

JONNEL D. ESPALDON, PETITIONER, V. PETER L. CALIMAG, RENATO M. GARBO III, MA. LETICIA MALMALATEO, MARLON K. TAULI, FRAYN M. BANAWA, JOHNNY CAGUIAT, ROGELIO M. SABADO, PRUDENCIO ...

Ponente: BARZA, J.

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BARZA, J.:

This is a petition for review under Rule 43 of the Rules of Court assailing the Order[1] of the Ombudsman in OMB-C-A-11-0036-A dated 16 January 2012, dismissing the administrative complaint against herein respondents, and the Joint Order[2] dated 12 March 2012 denying reconsideration thereof.

Petitioner, Jonnel D. Espaldon, is the Corporate Secretary of Metal Exponents, Inc. and retained counsel of Ferrotech Steel Corporation. He is also the legal counsel of Metalex International, Inc.

Sometime in December 2010, the National Bureau of Investigation (NBI) applied for Search Warrant with the Regional Trial Court of Manila on account of Ferrotech Steel Corporation's alleged illegal activities involving violations of the provisions of the National Internal Revenue Code (NIRC) and other relevant laws. The RTC of Manila, Branch 47, issued Search Warrants No. 10-17070, 10-17071, 10-17072 and 10-17073 against Ferrotech Steel Corporation and/or Benito Keh for their different offices and warehouses located in Valenzuela City and Makati City on 17 December 2010. On even date, the search warrants were served by agents of the NBI, Philippine National Railways (PNR) personnel and private individuals, who are the respondents in this case.

The NBI Agents were also armed with the OSEC Mission Order No. 10-001 issued by the Secretary of the DOF, Cesar V. Purisima, directing them to search the offices and warehouses of Metalex International Inc. and Metal Trade Sales Co., pursuant to Section 79 (c) of the Revised Administrative Code in relation to Sections 2203 and 2205 of the Tariff and Customs Code of the Philippines.

Petitioner alleged that during the implementation of the warrants on 17 December 2010, very illegal events transpired and were committed by the respondents. These were witnessed by numerous persons, employees of Ferrotech Steel Corporation and Metal Exponents, Inc., including members of the media, both print and broadcast. Unreasonable and excessive searches were allegedly made.

On 27 January 2011, a Complaint-Affidavit was filed by petitioner with the Ombudsman against the respondents for violations of the Revised Penal Code, Anti-Graft and Corrupt Practices Act (R.A. No. 3019), Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713), National Internal Revenue Code (R.A. No. 8424), Tariff and Customs Code of the Philippines (P.D. No. 1464), Electronic Commerce Act of 2000 (R.A. No. 8792) and the Code of Professional Responsibility.

On 16 January 2012, the Ombudsman resolved the administrative case (Omb. C-A-11-0036-A) for Violation of R.A. 6713, "Misconduct" against the respondents and dismissed the same pursuant to Section 20, par. 1 of the Ombudsman Act of 1989 providing that:

“x x the Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of it it believes that:

1. The complainant has an adequate remedy in another judicial or quasi-judicial body.”

According to the Ombudsman, since the complaint essentially involves the application and interpretation of the Tariff and Customs Code, raising the matter with the Commissioner of Customs and/or the Department of Finance and/or the Court of Tax Appeals could provide adequate remedy.

Petitioner filed a Motion for Reconsideration[3] which in the assailed Joint Order dated 12 March 2012, was denied by the Ombudsman.

Hence, this recourse to the Court on the sole issue that:

IN ISSUING THAT QUESTIONED ORDER AND JOINT ORDER, WHETHER OR NOT PUBLIC RESPONDENT COMMITTED ERRORS OF FACT OR LAW THAT WOULD WARRANT THEIR REVERSAL OR MODIFICATION CONSIDERING THAT PUBLIC RESPONDENT AS OMBUDSMAN HAS THE OBLIGATION AND MANDATE UNDER THE 1987 CONSTITUTION AND THE OMBUDSMAN ACT OF 1989 OR R.A. NO. 6770 TO SERVE AS PROTECTOR OF THE PEOPLE.

The respondents, on the other hand, argue in the main that the Court may not review the ruling of the Ombudsman in this case, as it is the consistent policy of courts of justice not to interfere with the Ombudsman's exercise of his investigatory powers without good or compelling reasons. The assailed Orders are in accordance with law and applicable rules. It is within the Ombudsman's full discretion to determine whether or not to dismiss a criminal complaint outright without a preliminary investigation, it is with more reason that it is within the Ombudsman's full discretion to dismiss an administrative complaint outright if the Ombudsman finds the same to be without merit.

It is also argued that since some of the respondents impleaded in this petition are not government employees, they are not covered by the disciplinary authority of the Ombudsman. The petition must, thus, be dismissed as against them (Almeda, Quizon, Sarmiento and Begueras).

Respondent Calimag has already resigned from the DOF on or about 30 April 2012. Hence, the administrative complaint against him has become moot.

In addition, the respondents brought to the attention of the Court the other cases[4] with different judicial and quasi-judicial bodies filed by herein petitioner, which contain similar allegations. Another petition[5] is also filed with the Supreme Court (G.R. No. 202784). Said petition purports to be a petition for certiorari and mandamus under Rule 65 of the Rules of Court in connection with OMB-C-C-11-0034-A, but arises from the same set of facts, and same issues and parties as in the present petition.

The Comment filed by the Ombudsman advances the argument that it is not its disciplinary authority which is being assailed in this case but its discretion to conduct an administrative adjudication over an administrative act or omission. The ground relied upon by the Ombudsman is in accord with law. The petitioner cannot compel the Ombudsman to conduct administrative adjudication as the option to conduct the same is discretionary on the part of the Ombudsman under Sec. 20 of R.A. No. 6770 and Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman). The use of the word “may” in the said law is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved.[6]

As also argued, the wide latitude of prosecutory and investigatory powers given to the Ombudsman are not the subject of interference by the courts, and is not confined to criminal cases but to administrative complaints as well.

As reiterated, since the petitioner's complaint essentially involves the application and interpretation of the Tariff and Customs Code, or any relevant law, it would have been more prudent and in keeping with the law if such matters are raised before the proper judicial or quasi-judicial body for the latter could very well provide adequate remedy. The actions taken by the proper body would have a bearing on the investigation of the private respondents' possible criminal and administrative liabilities.

The petition lacks merit.

At thrust is Sec. 20, par. 1 of the Ombudsman Act of 1989 upon which the Ombudsman anchored the assailed orders in this case. A perusal of the above provision clearly reveals that the use of the word “may” as argued by the respondents, is ordinarily construed as permissive or directory. The rule in this regard is steady, thus, “The use of the word “may,” in a statute, denotes that it is directory in nature and generally permissive only.[7] The use of the word “may” in the provision is construed as permissive and operating to confer discretion. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.[8]

As correctly argued by the respondents in this case, “x x x the option to conduct administrative adjudication is discretionary on the part of the Office of the Ombudsman” and “in dismissing the administrative complaint, the Ombudsman merely exercised sound discretion in full accord with law.”

It is true that the authority of the Office of the Ombudsman to conduct administrative investigations proceeds from its constitutional mandate to be an effective protector of the people against inept and corrupt government officers and employees, and is subsumed under the broad powers “explicitly conferred” upon it by the 1987 Constitution and R.A. No. 6770.[9]

However, as correctly argued by the respondents in this case, citing the case of *Alba vs. Nitorreda*,[10] the Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. As held therein, “it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.”

This judicial non-interference is further explained in the case of *Soria vs. Desierto*[11], as follows:

“This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence. x x x Hence, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless clothed with grave abuse of discretion. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it. x x x”

Thus, in recognition of the Office of the Ombudsman's independence and initiative in prosecuting or dismissing a complaint filed before it, and this being a petition for review under Rule 43 of the Rules of Court wherein it is provided that findings of fact of the court or agency concerned, when supported by substantial evidence shall be binding on the Court[12], the petition should be dismissed.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Rollo, pp. 46-49

[2] Rollo, pp. 94-97

[3] Rollo, pp. 50-62

[4] OMB-C-C-11-0034-A filed with the Ombudsman

CHR NCR Case No. 2011-0095 filed with the Commission of Human Rights

A.C. No. 8906 filed with the Court, but subsequently referred to the Commission on Bar Discipline, Integrated Bar of the Philippines (docketed as CBD Case No. 12-3388)

[5] Rollo, pp. 342-375

[6] Citing Office of the Ombudsman vs. Court of Appeals, Macabulos, G.R. No. 159395, May 7, 2008

[7] National Federation of Labor vs. NLRC, G.R. No. 127718, March 2, 2000

[8] Office of the Ombudsman vs. Sahagun, G.R. No. 167982, August 13, 2008

[9] Gonzales III vs. Office of the President of the Philippines, G.R. No. 196231, September 4, 2012 and Barreras-Sulit vs. Ochoa, G.R. No. 196232, September 4, 2012, citing Ledesma vs. Court of Appeals, 503 Phil. 396 (2005)

[10] G.R. No. 120223, March 13, 1996

[11] G.R. Nos. 153524-25, January 31, 2005

[12] Sec. 10, Rule 43

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