

Republic of the Philippines

SUPREME COURT

Manila

EN BANC

G.R. No. L-15824 May 30, 1961

RICARDO M. GUTIERREZ, petitioner,

vs.

HON. ARSENIO SANTOS, ETC. ET AL., respondents.

Mariano G. Bustos and Agripino S. Bustos for petitioner.

Quiambao, Galang & Beltran for respondent Benigno Musni.

Antonio R. Abagon for respondent Rogelio de la Rosa.

Office of the Solicitor General for respondent Secretary of Public Works and Communication.

DIZON, J.:

On August 15, 1958 Benigno Musni and others filed a complaint with the Secretary of Public Works and Communications against Ricardo M. Gutierrez alleging therein, *enter alia*, that the latter had illegally constructed dams, dikes and other obstructions across navigable waters, waterways, rivers and communal fishing grounds located in Barrio San Esteban, Macabebe, Pampanga. They prayed that, pursuant to the provisions of Republic Act No. 2056, the said obstructions be ordered removed or destroyed. The original complaint was subsequently amended by adding six more to the streams or waterways mentioned therein.

On December 13, 1958 Gutierrez filed a motion to dismiss the complaint upon the ground that the proceedings to be held before Julian C. Cargullo, the investigator appointed by the Secretary of Public Works and Communications, would be void because Republic Act 2056 was unconstitutional as it conferred judicial powers to the Secretary of Public Works and Communications. This motion was denied and the investigator set the case for hearing on December 19 and 20, 1958.

On December 15, 1958 Gutierrez filed with the Court of First Instance of Pampanga a petition for prohibition — which was subsequently amended twice — against the Secretary of Public Works and Communications, Florencio Moreno, the Department investigator, Julian C. Cargullo, Senator Rogelio de la Rosa, Benigno Musni and his complainants, to prevent the carrying out of the investigation referred to above. Main contentions of petitioner were: firstly, that Act 2506 was unconstitutional because it granted judicial power to the Secretary of Public Works and Communications, and secondly, that the nature and character of the streams and waterways subject of the complaint lodged with the Department of Public Works and Communications was already *res judicata*, having been the subject of an agreement between the Zobel Family — former owners of petitioner's fishponds — and the Municipality of Macabebe. Said case was docketed as Civil Case No. 1520 and was assigned by lottery to Branch I of said court, presided by the Hon. Arsenio Santos.

The Secretary of Public Works and Communications and the Department Investigator filed their answer to the petition for prohibition alleging therein several affirmative defenses. Respondent Rogelio de la Rosa adopted said answer *in toto* as his own, while the other respondents filed a separate pleading invoking virtually the same defenses pleaded by their co-parties.

On February 25, 1959 respondent de la Rosa filed a motion to disqualify the Hon. Arsenio Santos from trying and deciding the case, upon the ground that sometime in 1948 he had acted as counsel for fishpond owners, like the petitioner Gutierrez, in an administrative investigation involving the same or at least similar issues and properties, and had expressed views in the course of said investigation prejudicial or adverse to the contention of the respondents in the pending case. Petitioner Gutierrez objected to the motion aforesaid upon the ground that there was no legal ground upon which Judge Santos could be disqualified under the provisions of Rule 125 of the Rules of Court.

After the hearing on the matter, the respondent Judge issued an order dated April 16, 1959 disqualifying himself and endorsing the case to the Second Branch of the court, for reasons stated as follows:

Meanwhile, the new respondent, in his motion dated February 24, 1959, is seeking the disqualification of the presiding judge from sitting in the instant case on the ground that, before his appointment to the bench, he has been counsel for some fishpond owners, "like petitioner herein", as evidenced by photostatic copies of two (2) communications, annex A and annex B (par 2 of the motion); and that under section 1, Rule 125 of the Rules of Court, "no judge shall sit in a case in which he has been a counsel" (par. 4, some motion).

The motion is being objected to by the petitioner for reasons stated in his written opposition dated March 14, 1959. A perusal of the legal provisions, invoked by said respondent, does not show that the presiding judge is included in any of their prohibitions, because he is not pecuniarily interested in the case; he is not related to either party within the sixth degree of consanguinity or affinity; he has not been an executor, administrator, guardian, trustee, or *counsel*; neither has he presided in any inferior court, whose ruling or decision being the subject of review (sec. 1, Rule 126, *supra*).

It is true that while in the practice of law as a member of a law firm, the presiding judge, in behalf of Roman Santos, Manuel Borja and heirs of Proceso de Guzman, wrote the then Secretary of the Interior a letter dated June 1, 1948, annex A of the motion, requesting that the proposed lease, in public bidding, of certain streams listed in resolution No. 26, series of 1948 of the municipal council of Macabebe, Pampanga be held in abeyance until after the Committee on Rivers and Streams, created under Administrative Order No. 32 issued by the President of the Philippines, would have determined their nature whether private or public.

But, nowhere in the letters, annex A and annex B, could be found any showing that the presiding judge has ever appeared as counsel for Ricardo Gutierrez, the herein petitioner; contrary to the contention of the respondent, Senator Rogelio de la Rosa. Had he been his counsel, the presiding judge should have disqualified himself from sitting in the present case even without motion, as he did in a case pending in the second branch of this court, wherein Manuel Borja is the petitioner.

On the other hand, in the petition, annex 1 of the reamended petition, filed by Benigno Musni and others on August 15, 1958, they stated that the respondents named therein, one if them being Ricardo Gutierrez, "constructed dams, dikes and other works in public navigable waters, waterways, rivers and communal fishing grounds in the Municipality of Macabebe, Pampanga"; and that such navigable waters, waterways, rivers and communal fishing grounds are those specified in the list, annex A of the and petition, annex 1 of the re-amended petition.

A reading of this list shows that some of the streams mentioned in resolution No. 26, series of 1948 of the municipal council of Macabebe, Pampanga, included in the fishponds of Roman Santos, Manuel Borja and heirs of Proceso de Guzman, were the ones, which the presiding judge, then law practitioner, contended in his letter, annex A of the motion, to be private and not public; and that the said streams, as shown by the plan, Exhibit A - De la Rosa, were more or less similar to those included in the fishpond or fishponds of the petitioner, Ricardo Gutierrez, which were being investigated by Mr. Julian C. Cargullo, upon order of the respondent Secretary of Public Works and Communications.

Such being the case, the presiding judge is inclined to grant the motion, by disqualifying himself to sit in this case, not because he has been a counsel for the above-named petitioner, which is entirely false, neither because of "extremada delicadeza", but because his opinion given in the aforesaid letter might, some way or another, influence on his decision in the case at bar. While this would be a too remote possibility, yet it is the duty of the court to administer justice without any suspicion of bias and prejudice, otherwise a party-litigant might lose confidence in the judiciary that must be avoided as much as possible for the purpose of preserving its dignity.

Petitioner Gutierrez filed a motion for the reconsideration of the order mentioned above, but the respondent Judge denied said motion in his order of August 11, 1959 where the following is stated:

While it is true that presiding judge was not counsel for the petitioner, yet in his letter dated June 1, 1949, attached to the record, as then a private law practitioner and as counsel for Manuel Borja, Roman Santos and the heirs of Proceso de Guzman, he informed the then Secretary of Interior that the streams and rivers, intended to be leased at public caution by the municipal council of Macabebe, Pampanga, in its Resolution No. 26. were private and not public.

In his same letter, the presiding judge even stated that copies of Resolution No. 26 were furnished the persons mentioned therein, one of them being Ricardo Gutierrez, the herein petitioner, because the streams and rivers subject of the instant petition were among those to be leased. In other words, the interests of Manuel Borja, Roman Santos and the heirs of Proceso de Guzman were identical to the interests of the herein petitioner Ricardo Gutierrez, so much so that whatever may be the resolution of the Secretary of the Interior then would benefit the interests of the said petitioner.

Under these circumstances, the presiding judge believes that he has no other recourse but to disqualify himself from sitting in this case.

On August 22, 1959 Gutierrez commenced the present action for *mandamus* against the Hon. Arsenio Santos, the Secretary of Public Works and Communications, the Department Investigator and the parties

who filed the complaint against him, for the purpose of compelling the aforesaid Judge "to proceed, continue with the hearing and take cognizance of Civil Case No. 1520 of the Court of First Instance of Pampanga."

Petitioner invoking the provisions of section 1, Rule 126 of the Rules of Court, argues that the case of the respondent judge does not fall under any one of the grounds for the disqualification of judicial officers stated therein. Assuming *arguendo* that a literal interpretation of the legal provision relied upon justifies petitioner's contention to a certain degree, it should not be forgotten that, in construing and applying said legal provision, we cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer, which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge (30 Am. Jur. p. 767). Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law — stated in general terms — that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent (30 Am. Jur. *Supra*) because —

. . . However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed *ex parte* may still linger to affect unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or cannot under the rules of evidence. No effort of the will can shut out memory; there is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process. . . . (Ann. Cas. 1917A, p. 1235) .

In the present case the respondent judge himself has candidly stated that the opinion expressed by him in a letter dated June 1, 1948 addressed by him as counsel for Manuel Borja and others to the then Secretary of the Interior, attached to the motion for disqualification as Annex A, "might, some way or another, influence (on) his decision in the case at bar" (order of April 13, 1959). The fear he has thus expressed — of not being able to render a truly impartial judgment — does not appear to be capricious and whimsical, having in mind particularly that in his order of August 11, 1959 denying petitioners' motion for reconsideration, His Honor reiterated that in the aforesaid letter he informed the Secretary of the Interior that the streams and rivers to be auctioned, for lease purposes, by the municipal council of Macabebe, Pampanga, were private and not public streams and rivers; that the streams and rivers subject of the petition for prohibition filed by herein petitioner were among those that he considered as private in nature; that, therefore, the interests of Borja and his other clients "were identical to the interest of the herein petitioner etc." In view of these circumstances, we are constrained to agree with His Honor that the opinion thus expressed by him years ago "might, some way or another, influence his decision" in the case before him.

WHEREFORE, the petition for *mandamus* under consideration is hereby denied, without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, De Leon and Natividad, JJ., concur.

Barrera, J., took no part.