JESUS C. OCAMPO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN and MAXIMO ECLIPSE, RESPONDENTS.

G.R. No. 114683. January 18, 2000

Ponente: BUENA, J.

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BUENA, J.:

This petition for certiorari seeks to nullify the Resolutions of the Ombudsman in OMB-Adm-O-92-0020 dated November 18, 1993[1] and February 28, 1994[2] which dismissed petitioner from the service, with forfeiture of benefits and special perpetual disqualification to hold office in the government or any government-owned or controlled corporation, and which denied the motion for reconsideration thereof, respectively.

The facts are as follows:

Petitioner is the Training Coordinator of. NIACONSULT, INC., a subsidiary of the National Irrigation Administration.

On March 21, 1988, K.N. Paudel of the Agricultural Development Bank of Nepal (ADBN) wrote a letter to NIACONSULT requesting a training proposal on small-scale community irrigation development.[3]

On November 17, 1988, petitioner as the training coordinator of the NIACONSULT, sent a letter-proposal requested by ABDN.[4] Another letter was sent by petitioner on January 31, 1989 to Dr. Peiter Roeloffs of ADBN confirming the availability of NIACONSULT to conduct the training program and formally requesting advance payment of thirty (30%) percent of the training fees[5] in the amount of US $9,600.00 or P204,960.00.

NIACONSULT conducted the training program for six Nepalese Junior Engineers from February 6 to March 7, 1989.[6] ADBN, thru its representative, Deutsche Gesselschaft) Technische Zusummenarbeit (GTZ) Gmbh Technical Cooperation of the Federal Republic of Germany paid to the petitioner the agreed training fee in two installments of P61,488.00 and P143,472.00.[7]

On April 1, 1991, NIACONSULT, through its president, Wilfredo S. Tiongco, wrote a letter to petitioner demanding the turn-over of the total training fee paid by ADBN which petitioner personally received.[8] Despite receipt of the letter, petitioner failed to remit the said amount prompting NIACONSULT through its president, Maximino Eclipse, to file an administrative case before respondent OMBUDSMAN for serious misconduct and/or fraud or willful breach of trust.[9]

Finding enough basis to proceed with the administrative case, the Administrative Adjudication Bureau of the respondent OMBUDSMAN, on February 17, 1992, issued an order[10] requiring petitioner to file his counter-affidavit within ten (10) days from receipt with a caveat that failure to file the same would be deemed a waiver of his right to present evidence. Despite notice, petitioner failed to comply with the said order.

A year later, or on March 17, 1993, respondent OMBUDSMAN issued another order[11] giving petitioner another chance to file his counter-affidavit and controverting evidence. Again, petitioner failed. Thus, on April 14, 1993,

private respondent was required to appear before the OMBUDSMAN to present evidence to support its complaint.[12]

Thereafter, on November 18, 1993, respondent OMBUDSMAN issued the assailed Resolution, the decretal portion of which reads:

> "Withal, for such dishonesty, untrustworthiness, and conduct prejudicial to the service as established by overwhelming evidences, it is respectfully recommended that respondent Jesus C. Ocampo be discharged from the service, with forfeiture of benefits and special perpetual disqualification to hold office in the government or any government-owned or controlled corporation; without prejudice to any civil action NIACONSULT, Inc., may institute to recover the amount so retained by the respondent.
>
> SO ORDERED."[13]

On February 16, 1994 petitioner moved for reconsideration and to re-open the case claiming that he was denied due process in that the administrative case was resolved on the basis of the complainant's evidences, without affording him the opportunity to file a counter-affidavit and to present his evidence. Petitioner likewise contends that he was not given access to the records of the subject transaction vital to his defense and in the preparation of his counter-affidavit despite his verbal requests to the graft investigator.[14]

The respondent OMBUDSMAN denied the motion on February 28, 1994.[15]

Aggrieved, petitioner filed the instant petition basically reiterating his arguments in his motion for reconsideration.

We gave due course to the petition and required the parties to submit their respective memoranda.

While the case is pending, petitioner filed a Manifestation on May 24, 1997[16] stating that the criminal complaint for estafa and falsification filed against him based on the same facts or incidents which gave rise to the administrative case, was dismissed by the Regional Trial Court on February 24, 1997. With the dismissal of the criminal case, petitioner manifests that the administrative case can no longer stand on its own and therefore should be dismissed.[17]

Such manifestation is not well taken.

The dismissal of the criminal case will not foreclose administrative action filed against petitioner or give him a clean bill of health in all respects. The Regional Trial Court, in dismissing the criminal complaint, was simply saying that the prosecution was unable to prove the guilt of petitioner beyond reasonable doubt, a condition sine qua non for conviction. The lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then too, there is the "substantial evidence" rule in administrative proceedings which merely requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[18] Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other.[19]

Going now to the crux of the controversy, petitioner asserts that he was denied the opportunity to be heard.

The essence of due process is an opportunity to be heard. One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably and practicable than oral argument, through pleadings. In administrative proceedings, moreover, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense.[20]

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Petitioner has been amply accorded the opportunity to be heard. He was required to answer the complaint against him. In fact, petitioner was given considerable length of time to submit his counter-affidavit. It took more than one year from February 17, 1992 before petitioner was considered to have waived his right to file his counter-affidavit and the formal presentation of the complainant's evidence was set. The March 17, 1993 order was issued to give the petitioner a last chance to present his defense, despite the private respondent's objections. But petitioner failed to comply with the second order. NewÓ miso

Thus, petitioner's failure to present evidence is solely of his own making and cannot escape his own remissness by passing the blame on the graft investigator. While the respondent OMBUDSMAN has shown forebearance, petitioner has not displayed corresponding vigilance. He therefore cannot validly claim that his right to due process was violated. We need only to reiterate that a party who chooses not to avail of the opportunity to answer the charges cannot complain of a denial of due process.[21]

Petitioner's claim that he was not given any notice of the order declaring him to have waived his right to file his counter-affidavit and of allowing the private respondent to present evidence ex-parte is unmeritorious.

The orders of respondent OMBUDSMAN requiring petitioner to submit his counter-affidavit and which was admittedly received by the latter explicitly contain a warning that if no counter-affidavit was filed within the given period, a waiver would be considered and the administrative proceedings shall continue according to the rules. Thus, respondent OMBUDSMAN need not issue another order notifying petitioner that he has waived his right to file a counter-affidavit. In the same way, petitioner need not be notified of the ex-parte hearing for the reception of private respondent's evidence. As such, he could not have been expected to appear at the ex-parte hearing.

With regard to the petitioner's claim that he made requests for the production of the documents alleged to be material to his defense, the record is bereft of any proof of such requests. If it were true that the graft investigator did not act on such requests, petitioner should have filed the proper motion before the respondent OMBUDSMAN for the production of the documents or to compel the respondent complainant to produce whatever record necessary for his defense. Petitioner did not. It was only after the respondent OMBUDSMAN issued the assailed resolution of November 18, 1993 that he bewailed the alleged failure of respondent's graft investigator to require the production of the records of the subject transaction.

The record of this case indisputably shows that petitioner is guilty of dishonesty and conduct prejudicial to the government when he failed to remit the payment of the training program conducted by NIACONSULT. The evidence presented sufficiently established that petitioner received the payments of ADBN through its representative, GTZ, Philippines the amount of US $9,600.00 and that he failed to account this and remit the same to the corporation. All these acts constitute dishonesty and untrustworthiness.

WHEREFORE, the petition is hereby DENIED for lack of merit. The assailed Resolutions of the respondent OMBUDSMAN are hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Annex F, pp. 61- 66, Rollo.

[2] Annex H, pp. 73 -75, Id.

[3] Rollo, pp. 31-33.

[4] Rollo, pp. 34-42.

[5] Id.,p.43.

[6] Id., p. 44.

[7] See pp, 45-50

1) GTZ Philippine Voucher No. 5166 signed by Mr, Jesus C. Ocampo, indicating that he received P61,488.00 as 30% deposit for the training

2) GTZ Philippine Check No. 0227431 for P61,488.00 payable to the Order of Mr. Jesus C. Ocampo

3) NIACONSULT, Inc. Official Receipt No. 1071 acknowledging payment of P61,488.00

4) GTZ Voucher no. 5822 signed by Mr. Jesus C. Ocampo showing that he received P143,472.00 as final payment

5) GTZ Check No.633554 for P143,472.00 payable to the Order of Mr. Jesus C. Ocampo

6) NIACONSULT, Inc. Official Receipt No.1095 acknowledging payment of P143,472.00.

[8] Id., p. 134.

[9] Annex B, pp. 25-30, Rollo.

[10] Annex C, p. 57, Id.

[11] Annex D, p. 59, Id.

[12] Annex E, p. 60, id.

[13] Annex, F, p. 66, Rollo.

[14] Annex G, pp. 68- 72, Rollo.

[15] Annex H, pp. 73-75, Rollo.

[16] Pp. 252-253, Rol1o.

[17] Pp. 254-262, Id.

[18] Office of the Court Administrator vs. Ramon G. Enriquez, 218 SCRA 1 (1993)

[19] Office of the Court Administrator vs. Matas, 247 SCRA 9, 22-23 (1995)

[20] Concerned Officials of the MWSS vs. Hon. Omubudsman Conrado Vasquez, 240 SCRA 502.

[21] Esber vs. Sto. Tomas, 225 SCRA 664.

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