

ROMEO M. BERNAL, JR., PETITIONER, VS. INMATES POST EXCHANGE (IPX), BUREAU OF CORRECTIONS, NBP RESERVATION, REP. BY RODOLFO ESQUITA AND ALFREDO MEMIJE, AND THE OFFICE OF THE OMBU...

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PAREDES, J.:[*]

THE CASE

BEFORE US is a Petition for Review[1] under Rule 43 of the Rules of Court assailing the Order[2] dated August 23, 2011 of the Office of the Ombudsman in OMB-P-A-07-0073-G, modifying its earlier Decision[3] dated May 27, 2008 and changing the duration of the penalty of suspension imposed on petitioner Romeo M. Bernal, Jr. (petitioner), from one (1) month without pay, to one (1) year without pay. Also assailed is the Order[4] dated March 20, 2012 denying petitioner's Motion for Reconsideration.

THE ANTECEDENTS

The Inmate Post Exchange (IPX), Bureau of Corrections (BuCor), represented by Rodolfo Esquita and Alfredo Memije lodged an administrative complaint for Grave Misconduct, Gross Neglect of Duty, Dishonesty and Violation of RA No. 6713 against petitioner, an IPX accountant, P/Supt. Juanito Leopando (Leopando), purchaser/canvasser Cynthia Ines (Ines), IPX bookkeeper Gil Llano (Llano), PG2 Arnold Chua (Chua), and IPX warehouseman, PG2 Jose Longalong (Longalong), before the Office of the Ombudsman.

The Office of the Ombudsman rendered a Decision[5] dated May 27, 2008 disposing the case as follows:

WHEREFORE, there being substantial evidence, this Office finds respondent CYNTHIA INES guilty of Conduct Prejudicial to the Best Interest of the Service, with Abuse of Position as aggravating circumstance and hereby meted the penalty of suspension in office without pay for a period of one (1) year, pursuant to Section 52, Rule IV, in connection with Section 54 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936) in relation to the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 7, as amended by Administrative Order No. 17, dated 07 September 2003).

As regard respondents ARNOLD CHUA, ROMEO BERNAL, and SUPT. JUANITO LEOPANDO, this Office finds them GUILTY of Simple Neglect of Duty and are hereby meted the penalty of suspension in office without pay for a period of one (1) month.

Lastly, as to respondents JOSE LONGALONG and GIL LLANO, this Office finds no substantial evidence against them for any administrative offense.

Let a copy of this DECISION be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City, for IMPLEMENTATION.

SO ORDERED.

In the last week of May 2010, petitioner received Special Order No. 341, s. 2010[6] dated May 25, 2010 from the BuCor Director enforcing the above decision. Thus, petitioner was suspended in June 2010[7]. Of the

respondents, only Ines filed a motion for reconsideration from the decision of the Ombudsman.

Acting on Ines' motion for reconsideration, the Ombudsman, on August 23, 2011, issued an Order[8], the dispositive portion of which reads:

WHEREFORE, premises considered, it is respectfully recommended that the Motion for Reconsideration dated 30 September 2010, filed by respondent Cynthia B. Ines be DENIED.

It is further recommended that the Decision dated 27 May 2008 be MODIFIED so that respondents ARNOLD CHUA, ROMEO BERNAL a.k.a. ROMEO BERNAL, JR. and SUPT. JUANITO S. LEOPANDO be SUSPENDED from office for one (1) year without pay for Conduct Prejudicial to the Best Interest of the Service.

xxx xxx xxx

If the penalty of suspension cannot be imposed against respondents for any cause or reason, the alternative penalty of FINE equivalent to the period of suspension must be imposed upon said respondents.

Let a copy of this Order be furnished the Director, Bureau of Corrections, National Bilibid Prison, Muntinlupa City for his information and appropriate action.

SO ORDERED.[9]

Petitioner filed a motion for reconsideration[10] but this was denied in the Order[11] dated March 20, 2012; hence, this Petition, attributing grave abuse of discretion to the Ombudsman, that:

I.WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN MODIFYING ITS PREVIOUS DECISION DATED MAY 27, 2008, DESPITE A CLEAR SHOWING THAT SAID DECISION WAS ALREADY FINAL, EXECUTORY AND UNAPPEALABLE.

II.WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN MODIFYING ITS PREVIOUS DECISION DATED MAY 27, 2008, DESPITE A CLEAR SHOWING THAT IT HAD ALREADY LOST JURISDICTION OVER THE CASE AS THE SAID DECISION DATED MAY 27, 2008 WAS FINAL, EXECUTORY AND UNAPPEALABLE.

III.WITH DUE RESPECT, THE HONORABLE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OR EXCESS OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT FAILED TO CONSIDER THE SETTLED RULE THAT A DECISION/ORDER THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE.[12]

THE ISSUE

In fine, the sole issue is whether or not the Ombudsman committed grave abuse of discretion when, despite the absence of a motion for reconsideration from petitioner, it modified its Decision dated May 27, 2008, by increasing the penalty, but which penalty had, in the meantime, been served in full.

THE COURT'S RULING

The Petition is meritorious.

The Ombudsman is a creature of the Constitution. The framers of the 1987 Constitution intended the office to be strong and effective, with sufficient bite and muscle to enable it to carry out its mandate as protector of the people against the inept, abusive, and corrupt in the Government[13]. Section 12 of Article XI of the Constitution, expresses the mandate of the Ombudsman, thus:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13, paragraph 1, Article XI of the Constitution confers on the Ombudsman the power, function, and duty 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. Under paragraph 8, the Ombudsman has the power to promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Further, Section 15[14] of RA 6770 reveals the manifest intent of the lawmakers to give the Ombudsman full administrative disciplinary authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty.[15]

However, as with any power, it is not without limit. Nowhere in the Constitution or in the law is the Ombudsman vested with authority to review its decisions *motu proprio*. In the case at bar, We find that the Ombudsman acted without or in excess of jurisdiction, or with grave abuse of discretion, in modifying, on its own, *sans motion* from petitioner, the penalty it imposed in its May 27, 2008 Decision. The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." [16]

That the assailed Order dated August 23, 2011 is wholly void so far as case of the petitioner is concerned, is beyond cavil.

Section 7, Rule III of the Rules of Procedure[17] of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration. (Emphasis supplied)

In justifying the modification of the penalty, the Ombudsman, in its Order[18] dated March 20, 2012, posits that the Decision dated May 27, 2008 was not yet final in view of the motion for reconsideration of Ines. Worse, according to the Ombudsman, despite the non-participation of petitioner in the motion for reconsideration, he is bound by the finding as stated in the order modifying the decision. We do not agree.

It must be emphasized that the Decision dated May 27, 2008 imposed the penalties of suspension of one (1) year

for Ines and suspension of one (1) month for petitioner. Verily, the remedies available for them are also different. Pursuant to Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, the decision with respect to petitioner is final, executory and unappealable since his suspension did not exceed one (1) month. On the other hand, Ines, whose suspension of one (1) year falls under the phrase "in all other cases", may appeal to this Court on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

As petitioner's penalty of suspension of one month had become final and executory, the Ombudsman lost its jurisdiction over the case. As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. This is the rule on immutability of judgments[19]. An exception to this rule is the existence of supervening events which refer to facts transpiring after judgment has become final and executory or to new circumstances that developed after the judgment acquired finality, including matters that the parties were not aware of prior to or during the trial as they were not yet in existence at that time[20]. The motion for reconsideration filed solely by Ines does not qualify as a supervening event or an exception to the rule on the immutability of judgments.

The standard of due process that must be met in administrative proceedings, including those before the Ombudsman, allows a certain degree of latitude as long as fairness is not ignored[21]. In the case at bar, the modification of the decision without notice to or participation of the petitioner is clearly and undeniably unfair and prejudicial. The discussion of the Supreme Court in *Mendiola vs. Civil Service Commission*[22] is enlightening:

"The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice . . ." Thus, We have ruled in *Young vs. Court of Appeals* that:

". . . Once a decision becomes final and executory, it is removed from the power and jurisdiction of the court which rendered it to further alter or amend it, much less revoke it. This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of the courts must become final at some definite date fixed by law. To allow courts to amend final judgments will result in endless litigation."

This doctrine applies equally to quasi-judicial agencies. Thus, in *Filcon Manufacturing Corp. vs. NLRC*, We also said:

"A judgment which has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes. Likewise, an executory and final decision cannot be lawfully altered or modified even by the court which rendered the same, especially where the alteration or modification is material or substantial. In such a situation, the trial court loses jurisdiction over the case except for execution of the final judgment. Any amendment or alteration made which substantially affects the final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose."

The Decision of the Ombudsman dated May 27, 2008 stands; and the penalty imposed on petitioner, declared final and duly served, can no longer be modified and/or amended to increase the penalty or upgrade the charge against petitioner.

Settled is the rule that a void judgment cannot attain finality and its execution has no basis in law[23]. In this case, the assailed Orders dated August 23, 2011 and March 20, 2012 are, on its face, void judgments; and the reason why, at the first instance, We applied full procedural liberality in favor of the petitioner.

WHEREFORE, premises considered, this Petition is GRANTED. The Orders dated August 23, 2011 and March 20, 2012 of the Office of the Ombudsman, in OMB-P-A-07-0073-G, with respect to petitioner Romeo M. Bernal, Jr.'s suspension from office for one (1) year without pay for Conduct Prejudicial to the Best Interest of the Service is ANNULLED and SET ASIDE. Consequently, the Decision dated May 27, 2008, so far as petitioner is concerned, is REINSTATED and declared final and executory, and the penalty therein imposed, duly served.

SO ORDERED.

Didican, (Chairperson), and [**] Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR, November 3, 2014.

[**] Acting Junior Member vice J. Elbinias per Office Order No. 461-14-ABR, November 3, 2014.

[1] Rollo, pp. 3-15.

[2] Petition; Id., pp. 18-27.

[3] Id., pp. 51-57.

[4] Annex B, Petition; Id., pp. 29-32.

[5] Annex F, Petition; Id., pp. 51-57.

[6] Annex G, Petition; Id., p. 59.

[7] Certification, Annex H, Petition; Id., p. 60.

[8] Annex A, Petition; Id., pp. 18-27.

[9] Id., pp. 26-27.

[10] Annex C, Petition; Id., pp. 34-41.

[11] Annex B, Petition; Id., pp. 29-32.

[12] Id., p. 5.

[13] *Gobenciong vs. Court of Appeals*, GR No. 159883, March 31, 2008.

[14] Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who

neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

[15] *Alejandro vs. Office of the Ombudsman Fact Finding and Intelligence Bureau*, GR No. 173121, April 3, 2013.

[16] *Malayang Manggagawa ng Stayfast Phils., Inc. vs. NLR, Stayfast Phil., Inc./Maria Almeida*, G.R. No. 155306, August 28, 2013.

[17] Administrative Order No. 7, dated April 10, 1990.

[18] Annex B, Petition; Rollo, pp. 29-32.

[19] *Bani Rural Bank, Inc., et.al. vs. Teresa De Guzman, et. al.*, G.R. No.170904, November 13, 2013.

[20] *Id.*

[21] See *Honorable Ombudsman vs. Bungubung*, GR No. 175201, April 23, 2008.

[22] GR No. 100671, April 7, 1993.

[23] P/Sr. Supt. Macawadib vs. The PNP Directorate for Personnel and Records Management, G.R. No. 186610, July 29, 2013.

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