other and had become friends since before Martial Law because as Chief Counsel of the Federation of Free Farmers (FFF) we were opposing counsel in

various cases in Bulacan.

Attorney Santos informed me that the dispute between the GSIS and MERALCO was now in the Court of Appeals; and, that as a matter of fact, my brother, Justice Sabio, was chair of the Division to which the case had been assigned. Being a Trustee, Attorney Santos requested me to help. I readily welcomed the request for help and thanked him. There was no mystery about his having known of the results of the raffle because the lawyers are notified thereof and are present thereat. As a Trustee, Attorney Santos should be concerned and involved. As such it is his duty to seek assistance for the GSIS where he could legitimately find it. He was right in seeking my assistance.

I was aware of the controversy between the GSIS and MERALCO. In essence this was in fact a controversy between the long suffering public and the mighty - financially and politically - controlling owners of MERALCO. MERALCO is not only a public utility but also a monopoly. Fortunately, GSIS had taken up the cudgels for the long suffering public, who are at the mercy of MERALCO.

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Immediately, I tried to contact Justice Sabio. But due to the noise I could not hear him. So I waited until we would arrive in Manila.

As we were leaving the Airport, I again got in touch with Justice Sabio. After, he confirmed that he was in fact in the Division to which the petition of MERALCO had been raffled. I impressed upon him the character and essence of the controversy. I asked him to help GSIS if the legal situation permitted. He said he would decide according to his conscience. I said: of course.

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On the same day, May 30, 2008, GSIS filed an urgent ex-parte motion to inhibit Justice Roxas from CA-G.R. No. SP 103692.<sup>[18]</sup> The Special Cases Section of the Court of Appeals received a copy of the motion at 11:58 a.m.<sup>[19]</sup>

Claiming that the TRO was issued "to pre-empt the hearing" scheduled in the afternoon of that day before the SEC, the GSIS Law Office, through Atty. Marcial C. Pimentel, Jr., set forth its reason for the motion for inhibition as follows:

3. Unfortunately, reports have reached respondent GSIS that the Honorable ponente has been in contact with certain lawyers of MERALCO and has in fact already prepared a draft resolution granting the TRO without affording respondents even a summary hearing. The records of this case was (sic), per information, immediately transmitted to the Honorable ponente upon his instructions. The worries of the respondent were exacerbated when it learned that there are supposedly two administrative cases pending against the Honorable ponente, both of which involve allegations of bias and prejudice.

It turned out, however, that at that time, Justice Roxas had not yet been officially notified by the Raffle Committee that the case was raffled to him.<sup>[20]</sup> Moreover, contrary to the allegation of Atty. Elamparo that the raffle was rigged, Justice Roxas had no hand in the raffle proceeding, which was handled by the Division chaired by Justice Mariano del Castillo with the use of a "fool-proof Las Vegas tamboliolo, like the lotto machine."<sup>[21]</sup>

Justice Roxas brought to the office of Justice Sabio, for the latter's signature, the TRO which he had prepared, already signed by himself and Justice Dimaranan-Vidal. Convinced of the urgency of the TRO, Justice Sabio signed it on condition that the case will be set for oral arguments.

Thus, at 2:08 p.m. on May 30, 2008,<sup>[22]</sup> the Special Ninth Division composed of Justices Sabio, Roxas, and Dimaranan-Vidal, issued the Resolution granting the TRO prayed for by the petitioners and directing the respondents to file their respective comments (not a motion to dismiss) to the petition within ten days from notice, with the petitioners given five days from receipt of that comment within which to file their reply. The Special Ninth Division also set the hearing on the application for the issuance of a writ of preliminary injunction for 10:00 a.m. on June 23 and 24, 2008. In the same Resolution, parties were directed to file their respective memorandum of authorities in connection with the application for a writ of preliminary injunction together with their comments/reply. After the parties had filed their memorandum of authorities relative to the application for a writ of preliminary injunction, the prayer for the said writ would be considered submitted for resolution "forty five (45) days from promulgation of this Resolution." The SEC received a copy of the Resolution at 4:03 p.m. on that day.<sup>[23]</sup>

For Justice Roxas, the issuance of the TRO was an implied denial of the motion for inhibition filed against him. There was no need to put in writing the action on the motion for inhibition.<sup>[24]</sup>

At 3:00 p.m., the Special Cases Section of the Court of Appeals received the Urgent Motion to Lift Temporary Restraining Order and To Hold Its Enforcement in Abeyance filed by the GSIS.<sup>[25]</sup> Justice Roxas did not act on the Urgent Motion because he did not consider it meritorious.<sup>[26]</sup>

On May 31, 2008, Justice Sabio received a cellular phone call from Mr. Francis De Borja (Mr. De Borja), a person he had lost contact with for almost a year already.<sup>[27]</sup> Mr. De Borja greeted him with: "*Mabuhay ka, Justice.*" When Justice Sabio, Jr. asked Mr. De Borja why he said that, Mr. De Borja told him that the Makati Business Club was happy with his having signed the TRO, to which Justice Sabio retorted, "I voted according to my conscience."

On June 5, 2008, the GSIS Law Office received a letter dated June 2, 2008 of Presiding Justice Vasquez, Jr. informing GSIS Chief Legal Counsel, Atty. Elamparo, that the Court of Appeals could not grant her request for the re-raffling of CA-G.R. SP No. 103692 "in the presence of the parties in the interest of transparency and fairness," as the case had been raffled in accordance with the procedure under the IRCA.<sup>[28]</sup>