

BUGNOSEN, Augusto W.

Re: Dishonesty; Falsification;
Nepotism; "Bilas"

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RESOLUTION NO. 002396

Richard F. Kiaki appeals the decision of Civil Service Commission - Cordillera Administrative Region (CSC-CAR) in Case No. 00-170 which dismissed his complaint against Augusto W. Bugnosen for Dishonesty and Falsification of Official Documents.

Kiaki, in his appeal, alleges as follows:

The CSC-CAR Regional Director anchored solely her finding that respondent is not related in anyway to Gov. Mayaen based on the definition of affinity by Black's Law Dictionary Fifth Edition-which accordingly defines said term as referring to relation which one spouse because marriage has to blood relatives. On the basis of said definition she concluded that Gov. Mayaen is related by affinity to Mrs. Elnora Gawe - by virtue of his marriage to Mrs. Sonia Mayaen but not to respondent Augusto considering that he is not a blood relative but a bilas to Gov. Mayaen.

"We humbly maintained that Gov. Mayaen is related to respondent by affinity within the second civil degree based on the provisions of Article 966 of the New Civil Code of the Philippines. Their respective wife being sisters Gov. Mayaen and respondent are considered as brothers by affinity. Black's Law Dictionary-Sixth Edition p. 59 defines affinity thus-xxx

"Gleaned from the foregoing definition of affinity we can conclude the following:

'1. That the doctrine of affinity grew out of the canonical maxim that marriages makes husband and wife as one-hence in this case Gov. Mayaen and his wife being one and that Respondent and his wife being one - whatever is the degree of relationship of their respective spouses have is likewise the degree of relation that exist between Gov. Mayaen and the respondent only in the latter it is by affinity;

'2. That degrees of relationship by affinity are computed as are degrees of relationship by

consanguinity-based on this, per provision of the aforecited Article 966 of the Civil Code, Gov. Mayaen and respondent are related by affinity within the second civil degree;

'3. That affinity is distinguished into three kinds:

- a. Direct-that which is subsisting between the husband and wife's relation by blood and vice versa.*
- b. Secondary-that which subsisting between the husband and wife's relation by marriage (underscoring ours)*
- c. Collateral-that which subsists between the husband and the relations of his wife's relations.*

"The CSC-CAR REGIONAL DIRECTOR considered only the DIRECT KIND that is relation by affinity by reason of blood. She failed to consider the Secondary Kind which refer to relation by affinity by reason of marriage as in this case when Gov. Mayaen is the husband of the sister of the wife of respondent hence respondent and Gov. Mayaen are considered as brothers by affinity by reason of their marriages to persons who are sisters.

"We most strongly maintain that the appointment of respondent is invalid, illegal, null and void ab-initio considering that it is in direct contravention of the provisions of Section 70 of R.A. 7160 otherwise known as the Local Government Code and Section 9, Rule XIII, CSC MC No. 40, s. 1999.

"The CSC-CAR Regional Director failed to consider the specific provisions of Republic Act No. 6713 otherwise known as A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES. Section 3, paragraph 'K' which states and we quote:

'Relatives refers to any and all persons related to a public official or employee within the fourth degree of consanguinity or affinity, including BILAS, INSO and BALAE.' (Underscoring ours)

"There is no need for us to go on discussing the issue as to whether bilas in considered within the fourth civil degree as the above-quoted provision of R.A. 6713 is very explicit and specific which provision should have been known by the CSC Regional Director considering that it directly affects the Civil Service in our dear country, unless she chose in this case to be ignorant about the said law. With the specific provision of R.A. 6713 which law was earlier enacted vis-²⁹₁₁-vis R.A. 7160 and which was never amended by another law stating otherwise, the relationship we call in our language as BILAS is within the fourth civil degree and therefore the appointment in question should be declared as invalid, illegal, void it being obviously contrary to

law.

"We humbly submit, that the philosophy behind the law against nepotism is to that the appointing authority will not give due advantage to their relations and for all qualified applicants in the Civil Service to be given an equal chance and opportunity and for the eradication of graft and corruption. It is our humble position that if the respondent is not the bilas of Gov. Mayaen he would not have been appointed as Assistant General Services Officer of Mountain Province considering that there are applicants who are more senior and qualified than him.

"It is out humble position that if the questioned Resolution of CSC-CAR will not reversed by this commission then may God help those applicants in the Civil service. We Filipinos are known for our undue concern and bias in favor of our relations.

ON THE SECOND ASSIGNMENT OF ERROR

"Considering the foregoing factual and legal basis of our contention that the relationship between respondent and Gov. Mayaen being in laws and which we call in our language bilas as within the second degree of affinity. We humbly contend that respondent committed dishonesty and falsification of Public Document when he answered NO instead of YES in both questions in item No. 23-in CSC Form 212-Annex 'C'.

"Furthermore, the aforecited R.A. 6713, Sec. 8, paragraph B states, and we quote:

'It shall be the duty of every public official or employee to identify and disclose to the best of his knowledge and information, his relatives in the government in the form, manner and frequency prescribed by the Civil Service Commission.'

"Based on the aforecited provisions of R.A. 6713 respondent can be held liable under said law for his failure to identify and disclose that he is relative of Gov. Mayaen.

"Considering that respondent had always maintained that he is not related in anyway to Gov. Mayaen, we ask this Honorable Commission to further investigate the respondent and to go over his Statement of Assets and Liabilities which he submitted yearly to the Office of the Ombudsman or to this Commission. We are sure that he did not disclose or identify Gov. Mayaen as his relative in gross violation of R.A. 6713, section 8, paragraph B. thereof.

ON THE THIRD ASSIGNMENT OF ERROR

"At best, we humbly submit, that the questioned RESOLUTION is haphazardly prepared and not the result of an in depth and judicious study and consideration. It treated the issues raised in this instant case as

trivial. It failed to consider that the issues raised in the complaint have tremendous effects on appointments and in the Civil Service in general. The CSC-Regional Director in her findings of facts even interchanged the personalities involved in this case. She considered the complainant as the respondent (Please refer to page 1 last paragraph of Annex 'A') which make the questioned RESOLUTION very confusing.

'In the dispositive portion of the aforesaid questioned RESOLUTION, it states and we quote:

'WHEREFORE, the complaint filed by Richard Kiaki against Augusto W. for dishonesty and falsification of Public Document is hereby dismissed for lack of merit. Consequently, the appointment of Richard Kiaki as Assistant Services Officer is hereby affirmed.' (Underscoring ours)

"A cursory reading of the above quoted dispositive portion of the questioned RESOLUTION will disclose that the appointment of Richard Kiaki the complainant which appointment is non-existence is the one being affirmed and not that of respondent. It cannot be said that the same was an honest mistake considering that on the face of the questioned RESOLUTION, the same was reviewed and initialed by two personnel of the CSC-CAR."

By way of comment, CSC-CAR averred that:

"Complainant-appellant contends that the CSC-CAR erred when it anchored its decision on the definition of affinity in its direct kind when it ruled that respondent is not related in anyway to Governor Leonard Mayaen (appointing officer). He further alleges that this Office failed to consider the provisions of Sections 3(k) of Ra 6713 which states the following:

'(k) Relatives refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including bilas, insos and balae.'

"The facts of the instant case is very similar to the case of Pacifico B. Abaya, which was decided by the Commission in CSC Resolution No. 992063, dated September 16, 1999. In said case Mayor Purugganan who is the appointing Officer is the 'bilas of Pacifico P. Abaya who was appointed by the former as Municipal Agriculturist of Bangued, Abra. The CSC-CAR disapproved said appointment on the ground that it is violative of Section 4 ²¹/₁ of RA 6713.

"The Commission in this case did not refute the contention of Abaya that the relationship of bilas is beyond the degree of consanguinity and affinity prohibited under civil service law. It considered the appeal as impressed with merit. The pertinent contention of Abaya in his appeal is hereby quoted, to wit:

'The parents of Mayor Purugganan are Dr. Jose Purugganan and Consolacion Valera.

The parents of PACIFICO ABAYA are DR. PATROCINO ABAYA and ESTEHR BERSAMIN. Absolutely there is no blood relationship between Purugganan and Abaya.

'The wife of Mayor Purugganan is Victoria Bobila; the wife of Pacifico Abaya is Dr. Maribel Bobila. Victoria and Maribel are sisters. Thus by affinity Ramon Purugganan is the brother-in-law of Maribel Abaya; Maribel is related (being sister-in-law) by affinity (sic) Purugganan. In GAYON and GUILLERMO (sic), supra, as sister-in-law or a brother-in-law is not considered a relative "FAMILY MEMBER moreso is BILAS, which is further or beyond the degree of consanguinity and affinity.'

"On the ground of disapproval that the appointment was violative of Section 4⁽²⁾ of RA 6713 (appointment of bilas), the Commission reversed said action. It ruled as follows:

'xxx, RA 6713 does not speak of a nepotic situation nor a nepotic appointment. What RA 6713 deals with are norms of conduct that a government official or employee observe. Among other things, it proscribe the dispensing or extending of undue favors to relatives by consanguinity or affinity on account of one's office except appointments specifically mentioned in the aforequoted law.

xxx.

'Hence, there is no basis in disapproving Abaya's appointment considering that Sec 4c of RA 6713, does not provide that appointments issued not in accordance with the norms of conduct should be disapproved.

'Likewise, granting that the herein appointment falls squarely within the contemplation of RA 6713, it must be emphasized that there was no showing that there was undue favor extended to the appointee Abaya. Be it noted that the concept of undue favor should be taken in relation to the qualifications of the proposed appointee, such that if the only reason why he was appointed is her relationship with the appointing authority, as contemplated in RA 6713, and not his qualifications, then there is clearly undue favor extended to the appointee. Such is not true in the case at bar.'

"On the basis and in conformity with the above ruling of the Commission, the CSC-CAR maintains that the dismissal of the complaint and the consequent affirmation of's appointment is in order.

ON THE SECOND ASSIGNED ERROR

"The foregoing discussion equally answers the second assigned error. The Commission, in its

*decisions relative to nepotism, has only regarded the relationship of affinity under the direct kind. In consonance thereto, the CSC-CAR maintains and affirms the contention of respondent-appellee that the relationship between respondent-appellee and Gov. Mayaen (appointing authority) is not covered by the rule on nepotism under Section 70 of RA 7160. Hence, respondent--appellee did not commit dishonesty and falsification of public document when he answered **NO** to both questions in Item No. 23 of his Personal Data Sheet.*

ON THE THIRD ASSIGNED ERROR

"After the CSC-CAR released DECISION NO. CAR 00-170 to the parties concerned, it was discovered that the name of the complainant Richard Kiaki was inadvertently interchanged with the name of respondent Augusto W. in the last paragraph of the first page and the last sentence of the dispositive portion of said decision. Hence, an Order dated May 18, 2000 was immediately issued amending said decision and reflecting the correct name of the party referred to. Considering that DECISION NO. CAR 00-170, dated April 11, 2000 was immediately amended in an Order dated May 18, 2000 of the CSC-CAR, the error has been corrected. Thus, said decision as amended remains valid and effective for having been issued pursuant to the powers and jurisdiction of the CSC-CAR."

Records show that Bugnosen was appointed as Provincial Government Assistant Department Head (Assistant General Services Officer) at the Provincial Government of Mountain Province by Governor Leonard Mayaen on December 1, 1998. Apparently, Sonia Gawe-Mayaen, the wife of Governor Mayaen is the sister of Elnora Gawe, the wife of Bugnosen. Hence, Bugnosen is the bilas of Governor Mayaen.

The issue to be resolved in the instant case is whether or not Bugnosen is related to Governor Mayaen within the prohibitive degree as to constitute nepotism and consequently hold Bugnosen administratively liable for Dishonesty and Falsification of Official Documents for failure to declare that he is a relative of the appointing authority.

Relevant to the judicious disposition of this case is the pronouncement of the Commission in the case of **Pacifico Abaya (CSC Resolution No. 99-2063 dated September 16, 1999)** where it ruled that:

"For the proper determination of the herein case, it becomes imperative at this juncture, to re-examine the rules relative to nepotism, both under the Civil Service Law and Rules and RA 6713.

"The rule on nepotism is found in Section 59, Chapter 7, Subtitle A, Title I of the Administrative Code of 1987, which provides:

"SEC.59. - (a) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned or controlled corporations, made in favor of a relative of the appointing or recommending authority,

or of the chief of the of the bureau or office, or of the person exercising immediate supervision over the him, are hereby prohibited.

"As used in this Section, the word 'relative' and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

"(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission. xxx

"Thus, the abovequoted provision speaks of nepotism in express and unequivocal terms. It undoubtedly prohibits the issuance of an appointment to a relative either of consanguinity or affinity within the third degree. In the case of local government units, the prohibition extends up to the fourth degree.

"Meanwhile, RA 6713 does not speak of a nepotic situation nor of a nepotic appointment. What RA 6713 deals with are norms of conduct that a government official or employee should observe. Among other things, it proscribes the dispensing or extending of undue favors to relatives by consanguinity or affinity on account of one's office except appointments specifically mentioned in the aforequoted law."

It is therefore, clear that R.A. 6713 speaks not of appointments that should be disapproved for violating the prohibition on nepotism. Rather, said law speaks of the norms of conduct to be observed by government officials and employees. Hence, it is the validity of appointments which is being questioned in the case at bar, there can be no violation of R.A. 6713.

Moreover, in the herein case, the more important issue is whether relationship between "bilas" is nepotic. And if so, whether failure to declare the same in the Personal Data Sheet is tantamount to dishonesty and falsification of official documents.

The Commission answers both issues in the negative.

The **1991 Local Government Code**, particularly Section 79, provides:

"Sec.79. Limitation on Appointments. - No person shall be appointed in the career service of the local government if he is related within the fourth civil degree of consanguinity or affinity to the appointing or recommending authority."

To determine who are relatives within the prohibitive degree, **Article 963 of the Civil Code of the Philippines** is relevant. It provides:

"Proximity of relationship is determined by the number of generations and each generation forms a degree."

In application then, the husband is one degree removed from his parents and two degrees, from his sister or brother. The same is the case of his wife. Since the husband shares no degree of relationship with his wife because they are treated as one, the sister or brother of the wife is also two degrees removed from the husband.

In the herein case, the relationship in controversy is that between "bilas" - the spouses of 2 Gawe sisters whose husbands are appointee and the appointing authority.

Since definitely, Bugnosen and Governor Mayaen are not blood relatives ("consanguinity"), can they be properly considered as relatives by "affinity"? For that reason, what is particularly important is the definition of "affinity". According to the **Philippine Legal Encyclopedia, 1986 edition, by Jose Agaton R. Sibal (p.300)** affinity has been defined as the *"relationship of a husband to the blood relatives of his wife, or of a wife to the blood relatives of her husband"*. It is thus clear that a spouse is related by affinity only to the blood relatives of his/her spouse.

In the instant case, the relative by affinity of Governor Mayaen is only limited to the blood relatives of his wife, thus including her sister but not her brother-in-law who in this case is Bugnosen.

Accordingly, since Bugnosen and Governor Mayaen are not relatives, the former is not liable for Dishonesty and Falsification of Official Documents for not declaring that the latter is his relative.

WHEREFORE, the appeal of Richard F. Kiaki is DISMISSED. Accordingly, the decision of CSC-Cordillera Administrative Region dismissing Kiaki's complaint against Augusto Bugnosen is affirmed.

Quezon City, OCT 18 2000

(SGD.)
J. WALDEMAR V. VALMORES
Commissioner

(SGD.)
CORAZON ALMA G. DE LEON
Chairman

O.B.
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(SGD.)
ARIEL G. RONQUILLO
Director III

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