

DR. RAMON Y. ALBA, PETITIONER, VS. THE HONORABLE DEPUTY OMBUDSMAN, CESAR Y. NITORREDA, ET AL., RESPONDENTS.*G.R. No. 120223. March 13, 1996*

Ponente: FRANCISCO, J.

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The instant motion for reconsideration has its origin in an administrative case (OBM-MIN-ADM-94-059) filed with the Office of the Ombudsman for Mindanao by private respondents Jesiela Antiporta and Aida Salmeo against petitioner Dr. Ramon Y. Alba in his capacity as Director III of the Department of Education Culture and Sports (DECS) accusing the latter of violating certain provisions of the Code of Conduct and Ethical Standards For Public Official and Employees (R.A. 6713).

The facts are as follows:

Private respondents were among the twenty five (25) graduating students of the Arriesgado Institute of Medical Sciences Foundation, Inc. (AIMSFI) in Tagum, Davao who sought the intervention of petitioner in settling a dispute with the said school arising from the implementation of certain school policies. Acting on the request for intervention, petitioner scheduled a meeting with the students on March 20, 1994 at 8:30 in the morning. Thus, on the said date, private respondents and the other complaining students travelled all the way from Tagum, Davao to the DECS Office in Davao City. Their presence in the said office was duly noted by DECS Administrative Officer V, Aquilina Granada who advised them that petitioner will forthwith meet with them. However, instead of conferring with the aggrieved students, petitioner instead met with the Arriesgado spouses-owners of AIMSFI - who admittedly did not even have a previous appointment with petitioner with the result that the students were left waiting at the anteroom for several hours. In view of this apparent discrimination, the students contacted respondent Deputy Ombudsman for Mindanao, Cesar E. Nitorreda who was impelled to proceed to the DECS Office to admonish petitioner for not conferring with both parties at the same time in order to hear both sides of the controversy. Thereafter, petitioner presided over the conference between the Arriesgados and the aggrieved students.

On March 29, 1994, petitioner submitted to the Office of the Ombudsman for Mindanao (Office of the Ombudsman), a report on the said conference wherein he claimed that he had succeeded in facilitating an amicable settlement between the parties. However, petitioner's claim of having settled the dispute between the Arriesgados and the complaining students is belied by private respondents' affidavit-complaint[1] attesting to the fact that as a result of the said dispute, they were barred from taking the final examinations and participating in the graduation rites. In the same affidavit complaint, private respondents pointed out petitioner's evident bias and partiality in favor of the Arriesgados in the conduct of the conference held on March 20, 1994. Petitioner denied the said charges in his counter-affidavit[2] and justified his actuations by posturing that the reason why he decided to talk to the school owner first was "to thresh out the complaints of the students in order to have a complete view of the situation before talking jointly with the student and the owner of the school." [3] Petitioner also theorized that private respondents were not allowed to take the final examinations and participate in the graduation rites due

to their failure "to settle their obligations with the school and/or x x x pass their academic subjects x x x." [4] However, in a rejoinder filed by petitioner, he averred that after inquiry from AIMSFI, he was informed that private respondents' taking of the final examinations and their graduation were conditioned upon their withdrawal of the complaint filed against petitioner with the Office of the Ombudsman. [5]

After both parties failed to attend the preliminary conference scheduled by the Graft Investigating Officer assigned to the case, a resolution dated April 28, 1995 was rendered by the Office of the Ombudsman finding petitioner guilty of violating Section 4(b), (c) and (e) of R.A. 6713 [6] holding as follows:

"There is no denying that respondent Director Alba was partial to the AIMSFI school owners and acted against the interest of the complainants. Complaints' averments were confirmed by the school itself, thru School Principal Ma. Clara Arriesgado, that the complaining student were not allowed to take the final examination until and unless they agree to the withdrawal of the case they filed in this Office against herein respondent Assistant Regional Director. Clearly, respondent and the school jointly coerced the students to submit to such an illegal, improper and immoral demand. Respondent did not comport himself in accordance with justness, sincerity and professionalism required by the Code of Conduct and Ethical Standards of Public Officers and Employees (R.A. 6713)." [7]

For such gross misconduct, petitioner was meted a suspension of thirty (30) days without pay and warned that any other instance of non-observance of the Code of Conduct will result in graver punishment. [8]

When petitioner's motion for reconsideration of the foregoing resolution was denied, he filed an "Appeal/Petition for Certiorari and/or Prohibition With Prayer for Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction" (petition) with this Court. In a Resolution dated June 27, 1995, the said petition was dismissed on the ground that it was moot and academic because the questioned suspension of petitioner which was effective from May 26, 1995 to June 24, 1995 had already expired or became *functus officio* on June 28, 1995 when the petition was filed. Alleging, first and foremost, a misreading of the correct date of filing of the petition, petitioner filed the instant motion for reconsideration of the dismissal of the said petition. A closer scrutiny of the records shows that the petition was indeed filed on June 2, 1995 and not on June 28 as initially deciphered by this Court from the misleading sequence of numbers on the stamp of receipt, that is, "JUN 2 8 28 PM 95." Thus, as correctly averred by petitioner, at the time of the filing of the petition on June 2, 1995, there were still a good twenty two (22) days left of the suspension imposed on him. Consequently, we set aside our original finding that the petition is moot and academic.

With that error rectified, it is now incumbent upon this Court to resolve the following issues raised in the petition to the end that the latter may be finally disposed of on its merits.

"(A) Whether or not Section 27 of R.A. 6770 (otherwise known as the 'Ombudsman Act of 1989') which states:

'xxxxxxxxx.'

'Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary (sic) shall be final and unappealable.'

and Section 7, Rule III, of Administrative Order No. 07, date April 10, 1990 (otherwise known as the 'RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN' x x x), which states:

'Section 7. Finality of decision. - Where the respondent is absolved of the charged (sic) 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 and unappealable. In all other cases, the

decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.'

are valid or constitutional, or constitute an undue curtailment or deprivation of Petitioner's right to DUE PROCESS and a denial of his constitutional right to property." [9]

and

"(b) Whether or not the thirty (30)-day suspension of Petitioner, without pay and 'unappealable', imposed by herein respondent DEPUTY OMBUDSMAN for MINDANAO, Cesar E. Nitorreda, was in accordance with a valid or constitutional law/legislation and/or in accordance with due process, supported by substantial evidence and is not arbitrary, whimsical and a grave abuse of discretion or authority on the part of said Nitorreda." [10]

Petitioner assails the constitutionality of Section 27 of R.A. 6770 and Section 7, Rule III of Administrative Order No.7 for their failure to provide for the right of appeal in certain cases from the decision of the Ombudsman, maintaining that the same is tantamount to a deprivation of property without due process of law. As regards this threshold matter, suffice it to say that this Court has consistently held that:

"The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with" the provisions of the law." [11]

Apparently, therefore, the constitutional requirement of due process may be satisfied notwithstanding the denial of the right to appeal for the essence of due process is simply the opportunity to be heard and to present evidence in support of one's case. [12]

The Office of the Ombudsman is vested by law with the power to promulgate its own rules of procedure, [13] and a perusal of the said rules of procedure in administrative cases manifest sufficient compliance with the requirements of due process. Thus,

"Sec. 5. Administrative Adjudication; How Conducted. -

a) If the complaint is not dismissed for any of the causes enumerated in Section 20 of Republic Act No. 6770, the respondent shall be furnished with copy of the affidavits and other evidences submitted by the complainant, and shall be ordered to file his counter-affidavits and other evidences in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file reply affidavits within ten (10) days from receipt of the counter affidavits of the respondent.

b) If, on the basis of the affidavits and other evidences submitted by the parties, the investigating officer finds no sufficient cause to warrant further proceedings, the complaint may be dismissed. Otherwise, he shall summon the parties to a preliminary conference to consider the following matters:

1) Whether the parties desire a formal investigation or are willing to submit the case for resolution on the basis of the evidence on record and such other evidences they will present at such conference;

2) Should the parties desire a formal investigation to determine the nature of the charge, stipulation of facts, a definition of the issues, identification and marking of exhibits, limitation of witness and such other matters as would expedite the proceedings;

c) After the preliminary conference, the investigating officer shall issue an order reciting the matters taken up during the conference, including the facts stipulated, the evidence marked and the issues involved. The contents of this order may not be deviated from unless amended to prevent manifest injustice.

d) Should hearing be conducted, the parties shall be notified at least five (5) days before the date thereof. Failure of any or both of the parties to appear at the hearing is not necessarily a cause for the dismissal of the

complaint. A party who appears may be allowed to present his evidence in the absence of the adverse party who was duly notified of the hearing;

e) Only witness who have submitted affidavits served on the adverse party at least five (5) days before the date of his being presented as a witness may be allowed to testify at the hearing. The affidavit of any witness shall constitute his direct testimony, subject to cross-examination, re-direct examination and re-cross-examination;

f) The parties shall be allowed the assistance of counsel and the right to the production of evidence thru the compulsory process of subpoena and subpoena duces tecum."

Petitioner further assails the failure of the Graft Investigating Officer to call the parties to another preliminary conference after their failure to appear at the first one. He contends that the lack of any kind of hearing for evidence presentation resulted in "what may be termed, in the lingo of 'civil procedure,' a 'judgment on the pleading.'"[14] At the onset, it is worth pointing out that petitioner was afforded ample opportunity to present his side at the scheduled preliminary conference. His non-appearance thereat is attributable to no one else but himself and he cannot be allowed to now pass the buck to the Graft Investigating Officer who had complied strictly with the abovequoted procedure in the conduct of administrative investigations. Furthermore, undisputed is the fact that not only did the Office of the Ombudsman give due course and consideration to petitioner's counter-affidavit, but it also entertained and resolved his motion for reconsideration which is not ordinarily allowed in the adjudication of administrative cases where the penalty imposed is suspension of not more than one month. Thus, contrary to petitioner's claim, he was in fact given all opportunity to be heard, albeit through pleadings.

In point is the case of *Concerned Officials of the MWSS vs. Hon. Ombudsman Conrado Vasquez*,[15] where this Court upheld the validity of an order issued by the Ombudsman without prior hearing, in this wise:

"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."[16]

Hence, a formal or trial type hearing is not, at all times, necessary. So long as a party is afforded fair and reasonable opportunity to explain his side, the requirement of due process is complied with.[17]

That the petitioner and all other public officials are deprived of a legal recourse in the event that the Ombudsman or his Deputy "hastily, arbitrarily, if not oppressively and/or inhumanly, acts to find him administratively liable for an imagined violation of Sec. 4 of R.A. 6713 x x x"[18] is belied by the fact that the remedy of filing a petition for certiorari under Rule 65 of the Rules of Court is always available to an aggrieved public official in such a case. The Rules of Court which apply suppletorily to the Rules of Procedure of the Office of the Ombudsman[19] provides that in the absence of an appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved by any decision rendered in excess of jurisdiction or with grave abuse of discretion by a tribunal, board or officer exercising judicial functions, may file a petition for certiorari with this Court.[20]

Petitioner's asseveration that his suspension is not substantiated by evidence is a mere desperate attempt to lure this Court into reviewing the factual findings of the Office of the Ombudsman. Squarely applicable to the findings of fact in the administrative proceedings against petitioner is the settled rule that:

"x x x factual findings of administrative agencies are accorded not only respect but finality, because of the special knowledge and expertise gained by these quasi-judicial tribunals from handling specific matters falling under their jurisdiction. Court cannot take cognizance of such factual issues. In reviewing administrative decisions, the reviewing court cannot re-examine the sufficiency of the evidence x x x."[21]

Nonetheless, even a review of the evidence against the petitioner does not warrant a reversal of the findings of fact of the Office of the Ombudsman.

Finally and as a last ditch effort, petitioner secured a joint-affidavit of desistance dated May 19, 1995 from private respondents in the hope that the Office of the Ombudsman will be persuaded into discontinuing the prosecution of the case against him. The joint-affidavit of desistance was executed by private respondents only after all evidence against petitioner had been documented and evaluated by the Office of the Ombudsman, and in fact, only after it had issued its resolution finding petitioner guilty of the administrative charges against him. The joint-affidavit of desistance is not binding on the Office of the Ombudsman and cannot prevail over the provision of law which categorically allows the Office of the Ombudsman to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper or inefficient.[22] Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, 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.[23] 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.

WHEREFORE, in view of the foregoing reasons, the motion for reconsideration of the Resolution of this Court dated June 27, 1995 is hereby denied.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Hermosisima, Jr., and Panganiban, JJ., concur.

Bellosillo, J., took no part due to relation to one of the parties.

[1] Joint Affidavit-Complaint dated May 26, 1994; Rollo, p. 29.

[2] Counter-Affidavit dated July 13, 1994; Rollo, p. 31.

[3] Ibid., p. 2; Rollo, p. 32.

[4] Ibid, p. 4; Rollo, p. 34

[5] Resolution in OMB-MIN-ADM-94-059 dated April 28, 1995, p. 2; Rollo, p. 38.

[6] "SEC. 4. Norms of Conduct of Public Officials and Employees.

(a) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties.

"xxx xxx xxx

"(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

"(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the Underprivileged. They shall at all times respect the right of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public safety and public interest. xxx.

"xxx xxx xxx

"(e) Responsiveness to the public. - Public officials and employees shall extend prompt, courteous, and adequate service to the public x x x.

"xxx xxx xxx

[7] Resolution in OMB-ADM-94-059, *supra*.

[8] *Ibid*.

[9] Petition dated May 31, 1995, p. 16; Rollo, p. 17.

[10] *Ibid.*, pp. 16-17; Rollo, pp. 17-18.

[11] Villanueva vs. Court of Appeals, 205 SCRA 537, 544; Tiatco vs. Civil Service Commission, 216 SCRA 749; Mendez vs. Civil Service Commission, 204 SCRA 965.

[12] Padilla vs. Sto. Tomas, 243 SCRA 155; Concerned Officials of the MWSS vs. Vasquez, 240 SCRA 502; Shoemart, Inc. vs. NLRC, 225 SCRA 311; Ferrer vs. NLRC, 224 SCRA 410.

[13] SEC. 18, R.A. 6770 (I).

[14] Reply to Comment of Deputy Ombudsman dated July 11, 1995, p. 3; Rollo, p. 103.

[15] *Supra*.

[16] *Ibid.* at p. 518.

[17] Padilla vs. Sto. Tomas. *supra*, p. 161.

[18] Motion for Reconsideration dated July 27, 1995, p. 7; Rollo, p. 122.

[19] Sec. 3, Rule V of Administrative Order No. 7.

[20] Sec. 1, Rule 65 of the Rules of Court.

[21] Villanueva vs. Court of Appeals, *supra.*, pp. 544-545; Tiatco vs. Civil Service Commission, 216 SCRA 749; Sesbreno vs. Ala, 208 SCRA 359.

[22] Sec. 15(1) of R.A. 6770.

[23] Ocampo, IV vs. Ombudsman, 225 SCRA 725; Fernando vs. Sandiganbayan, 212 SCRA 680.

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