

AGUILAR, Arnulfo A.

Re: Appeal; Neglect of Duty;
Conduct Grossly Prejudicial to
the Best Interest of the Service

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RESOLUTION NO. 01-1396

Arnulfo A. Aguilar, Election Officer IV, Commission on Elections (COMELEC), Navotas, Metro Manila, appeals the Decision dated May 31, 1999 of the COMELEC, finding him guilty of Abandonment, Neglect of Duty, and Conduct Grossly Prejudicial to the Best Interest of the Service and imposing upon him the penalty of suspension from the service for six (6) months.

The relevant portions of the appealed Decision read, as follows:

“Since there was a release of partial provisional results of election to the candidates concerned, the board cannot be charged for ignorance of law or the rules of canvassing under C. E. Res. No. 2962, Sec. 24 (L) (3).

“As far as the charge of abandonment, neglect of duty and conduct unbecoming of a public officer, prejudicial to the interest of public service, respondent Aguilar is found to have committed the offense by not reporting back to his post as chairman of the Municipal Board of Canvassers at the scheduled resumption of the canvass on May 15, 1998 at 1:30 P.M.

“RESOLVED that respondent EO Arnulfo A. Aguilar, San Pedro, Laguna, be meted the penalty of suspension from the service for six (6) months without salary.”

In support of his appeal, Aguilar argues, as follows:

“17.1. ABANDONMENT- This is not one of the ‘grave offenses; ‘less grave offenses’ or ‘light offenses’ as enumerated in Section 52, CSC Res. No. 99-1936. xxx. Said CS Rules implementing the Civil Service Law xxx shall have the force and effect of law. xxx. Neither is ‘abandonment’ enumerated in Sec. 46 (b), of said Civil Service Law.

“17.1.1. xxx. The mere fact that EO-MBC Chairman Aguilar failed to ‘report back on the scheduled

resumption of canvass' could never be considered as 'abandonment of office'. There was no 'INTENTION' whatsoever to 'relinquish' the office by Aguilar. This first charge has therefore NO FACTUAL AND LEGAL BASIS to constitute any form of offensive and must be set aside.

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"17.2.1. xxx. How could EO-MBC Chairman Aguilar be accused and found having made any 'RASH' or 'RECKLESS' or 'WANTON DISREGARD' of not returning to his post, as scheduled when he was 'ill', 'exhausted', 'hungry', 'sleepless', 'threatened', 'harassed', 'allowed to be relieved by his superior', 'denied Marine escort to return to his post'. His absence did not affect the continuity of the service of the MBC with two other members constituting a quorum and 'validly proclaimed the winners', beneficial to all concerned despite his 'absence'. There is not one proof of 'malice' or 'lack of foresight' on the part of EO-MBC Chairman Aguilar, who even left instructions to his Vice-Chairman to proceed with their canvassing as scheduled in the afternoon of May 15, 1998, after MBC adjourned early in the morning of that same day. xxx. In no instance had Aguilar shown any or (sic) signs, form of 'carelessness' in the discharge of his dual duties despite all the hardships, harassment and threats attendant thereto.

"18. Conduct unbecoming a public officer. - xxx. Like the charge of 'abandonment', this 3rd charge must be dismissed for 'cause not provided by law'. xxx But even assuming that said charge may be a ground for disciplinary action, the mere fact that EO-MBC Chairman Aguilar failed, for causes beyond his control, to 'report back' to his assigned duty, with all the intimidating attendant factors of harassments, threats, personal fatigue, illness and exhaustion, be ever considered that such 'failure' constitute acts allegedly 'unbecoming of a public officer'. xxx. The trouble lies on the fact that Comelec never considered, much less hinted 'clearly and distinctly' those 'facts and circumstances', and other applicable 'laws' in all its Minute Resolutions finding Aguilar allegedly 'guilty' of 'offenses' or 'causes' not even 'provided by law'. xxx. Worse, Aguilar was not even given a chance to submit any evidence in his defense in a 'formal investigation', except the pleadings and reports which are not 'evidence' as defined by Sec. 1, Rule 128, Rules of Court.

"19. Conduct prejudicial to the interest of the public service.- xxx. To repeat, the mere 'absence' of EO-MBC Chairman Aguilar in the continuation of the proceedings of the MBC of San Pedro, Laguna on May 15, 1998, at 1:30 P.M., never PREJUDICE ANYONE, much less 'public service' affected. The canvassing proceeding as scheduled, even without its Chairman Aguilar, and ultimately 'proclaimed' the 'winners' for national and local officials. It would, perhaps, be different if the canvassing was delayed or stopped because Chairmen Aguilar was not present. Or NO PROCLAMATION made because also of his absence. And, xxx, his 'absence' was not 'intentional', 'malicious' or 'wanton disregard' of the 'consequences' thereof. In short, NO BODY-BUT NO BODY

was hurt or prejudiced when EO-MBC Chairman Aguilar failed to 'report back to his post' in the MBC which proceeded to continue its assigned duties, even if he was not present."

The COMELEC commented on the appeal, as follows:

"Appellant complains that he was not given a chance to present any evidence in his defense in a formal investigation, yet by the admission of the appellant himself in his appeal, he WAIVED formal investigation. Moreover, this does not equate to denial of due process. xxx.

"In the case at bar, appellant was able to file and Answer Memorandum to the first complaint on May 28,1998. In the same manner, he was able to file his answer to the Formal Charge against him and discussed exhaustively his defenses. Moreover, appellant was also given a chance to explain his arguments further in his Memorandum request to lift suspension-without salary order on August 27,1999 for causes or circumstances beyond his control and did not prejudice anyone even in his absence therefrom. xxx, appellant filed another Memorandum to the Comelec and pleaded for reconsideration stating therein his grounds for reconsideration and again, he argued his defenses.

"Clearly, xxx, no deprivation of due process was committed. Considering that appellant was afforded an opportunity to be heard, through his pleadings, there is really no denial of procedural due process xxx.

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"M.R. No. 99-1067 was promulgated May 31, 1999 while M.R. No. 99-1805 was promulgated October 11, 1999 and M.R. No. 00-0125 was promulgated January 27, 2000. The appellant's remedy was to seek their annulment by way of a special civil action of certiorari under Rule 65 of the Rules of Court xxx.

"THE APPELLANT'S (sic) CANNOT NOW COMPLAIN THAT MINUTE RESOLUTION NO. 99-1067 DATED MAY 31, 1999, MINUTE RESOLUTION NO. 99-125 DATED JANUARY 27, 2000 VIOLATE SECTION 14, ART. VIII, OF THE 1987 CONSTITUTION WHICH MANDATES TO EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THE DECISION IS BASED BECAUSE THESE RESOLUTIONS ARE ALREADY FINAL AND EXECUTORY.

"M.R. No. 99-1067 was promulgated on May 31, 1999 while M.R. No. 00-0125 was promulgated January 27, 2000. The appellant's remedy was to seek their annulment by way of a special civil action of certiorari under Rule 65 of the Rules of Court...

“In the same manner Section 2 of Rule 64 of the Rules of the Court provides:

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“Section 3 of same Rule provides that such petition shall be filed within 30 days from notice of the Resolution sought to be reviewed. No such petition was ever filed. The present appeal is nothing but an attempt to circumvent a final resolution of the COMELEC which are now final and binding upon the parties.

“Moreover, even if said resolutions were erroneous for being contrary to the provisions of the Rules of Procedure of the Comelec, the same is not void since they have become final and executory, it is already binding and effective. xxx.”

In response to the aforequoted comment, Aguilar submitted a rejoinder. In said rejoinder, Aguilar admitted that he waived the formal investigation of the case. He, however, argued that the waiver was made without the assistance of a counsel, thus, a denial of his right to due process.

It is of record that during the 1998 National and Local Elections, Aguilar, an Election Officer (EO) IV of COMELEC-Navotas, was designated as Acting EO and Chairman of the Municipal Board of Canvassers (MBC) of San Pedro, Laguna. As EO and Chairman of the MBC, Aguilar was tasked, among other things, to canvass election returns; prepare the certificate of canvass of votes; prepare the certificate of canvass and proclamation of winning candidates for municipal offices; and proclaim said winning candidates.

On May 11, 1998 at 6:00 in the evening, the MBC convened in the Session Hall of the Sangguniang Bayan, San Pedro, Laguna, to receive and tabulate the election returns or certificate of canvass. On May 15, 1998 at about 1:30 in the morning, the MBC resolved to suspend the canvassing of election returns and to summon the members of the Board of Election Inspectors (BEI) of 56 precincts with defective or incomplete election returns. In the afternoon of even date, the MBC reconvened. However, Aguilar failed to report back to his post, thus, the MBC resumed the canvassing and eventually proclaimed the winners.

On June 2, 1998, Geromina F. Albellera filed an unverified letter-complaint against Aguilar. She questioned the validity of the proclamations of the winning candidates on the ground that the certificates of canvass and proclamation did not contain the signature of EO-MBC Chairman Aguilar. The COMELEC En Banc, as a consequence, referred the said case to its Law Department for appropriate action.

On February 4, 1999, Aguilar was formally charged with Ignorance of the Law, Grave Misconduct, Neglect of Duty,

Abandonment and Conduct Unbecoming of a Public Officer Prejudicial to the Interest of public service. He was likewise preventively suspended for sixty (60) days pending investigation of the case.

On March 12, 1999, Aguilar submitted his answer to the formal charge, pertinent portions of which read, as follows:

- “2. *For failure to report back to his post as Chairman of the Municipal Board of Canvassers of San Pedro, Laguna.*

“Respondent did not abandon his post because on May 15, 1998 at 1:30 A.M., he together with the two Board Members were harassed by the 7 counsels including rabid supporters of candidates and media people. xxx. He was allowed to leave the canvassing center at 3:00 A.M after being subjected to humiliation before watchers and media people. At 2:00 P.M. of May 15, the board was scheduled to reconvene. He did not abandon his post without permission from his superiors as was alleged because at 1:00 P.M. he called up Regional Director Milagros Somera asking for relief while there were only 56 questioned election returns to be canvassed after the BEIs were called to correct the defects, because he was sick and his request was granted. He went to the Regional Office the following day, May 16 and was told he will be relieved of his duties as Chairman of the Board of Canvassers by Atty. Myrna Guillermo, only to be told later that he will not be relieved anymore. He reported to DEDO Joson to request for 2 marines to escort him to San Pedro, Laguna to proclaim the winning candidates. His request was turned down because there were no available escorts for dispatch. xxx. While Atty. Madarang and I were talking, Atty. Somera called up informing her that they already proclaimed in San Pedro. xxx.

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“I hereby waive a formal investigation of the instant administrative case. However, in the event that the Honorable Hearing Officer decides to conduct further clarificatory investigation, I respectfully request that I be notified hereof.”

Despite Aguilar’s waiver to a formal investigation, an investigation was nevertheless conducted. Accordingly, the COMELEC En Banc, in C.E. Resolution No. 99-1067 dated May 31, 1999, found Aguilar guilty of Abandonment, Neglect of Duty and Conduct Unbecoming of a Public Officer and imposed upon him the penalty of suspension from the service for six (6) months.

Aguilar moved for reconsideration but the same was denied.

Nonetheless, Aguilar requested the COMELEC to lift his suspension but the same was also denied. Again, he moved for reconsideration but was denied with finality in COMELEC Resolution No. 00215 dated January 27, 2000. Thereafter, Aguilar requested the urgent reinvestigation of the case on the ground of lack of due process which, however, was denied by the COMELEC En Banc in C.E. Resolution No. 00-0399 dated February 17, 2000.

Hence, this appeal raising the following issues: 1.) whether there is substantial evidence to hold Aguilar liable for the offenses charged against him; and 2.) whether there was compliance with the requirements of due process.

There is no dispute that Aguilar left and failed to report back to his post as the concurrent EO and Chairman of the MBC after the board reconvened on May 15, 1998 at 3:30 in the afternoon. However, Aguilar alleged that his failure to return to his post was due to his illness, physical exhaustion, and threat from the militant group “*Alex Boncayao Brigade*” (ABB). Said allegations, however, are unsubstantiated.

Sections 13 and 15 of C.E. Resolution No. 2962 dated January 5, 1998, provide:

“Sec. 13. Prohibition against leaving official station.- During the period beginning election day until the proclamation of the winning candidates, no member xxx of the different boards of canvassers xxx shall xxx leave said station without prior authority of the Commission.

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“Sec. 15. Incapacity of regular board member.- In case of sickness or serious injury of a regular board member, a medical certificate shall be required attesting to the incapacity of said member. Upon submission of the medical certificate, a substitute shall be appointed. xxx”

From the foregoing, it is explicit that no member of the board shall leave his/her station without authority from the COMELEC. Also, in case of sickness, a medical certificate should first be presented to the COMELEC before a substitute shall be appointed.

Evidently, Aguilar failed to support his allegations. He failed to submit a medical certificate showing that he was sick at that

time. Neither did he contact the other members of the board when it resumed the canvassing in the afternoon of May 15 until the completion of the canvass on May 16, 1998. Moreover, his subsequent appearance at the Office of the Regional Director of Region IV on May 16, 1998 negates his claim of illness.

As regards the allegation of threat, records reveal that based on the tenor of the supposed threat of the ABB, the letter simply warned Aguilar not to commit any irregularity that would impair the result of the election. This being the case, Aguilar should have at least returned to his post and performed his official duties until his substitute arrived. His conduct signifies unequivocal intention to omit or refuse to perform a legal obligation, inherent to his position without sufficient excuse constituting Neglect of Duty.

Anent the issue of due process, Aguilar's claim of denial of due process must also fail. The right to the assistance of counsel is not an indispensable requirement of due process. Except during custodial investigation of a person suspected of a crime, who may not waive his right to counsel except in writing and in the presence of counsel, and during the trial of the accused, who has the right "*to be heard by himself and counsel, whether retained by him or provided for him by the government at its expense*" (**Nera vs. The Auditor General, 164 SCRA 1**).

Lastly, the COMELEC's allegation that the Commission has no jurisdiction over the instant case cannot be considered. The said body claims that only the Supreme Court may review judgements or final orders or resolution rendered by it in accordance with the Revised Rules of Court. It further asserts that since appellant failed to file the required petition with the Supreme Court within the reglementary period of thirty (30) days from the time it received the decision of the COMELEC, then the case attained finality.

Pertinent to the discussion are **Sections 2 and 3 of Rule 64** of the said rules, which provide:

'SEC. 2. Mode of Review. - A judgement or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

"SEC. 3. Time to file petition. - The petition shall be filed within thirty (30) days from notice of the judgement or final order or resolution sought to be reviewed..."

Although the Commission on Audit, the Commission on Elections and the Civil Service Commission are pre-eminent in their respective spheres since neither one may claim dominance over the others (**Borromeo vs. Civil Service Commission, 1999 SCRA 911 dated July 31, 1991**), this Commission still has jurisdiction over the instant case since it involves personnel matter (**Sections 12 [14] Chapter 3, Subtitle A, Title I, Book V of the Revised Administrative Code of 1987 [Executive Order No. 292]**). Disciplinary cases and cases involving "personnel actions" affecting employees in the civil service, including "appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation," and, of

course, employment status and qualification standards, are within the exclusive jurisdiction of the Civil Service Commission (**Mantala vs. Salvador, 206 SCRA 264 dated February 13, 1992**).

A rule so long respected, because it is buttressed upon reason and authority, is that technical rules of court practice, procedure and evidence are not to be applied with rigidity in administrative proceedings. We should have in mind the nature of administrative bodies, the character of the duties they are required to perform, the purposes of which they are organized and the persons who compose them (**Asprec vs. Itchon, 16 SCRA 921 dated April 30, 1996**).

At this point, it is worth emphasizing that elections are the bulwark of democracy. So, when the electoral process is compromised especially by the officials in charge with the conduct of the elections, how could we expect others to follow. The lame excuse of Aguilar that he was exhausted, hungry, harassed, threatened and sleepless in justifying his leaving his post cannot be considered. It seems the appellant is not aware of the importance of the task assigned to him and the gravity of the offense he committed. As EO and Chairman of the MBC of San Pedro, Laguna, he had the obligation, among others, of keeping order within the canvassing room or hall and its premises and enforcing obedience among the personnel therein (**Section 228, Article XIX of the Omnibus Election Code of the Philippines [Batas Pambansa Blg. 881 as amended]**). Moreover, if we were to allow the line of reasoning of Aguilar, then any member of the board of canvassers may just leave his post for whatever flimsy reason to the prejudice of the public service.

Neglect, as applied to public officer, means a failure on his part to do and perform some of the duties of his office and when such neglect, from the gravity of the case or frequency of the instance, becomes so serious in its character as to endanger or threaten the public welfare (**Words and Phrases, Volume 27, Copyright 1995**).

On the other hand, the phrase Conduct Grossly Prejudicial to the Best Interest of the Service implies that the act committed by a government official or employee has unduly prejudiced the service. This means that it has one way or the other affected the efficient distribution of service to the public. Moreover, depending on the particular duties and responsibilities attached to the position of the official or employee concerned, this can mean service to the public in general or the employees of the agency to which the latter belongs (**RIMAS, Anthony C., CSC Resolution No. 01-0973 dated June 05, 2001**).

In the present case, the act of Aguilar of leaving his post as EO and Chairman of the MBC was so serious in its character that it endangered the public welfare, classifying his offense into Gross Neglect of Duty. Moreover, it also prejudiced the public service since it affected the efficient canvassing of the votes and put some question as to the legality of the proclamation of the winner that he is also guilty of Conduct Grossly Prejudicial to the Best Interest of the Service.

With respect to the penalty applicable, **Section 52 (A) (2) and (20) and Section 55 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 99-1936 dated August 31, 1999)** provide:

“Section 52. Classification of Offenses.- Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

“A. The following are grave offenses with their corresponding penalties:

x x x

“2. Gross Neglect of Duty

“1st offense - Dismissal

x x x

“20. Conduct prejudicial to the best interest of the service

“1st offense - Suspension (6 mos. 1 day to 1 year)

“2nd offense – Dismissal

x x x

“Section 55. Penalty for the Most Serious Offense. If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.”

From the foregoing, the applicable penalty for the offense committed by Aguilar is dismissal from the service.

WHEREFORE, the appeal of Arnulfo A. Aguilar is hereby **DISMISSED**. However, Resolution No. 99-1067 dated May 31, 1999 of the Commission on Elections is modified to the effect that Aguilar is found guilty of Gross Neglect of Duty and Conduct Grossly Prejudicial to the Best Interest of the Service and is meted the penalty of dismissal from the service.

Quezon City, **August 17, 2001**

(SIGNED)

JOSE F. ERESTAIN, JR.

Commissioner

(SIGNED)

KARINA CONSTANTINO-DAVID

Chairman

(SIGNED)

J. WALDEMAR V. VALMORES

Commissioner

Attested by:

(SIGNED)

ARIEL G. RONQUILLO

Director III

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