



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 12, 2020 which reads as follows:

“G.R. No. 229161 – (Resnol C. Torres and Joseph M. Sanguila, Jr. v. Omar M. Mayo)

The Case

This appeal assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 137859:

- 1) Decision¹ dated August 18, 2016 reversing the Ombudsman’s finding that respondent is guilty of grave misconduct and imposing on him the penalty of dismissal from the service;
- 2) Resolution² dated November 28, 2016 denying petitioners’ motion for reconsideration.

Antecedents

On August 2, 2012, petitioners Resnol C. Torres and Joseph M. Sanguila, Jr. filed a complaint against the officers of the National Electrification Administration (NEA) for dishonesty, grave abuse of authority, grave misconduct and violation of Republic Act 3019. Among them was respondent Omar M. Mayo, Acting Department Manager for Legal Services of the NEA.³

¹ Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Maria Elisa Sempio Diy and Ramon M. Bato, Jr.; *rollo*, p. 81.

² *Id.* at 92.

³ *Id.* at 83-84.

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Petitioners essentially alleged that in 2003, the NEA granted Cotabato Electric Cooperative (COTELCO) a power distribution franchise covering six (6) municipalities in Cotabato collectively known as the PPALMA area. Despite the opposition of Maguindanao Electric Cooperative (MAGELCO-PPALMA), the Court of Appeals upheld COTELCO's franchise in CA-G.R. SP No. 84996.⁴

Subsequently, COTELCO requested the NEA to order the dissolution of MAGELCO-PPALMA. The NEA granted the request and, in 2008, issued a letter-directive for dissolution of MAGELCO-PPALMA and the transfer of its funds and properties to COTELCO subject to payment of just compensation. The Court of Appeals, however, nullified the letter-directive through its Decision dated March 5, 2010 in CA-G.R. SP Nos. 02547-MIN entitled "*MAGELCO v. NEA and COTELCO et al.*" and 02759-MIN entitled "*COTELCO v. Hon. Indar*". Respondent Mayo appeared as counsel for the NEA in these cases.⁵

As ground for the administrative charges, petitioners asserted that Mayo solicited and received from COTELCO the amount of ₱1,500,000.00 as litigation fee for purposes of facilitating a court decision favorable to COTELCO in CA-G.R. SP Nos. 02547-MIN and 02759-MIN.⁶ Too, Mayo allegedly obtained a cash advance of ₱28,200.00 from COTELCO, an electric cooperative being supervised and regulated by the NEA. Said acts allegedly violated RA 3019 and civil service laws.⁷ Other high officials of the NEA were impleaded for acting in conspiracy with Mayo to conceal the latter's transgressions.⁸

In his Counter-Affidavit, Mayo admitted COTELCO's deposit of ₱1,500,000.00 to his joint account with his wife. He explained, though, that the amount was a reimbursement of his advances to one Atty. Albert Pangcog, the lawyer who handled COTELCO's appeal to the Supreme Court. He was constrained to advance the payment to Atty. Pangcog from his own funds since COTELCO's funds were under garnishment at that time.⁹ Further, his assistance to and legal representation of COTELCO was authorized by the NEA itself.¹⁰ He denied receiving the alleged ₱28,200.00 cash advance from COTELCO.¹¹

⁴ *Id.* at 72.

⁵ *Id.* at 73.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 84.

⁹ *Id.* at 74.

¹⁰ *Id.*

¹¹ *Id.*

Atty. Pangcog and COTELCO General Manager Alejandro Q. Collados corroborated Mayo's defense. In his affidavit, Atty. Pangcog admitted to having received ₱1,500,000.00 from Mayo as his litigation and handling fees.¹²

Ombudsman's Ruling

Under Joint Resolution dated June 2, 2014,¹³ the Ombudsman found Mayo guilty of grave misconduct, *viz*:

WHEREFORE, this Office finds probable cause to indict respondent OMAR M. MAYO for violation of Sec. 7(d) of Republic Act 6713.

This Office also finds respondent Mayo administratively liable for GRAVE MISCONDUCT and meted the penalty of DISMISSAL from the service, including all its accessory penalties of (a) cancellation of eligibility, (b) forfeiture of retirement benefits and (c) perpetual disqualification for re-employment in the government service.

In the event that the penalty of Dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his office.

It shall be understood that the accessory penalties attached to principal penalty of Dismissal shall continue to be imposed.

The administrative and criminal complaints against respondents EDITA S. BUENO, JOHN JOSEPH M. MAGTULOY, EDGARDO R. PIAMONTE and VERONICA B. CRUZ are DISMISSED.

SO ORDERED.¹⁴

Insofar as the administrative charges against Mayo were concerned, the Ombudsman found his acceptance of monies from COTELCO, an entity under the supervision of and regulated by NEA, as a clear violation of the prohibition against the solicitation or acceptance of gifts by public officials.

Mayo failed to substantiate his defense that the ₱1,500,000.00 deposited in his joint account with his wife was actually intended for

¹² *Id.*

¹³ *Id.* at 71.

¹⁴ *Id.* at 78-79.

Atty. Pangcog. The alleged obligation to pay the amount to Atty. Pangcog was highly suspicious in the absence of any engagement or service contract between Atty. Pangcog and COTELCO.¹⁵ Too, his availment of cash advance of ₱28,500.00 was sufficiently established by COTELCO's own record of cash advances to officers and employees.¹⁶

Court of Appeals' Ruling

Through the assailed Decision dated August 18, 2016, the Court of Appeals reversed, *viz*:

WHEREFORE, foregoing considered, with specific reference to the administrative aspect of Joint Resolution dated 02 June 2014 of the Office of the Ombudsman, the same is **REVERSED** and **SET ASIDE**. Petitioner Omar Mayo is **ABSOLVED** from administrative liability for Grave Misconduct.

SO ORDERED.¹⁷

Giving credence to Mayo's defense, the Court of Appeals held:

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As a background, it is relevant to mention that COTELCO and NEA received an adverse ruling from this Court (Mindanao Station) in CA-G.R. SP No. 02547-MIN xxx as well as in CA-G.R. SP No. 02759-MIN. It is averred that COTELCO received a copy of the adverse decision sometime April 2010 and, thus, only had limited time to appeal the same to the Supreme Court. Atty. Alberto Pangcog – whose principal office is in Manila – was COTELCO's choice to handle the appeal in light of his expertise in the field being the former Vice President and General Counsel of the National Power Corporation. At that time, however, COTELCO's bank accounts and other assets were garnished pursuant to the Order of RTC Cotabato City so much so that COTELCO sought the assistance of herein petitioner to advance the funds needed to defray Atty. Pangcog's legal fees so that he can immediately start the preparation of the appeal papers. Now then, considering the urgency of the situation since the case involved about Eighty Million Pesos (₱80,000,000.00), petitioner did not hesitate to advance the sum of One Million Five Hundred Thousand Pesos (₱1,500,000.00) for the attorney's fees aforesaid. Averse to the conclusion made by the investigating agency, We are of the view that petitioner's decision to assist COTELCO was motivated by good faith and compelled by the circumstances; thus,

¹⁵ *Id.* at 75-76.

¹⁶ *Id.* at 76.

¹⁷ *Id.* at 91.

it would be unfair, unjust and improper to impute upon him corrupt intention.¹⁸

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In fine, the Court of Appeals was of the view that Mayo adequately explained the reason and cause for his receipt of ₱1,500,000.00 from COTELCO. Collados affirmed that the deposit was for purposes of reimbursing Mayo for the legal fees that he earlier advanced to Atty. Pangcog who, in turn, admitted to receiving ₱1,500,000.00 from Mayo.¹⁹

In their motion for reconsideration, petitioners alleged that Sanguila, Jr. received copy of the adverse ruling on August 31, 2016. Through the assailed Resolution dated November 28, 2016, the Court of Appeals denied petitioners' motion for reconsideration for late filing, among others, thus:

At the onset, it is noted that the instant Motion for Reconsideration was filed after the fifteen (15) day reglementary period had lapsed. The records show that herein respondents received a copy of this Court's Decision on 31 August 2016; hence, pursuant to Section 1, Rule 52 of the Rules of Court, they had until 15 September 2016 to appeal or to file a motion for reconsideration. However, respondents were able to file the Motion for Reconsideration on 16 September 2016, after Our decision had attained finality.²⁰

The Present Petition

Petitioners now seek affirmative relief from the Court via Rule 45 of the Rules of Court. They basically argue:

Although petitioner Joseph M. Sanguila, Jr. received copy of the assailed Decision on August 31, 2016, their counsel of record Atty. Alyassar Saudi S. Saulog received a copy thereof only on September 7, 2016. Hence, when petitioners filed their motion for reconsideration with the Court of Appeals on September 16, 2016, the same was done within the prescribed fifteen (15)-day period.²¹

On the merits, petitioners fault the Court of Appeals for reversing the factual findings of the Ombudsman despite the substantial evidence on record supporting the same, i.e. the NEA Audit Reports of COTELCO from 2008-2010, check vouchers and deposit slips showing that COTELCO paid Mayo litigation fees of

¹⁸ *Id.* at 87-88.

¹⁹ *Id.* at 90.

²⁰ *Id.* at 93.

²¹ *Id.* at 8.

₱1,500,000.00. Mayo never liquidated the amount until petitioners filed a case against him before the Ombudsman.²² Further, the self-serving affidavits of Atty. Pangcog and Collados should not have been given credence since there was no categorical statement therein that COTELCO engaged the services of Atty. Pangcog for purposes of appealing from the decision in CA-G.R. SP Nos. 02547-MIN and 02759-MIN. On the contrary, what appears on record is COTELCO's action plan to engage the services of Saludo Agpalo Fernandez & Aquino Law Office to bring the case before the Supreme Court.²³

It is not true that COTELCO's funds were frozen. In fact, as early as 2008, COTELCO has already been receiving payment from its consumers in the PPALMA area.

In his Comment,²⁴ Mayo asserts that the assailed dispositions had already lapsed into finality since petitioners' motion for reconsideration was belatedly filed. At any rate, the petition is a mere rehash of petitioners' arguments in the proceedings below.²⁵

Ruling

The Court resolves to deny the petition in view of the finality of the assailed dispositions.

In their motion for reconsideration filed before the Court of Appeals, petitioners themselves admitted that on August 31, 2018, they received copy of the Decision dated August 18, 2018.²⁶ Under Rule 52, Section 1 of the Rules of Court, petitioners had fifteen (15) days or until September 15, 2016, a Thursday, within which to move for reconsideration.²⁷ As it was, though, petitioners filed their motion for reconsideration only on September 16, 2016 or one (1) day late. The assailed Decision, therefore, had already lapsed into finality and may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law.²⁸

In their bid to have the case revived, however, petitioners alleged that it was petitioner Joseph M. Sanguila, Jr. alone who received the assailed Decision on August 31, 2016 while their counsel

²² *Id.* at 24-28.

²³ *Id.* at 28-30.

²⁴ *Id.* at 457.

²⁵ *Id.* at 460.

²⁶ *Id.* at 467.

²⁷ **Section 1. Period for filing.** — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

²⁸ *One Shipping Corp. v. Penafiel*, 751 Phil. 204, 211 (2015).

of record Atty. Saulog received it much later on September 7, 2016. Petitioners, thus, submit that when they filed their motion for reconsideration before the Court of Appeals on September 16, 2016, they did so within the fifteen (15)-day reglementary period.

We cannot agree.

As stated in petitioners' motion for reconsideration, their counsel reckoned petitioners' receipt of the assailed decision on August 31, 2016, not on September 7, 2016. *Spouses Hernal, Jr. v. Spouses De Guzman, Jr.*²⁹ is in point:

Be that as it may, the fact was that respondent spouses' counsel himself had *actual notice* of the first RTC resolution. This was evidenced by his act of filing the motion for reconsideration on May 8, 2003. Worthy of note was the fact that, in his motion, he stated:

PLAINTIFFS, by the undersigned counsel and unto this Honorable Court [,] respectfully moves for the reconsideration of the Resolution dated April 11, 2003, granting defendants ['] Demurrer to Evidence and dismissing the instant case, copy of which was received on April 23, 2003, upon the ground that the dismissal is, with all due respect, unjustified and contrary to law and jurisprudence...

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The same was an admission on his part that he was very much aware of the existence of the first RTC resolution and had read its contents, for how else could he have prepared, signed and filed the pleading? It was thus irrelevant that he received the first RTC resolution only on May 15, 2003. For this reason, we rule that the CA erred when it stated that respondents seasonably filed their notice of appeal on May 27, 2003. (emphases added)

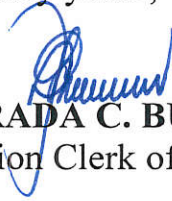
Petitioners' counsel may no longer alter his date of receipt to cover up his failure to file his clients' motion reconsideration on time.

WHEREFORE, premises considered, the petition is **DENIED**.

²⁹ 578 Phil. 562, 565 (2008).

SO ORDERED.” J. Reyes, Jr., J. on leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

114

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