

NELIA F. CARVAJAL, PETITIONER, V. THE OFFICE OF THE OMBUDSMAN, REPRESENTED BY HON. VICTOR C. FERNANDEZ, HON. ARLENE A. NAZARENO, RAMIL I. BEATO AND VIVENCIO G. ANDAYA, RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a "Petition for Certiorari, Prohibition and Mandamus with Prayer for TRO/WPI"[1] filed under Rule 65 of the Rules of Court. The Petition[2] assails the "Consolidated Order"[3] dated January 31, 2007 of the Office of the Deputy Ombudsman for Luzon ("public respondent Ombudsman" for brevity).

The pertinent facts are:

On November 6, 2006, private respondents Ramil I. Beato and Vivencio G. Andaya ("private respondents" for brevity) filed three Complaint-Affidavits against petitioner Nelia F. Carvajal ("petitioner" for brevity) before the Office of the Deputy Ombudsman for Luzon. The first Complaint-Affidavit charged petitioner with Malversation under Article 217 of the Revised Penal Code and violation of Section 3 (e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[4] The second Complaint-Affidavit charged petitioner with violation of Section 3(e) of R.A. No. 3019.[5] The third Complaint-Affidavit charged petitioner with Malversation under Article 217 in conjunction with Article 218 of the Revised Penal Code and violation of Section 3(e) and (g) of R.A. No. 3019.[6]

Public respondent Ombudsman found that the allegations in the three Complaint-Affidavits gave rise to the filing of administrative charges. Hence, public respondent Ombudsman docketed the first Complaint-Affidavit as OMB-L-A-06-0894-K for "Gross Neglect of Duty"; the second Complaint-Affidavit as OMBL- A-06-0897-K for "Grave Misconduct", and; the third Complaint-Affidavit as OMB-L-A-06-0900-K for "Grave Misconduct/Gross Neglect of Duty".[7]

On January 31, 2007, the Ombudsman Director recommended the preventive suspension of petitioner in the "Consolidated Order"[8] that is assailed here, which recommendation in turn, was approved by then Ombudsman Merceditas N. Gutierrez on October 13, 2008.[9] The dispositive portion of the "Consolidated Order" read as follows:

"WHEREFORE, in accordance with Section 24, R.A. No. 6770 an[d] Section 9, Rule III of Administrative Order No. 07, respondent Nelia F. Carvajal, City Accountant, Sta. Rosa City, Laguna is hereby PREVENTIVELY SUSPENDED during the pendency of this case until its termination, but not to exceed the total period of six (6) months, without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondent, the period of such delay shall not be counted in computing the period of the preventive suspension.

In accordance with Section 27, par. (1), R.A. No. 6770, this ORDER is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondent seeking relief from this

Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.

The Honorable City Mayor, Sta. Rosa City, Laguna, is hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

SO ORDERED."[10] (Emphasis was made in the original)

Petitioner then filed the Petition[11] at bench praying for the following:

"WHEREFORE, petitioner prays that:

a) xxx;

b) In due time, judgment be issued declaring void the Consolidated Order at bar, ordering the Ombudsman to dismiss said administrative cases, or to declare them to have prescribed, or their continuation void for being violative of petitioner's right to due process and speedy justice; prohibiting the Ombudsman from proceeding with any administrative investigation in said cases, and making the injunction permanent."[12]

On December 23, 2008, pending the resolution of the Petition[13] at bench, public respondent Ombudsman issued a "Joint Decision" dismissing the two administrative cases filed against petitioner docketed as OMB-L-A-06-0894-K for "Gross Neglect of Duty" and OMB-L-A-06-0900-K for "Grave Misconduct and Gross Neglect of Duty.

In her Petition, petitioner raised the following grounds:

"6. GROUNDS RELIED UPON:

6.1[.] The Ombudsman issued the subject order without jurisdiction considering that (a) the same complaints have been earlier filed in July 2005 by then Mayor Joey Catindig of Sta. Rosa, Laguna against the petitioner in the Local Adjudication Board where the cases have been submitted for decision; and (b) there is no administrative investigation conducted, being conducted or about to be conducted by the respondent Ombudsman wherein the preventive suspension of the petitioner can be considered as a 'preliminary step'.

6.2[.] The respondent Ombudsman acted with grave abuse of discretion in issuing and releasing and attempting to enforce the order for preventive suspension of the petitioner two years after the filing of the administrative cases considering that (a) there was absolutely no need for it because all the documents to be utilized by the complainants against the petitioner were available to them, as in fact, complete copies thereof were attached to the private respondents' complaint-affidavits (Annexes 'B', 'C' and 'D') and in the complaints of then Mayor Catindig in IPI No. 05-03 and IPI No. 05-04 (Annexes 'H' and 'I'), hence, no danger that petitioner would destroy them; and (b) there is no strong evidence of guilt against the petitioner.

6.3 The respondent Ombudsman in releasing and attempting to enforce the subject order has been acting in gross violation of the petitioner's constitutional right to due process of law and speedy justice."[14] (Emphasis was made in the original)

To begin with, the Petition[15] at bench is defective and dismissible. This is because petitioner failed to file a Motion for Reconsideration of the assailed public respondent Ombudsman's Consolidated Order[16] dated January 31, 2007 prior to the filing of the Petition[17].

Petitioner merely asserted that the filing of the motion for reconsideration of the Consolidated Order[18] of public respondent Ombudsman would be inadequate and useless since the provisionary orders were executory[19], and that filing a motion for reconsideration would not relieve her from the manifestly erroneous and unjust order[20].

However, parties, such as petitioner, may not arrogate unto themselves the determination of whether a Motion for Reconsideration is necessary or not. This is as is pursuant to the following pronouncement of the Supreme Court in Supreme Court in Republic of the Philippines vs. Pantranco North Express, Inc., et. al., G.R. No. 178593, February 15, 2012:

"It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.

It must be emphasized that the filing of a motion for reconsideration and filing it on time are not mere technicalities of procedure. These are jurisdictional and mandatory requirements which must be strictly complied with. xxx" (Emphasis supplied)

Moreover, no showing was made by petitioner that the Petition[21] at bench fell under any of the exceptions[22] to the rule requiring the filing of a Motion for Reconsideration. Even if the Petition[23] is to be considered as proper, still, petitioner's allegations, after a careful study of the Petition[24], were revealed to be unmeritorious.

Contrary to petitioner's assigned ground 6.1 (a) and (b), public respondent Ombudsman had properly exercised jurisdiction over the administrative cases filed against petitioner.

In insisting that public respondent Ombudsman had no jurisdiction over the administrative cases filed against her, petitioner had argued that:

"xxx the filing of these cases in the Ombudsman despite the pendency of the same cases in the Local Adjudication Board is barred by the rule against forum shopping, violation of which calls for summary dismissal. It cannot be disputed that the prohibition against forum shopping has been violated when the Ombudsman received and docketed these cases as administrative cases (and now issued the disputed order) because of the pendency of IPI No. 05-03 and IPI No. 05-04 in the Local Adjudication Board. xxx"[25]

However, to begin with, the Office of the Ombudsman has the power to investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient, pursuant to Section 13 (1), Article XI of the 1987 Constitution.

Moreover, public respondent Ombudsman's duties and functions extend to all kinds of malfeasance, misfeasance, and nonfeasance that may have been committed by any public officer or employee, as is provided for in Section 16 of R.A. No. 6770 otherwise known as "The Ombudsman Act of 1989".

Neither could there have been forum shopping as contended by petitioner in having filed with public respondent Ombudsman, supposedly similar cases pending before the Local Adjudication Board (LAB) of Sta. Rosa City. This, considering that forum shopping could not apply to the cases filed by then City Mayor Catindig against petitioner before the LAB and the cases pending before public respondent Ombudsman against petitioner, which were administrative charges. In LAB, petitioner was charged for (1) Dishonesty and Insubordination, and (2) Gross and Habitual Neglect of Duty. On the other hand, in the cases filed before the Office of public respondent Ombudsman, petitioner was charged for (i) Grave Misconduct and (ii) Grave Misconduct/Gross Neglect of Duty. That the rule against forum shopping is only applicable to judicial cases or proceedings, and not to administrative cases, is pursuant to the following pronouncement of the Supreme Court in Office of the Ombudsman vs. Rolson

Rodriguez, G.R. No. 172700, July 23, 2010:

"The facts in the present case are analogous to those in *Laxina, Sr. v. Ombudsman*, which likewise involved identical administrative complaints filed in both the Ombudsman and the sangguniang panlungsod against a punong barangay for grave misconduct. The Court held therein that the rule against forum shopping applied only to judicial cases or proceedings, not to administrative cases. Thus, even if complainants filed in the Ombudsman and the sangguniang bayan identical complaints against private respondent, they did not violate the rule against forum shopping because their complaint was in the nature of an administrative case." (Italics made in the original; Emphasis supplied)

Considering that public respondent Ombudsman had jurisdiction over the administrative cases against petitioner, then, contrary to petitioner's arguments in her assigned ground 6.2 (b), public respondent Ombudsman properly acted in issuing the assailed "Consolidated Order"[26] preventively suspending petitioner upon a finding that there was strong evidence of petitioner's guilt for Grave Misconduct.[27]

On these matters, petitioner had argued that:

"There is no allegation in OMB-L-A-06-0894- K xxx that the municipal government of Sta. Rosa xxx was prejudiced by the transaction. xxx

xxx

On the basis of these allegations, the conclusion that there is strong evidence of guilt[t] is clearly characterized with grave abuse of discretion. The Ombudsman has himself ignored the more important allegations showing no loss or prejudice to the city and relied only on the allegation that title cannot be delivered to the city because of the existence of some liens.

In Case No. L-A-06-0897-K (foreign travels), the Ombudsman took only the uncorroborated testimony of the private respondents that these travels were not authorized. xxx

The same can be said of case L-A-06-0900-K. The only basis of the charge are COA reports, recommendations and observations. xxx

All told, in all these administrative cases there is no strong evidence to warrant the preventive suspension order. xxx"[28] (Emphasis supplied)

Negating petitioner's arguments however, is that public respondent Ombudsman had properly complied with the requirements for justifying the issuance of an order of preventive suspension pending an investigation. Public respondent Ombudsman had the authority to preventively suspend petitioner so long as the conditions set forth in Section 24 of R.A. No. 6770 were complied with. Section 24 of R.A. No. 6770 states:

"Section 24. Preventive Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him." (Emphasis supplied)

Here, public respondent Ombudsman had found that the pieces of evidence presented before it indicated that petitioner's guilt for "Gross Neglect of Duty", "Grave Misconduct", and "Grave Misconduct/Gross Neglect of Duty" were strong.[29] Moreover, public respondent Ombudsman had found that petitioner's preventive suspension was necessary to prevent petitioner from tampering evidence.

That public respondent Ombudsman had the authority to preventively suspend petitioner upon a determination that the evidence of petitioner's guilt is strong is pursuant to the following declaration made by the Supreme Court

in *The Ombudsman, Factfinding and Intelligence Bureau, Office of the Ombudsman, and Preliminary Investigation and Administrative Adjudication Bureau, Office of the Ombudsman vs. Nestor S. Valeroso*, G.R. No. 167828, April 2, 2007:

"Here, respondent was charged with dishonesty, among other administrative and criminal charges, and the Ombudsman particularly found strong evidence to support said charge on the specified ground of 'non-disclosure of assets and business interests.' Questions on the strength of the evidence to support the preventive suspension order are squarely within the jurisdiction of the Ombudsman. On this score, the following pronouncements of this Court in *Yasay, Jr. v. Desierto* are very much in point:

The rule is that whether the evidence of guilt is strong, as required in Section 24 of R.A. No. 6770, is left to the determination of the Ombudsman by taking into account the evidence before him. In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if 'in his judgment' the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present. The Court cannot substitute its own judgment for that of the Ombudsman on this matter, absent clear showing of grave abuse of discretion on the part of respondent Ombudsman." (Emphasis supplied)

Besides, contrary to petitioner's assigned ground 6.2 (a), the issuance of the preventive suspension order so as to prevent petitioner "from using the powers and resources of her office to prejudice the fair and independent investigation"[30] was necessary.

Petitioner had argued that:

"All told, even before they filed the complaints private respondents already had in their possessions copies of all the documents they needed to prosecute the petitioner. That being the case, there is absolutely no need to put the petitioner in preventive suspension because evidently the evidence to be utilized by the complainants are already with them. They had already secured copies thereof. The danger of the petitioner destroying the evidence or tampering with their integrity no longer exists."[31] (Emphasis and italics were made in the original)

Defeating petitioner's arguments however, is that public respondent Ombudsman should be given the opportunity to gather and prepare facts free from the interference of the one subject of investigation, such as petitioner, as was similarly held by the Supreme Court in *Office of the Ombudsman vs. Ricardo Evangelista*, G.R. No. 177211, March 13, 2009, to wit:

"The appellate court's stance that there is no longer any reason for the preventive suspension of the respondents as the pertinent documents are with the Commission on Audit likewise has no merit. Respondents argue there is no reason for suspension *pendente lite* as they could no longer tamper with the evidence. This Court found a similar argument in *Bunye v. Escarreal* devoid of merit. We reiterate the rule that the prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure nonintervention and noninterference from accused's camp. Similar to Section 13 of Republic Act No. 3019, Section 24 of R.A. No. 6770 emphasizes the principle that a public office is a public trust. Part and parcel of this principle is a presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both. Relatedly, the Ombudsman has full discretion to select which evidence it will gather and present, free from any interference." (Emphasis supplied)

No cogent or compelling reason was therefore shown so as to justify any deviation from the following findings of public respondent Ombudsman, which findings were based on the facts and the law:

"The evidence before us preliminarily show strong evidence of guilt for grave misconduct.

The nineteen (19) foreign trips of the respondent to different countries from 1999 to 2005 without a

corresponding authority to travel issued by the head of the local government unit she serves constitutes Grave Misconduct. The vacation leave applications during the time respondent traveled abroad as certified by Human Resources Officer and the Summary of Travel Records by the Bureau of Immigration are strong evidence of guilt.

Also, the preventive suspension of the respondent is imperative to prevent her from using the powers and resources of her office to prejudice the fair and independent investigation. It should be noted that the other charges against the respondent involve financial matters supported financial documents in her official Custody as City Accountant such that a preventive suspension is necessary to prevent her from tampering evidence."[32] (Emphasis supplied)

Given all these, since public respondent Ombudsman's "Consolidated Order"[33] was validly issued as a preventive measure and a preliminary step to an administrative investigation, its enforcement did not run counter to petitioner's right to due process and speedy justice, contrary to petitioner's assigned ground 6.3.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent Ombudsman, in issuing its assailed Order, was therefore shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[34]

IN VIEW OF ALL THESE, the Petition is DENIED.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 2 - 25

[2] Rollo, pp. 2 - 25

[3] Rollo, pp. 26 - 35

[4] Rollo, pp. 36 - 41

[5] Rollo, pp. 43 - 47

[6] Rollo, pp. 48 - 53

[7] Rollo, pp. 100 - 103

[8] Rollo, pp. 26-35

[9] Rollo, p. 34

[10] Rollo, pp. 33-34

[11] Rollo, pp. 2-25

[12] Rollo, pp. 22-23

[13] Rollo, pp. 2-25

[14] Rollo, p. 10

[15] Rollo, pp. 2-25

[16] Rollo, pp. 26 - 35

[17] Rollo, pp. 2-25

[18] Rollo, pp. 26 - 35

[19] Rollo, pp. 8 - 9

[20] Rollo, p. 9

[21] Rollo, pp. 2-25

[22] Metro Transit Organization, Inc. and Jovencio P. Bantang, Jr. vs. The Court of Appeals, National Labor Relations Commission (First Division) and Ruperto Evangelista, Jr. G.R. No. 142133, November 19, 2002

[23] Rollo, pp. 2 - 25

[24] Rollo, pp. 2 - 25

[25] Rollo, pp. 14 - 15

[26] Rollo, pp. 26 - 35

[27] Rollo, p. 32

[28] Rollo, pp. 17 - 19

[29] Rollo, pp. 26-34

[30] Rollo, pp. 32 - 33

[31] Rollo, p. 16

[32] Rollo, pp. 32-33

[33] Rollo, pp. 26 - 35

[34] First Women's Credit Corporation, et al. v. Glicerio Perez, G.R. No. 169026, June 15, 2006

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