

GOVERNOR MANUEL M. LAPID, PETITIONER, VS. HONORABLE COURT OF APPEALS, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, FACT-FINDING INTELLIGENCE BUREAU (FFIB) OF THE O...

G.R. No. 142261. June 28, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us are the Motions for Reconsideration filed by the National Bureau of Investigation and the Department of the Interior and Local Government, represented by the Office of the Solicitor-General, and the Office of the Ombudsman of our 5 April 2000 Resolution.[1] In this resolution, we ordered the immediate reinstatement of petitioner Manuel Lapid to the position of Governor of Pampanga as the respondents failed to establish the existence of a law mandating the immediate execution of a decision of the Office of the Ombudsman in an administrative case where the penalty imposed is suspension for one year.

The factual antecedents are as follows:

On the basis of an unsigned letter dated July 20, 1998, allegedly originating from the "Mga Mamamayan ng Lalawigan ng Pampanga," addressed to the National Bureau of Investigation, the latter initiated an "open probe" on the alleged illegal quarrying in Pampanga & exaction of exorbitant fees purportedly perpetrated by unscrupulous individuals with the connivance of high-ranking government officials. The NBI Report was endorsed to the respondent Ombudsman and was docketed as OMB-1-98-2067.

On Oct. 26, 1998, a complaint was filed charging petitioner Gov. Manuel M. Lapid, Vice-Governor Clayton Olalia, Provincial Administrator Enrico Quiambao, Provincial Treasurer Jovito Sabado, Mabalacat Municipal Mayor Marino Morales and Senior Police Officer 4 Nestor Tadeo with alleged "Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service" for allegedly "having conspired between and among themselves in demanding and collecting from various quarrying operators in Pampanga a control fee, control slip, or monitoring fee of P120.00 per truckload of sand, gravel, or other quarry material, without a duly enacted provincial ordinance authorizing the collection thereof and without issuing receipts for its collection. They were also accused of giving unwarranted benefits to Nestor Tadeo, Rodrigo "Rudy" Fernandez & Conrado Pangilinan who are neither officials/employees of the Provincial Government. of Pampanga nor quarry operators by allowing them to collect the said amount which was over and above the P40.00 prescribed under the present provincial ordinance and in allowing Tadeo, Fernandez and Pangilinan to sell and deliver to various quarry operators booklets of official receipts which were pre-stamped with "SAND FEE P40.00." [2]

The Ombudsman issued an Order dated January 13, 1999 preventively suspending petitioner Lapid, Olalia, Quiambao, Sabado, Morales and Tadeo for a period of six (6) months without pay pursuant to Sec. 24 of RA 6770. On Jan. 19, 1999, the Department of the Interior and Local Government (hereinafter the "DILG") implemented the suspension of petitioner Lapid[3].

On November 22, 1999 the Ombudsman rendered a decision[4] in the administrative case finding the petitioner administratively liable for misconduct thus:

"Wherefore, premises considered, respondent Manuel M. Lapid, Clayton A. Olalia, Jovito S. Sabado and Nestor C. Tadeo are hereby found guilty of misconduct for which they are meted out the penalty of one (1) year suspension without pay pursuant to section 25 (2) of R.A. 6770 (Ombudsman Act of 1989). Respondent Marino P. Morales is hereby exonerated from the same administrative charge for insufficiency of evidence. The complaint against respondent Enrico P. Quiambao, who resigned effective June 30, 1998 was dismissed on March 12, 1999, without prejudice to the outcome of the criminal case."[5]

The copy of the said decision was received by counsel for the petitioner on November 25, 1999 and a motion for reconsideration was filed on November 29, 1999. The Office of the Ombudsman, in an Order[6] dated 12 January 2000, denied the motion for reconsideration.

Petitioner then filed a petition for review with the Court of Appeals on January 18, 2000 praying for the issuance of a temporary restraining order to enjoin the Ombudsman from enforcing the questioned decision. The temporary restraining order was issued by the appellate court on January 19, 2000.[7]

When the 60-day lifetime of the temporary restraining order lapsed on March 19, 2000 without the Court of Appeals resolving the prayer for the issuance of a writ of preliminary injunction, a petition[8] for certiorari, prohibition and mandamus was filed with this Court on March 20, 2000. The petition asked for the issuance of a temporary restraining order to enjoin the respondents from enforcing the assailed decision of the Ombudsman and prayed that "after due proceedings, judgment be rendered reversing and setting aside the questioned decision (of the Ombudsman) dated November 22, 1999 and the order dated January 12, 2000." [9]

On March 22, 2000 the Third Division of this Court issued a Resolution requiring the respondents to comment on the petition. That same day, the Court of Appeals issued a resolution[10] denying the petitioner's prayer for injunctive relief. The following day, or on March 23, 2000, the DILG implemented the assailed decision of the Ombudsman and the highest ranking Provincial Board Member of Pampanga, Edna David, took her oath of office as O.I.C.- Governor of the Province of Pampanga.

On March 24, 2000 a Motion for Leave to File Supplement to the Petition for Certiorari, Prohibition and Mandamus[11] and the Supplement to the Petition[12] itself were filed in view of the resolution of the Court of Appeals denying the petitioner's prayer for preliminary injunction. In addition to the arguments raised in the main petition, the petitioner likewise raised in issue the apparent pre-judgment of the case on the merits by the Court of Appeals in its resolution denying the prayer for preliminary injunction. In so doing, petitioner argued that the respondent court exceeded the bounds of its jurisdiction. Proceeding from the premise that the decision of the Ombudsman had not yet become final, the petitioner argued that the writs of prohibition and mandamus may be issued against the respondent DILG for prematurely implementing the assailed decision. Finally, the petitioner prayed for the setting aside of the resolution issued by the Court of Appeals dated March 22, 2000 and for the issuance of a new one enjoining the respondents from enforcing the said decision or, if it has already been implemented, to withdraw any action already taken until the issue of whether or not the said decision of the Ombudsman is immediately executory has been settled.

The Solicitor-General and the Office of the Ombudsman filed their respective comments[13] to the petition praying for the dismissal thereof. Regarding the issue of the immediate enforcement of the decision of the Ombudsman, the Solicitor-General maintains that the said decision is governed by Section 12, Rule 43 of the Rules of Court and is therefore, immediately executory. For its part, the Office of the Ombudsman maintains that the Ombudsman Law and its implementing rules are silent as to the execution of decisions rendered by the

Ombudsman considering that the portion of the said law cited by petitioner pertains to the finality of the decision but not to its enforcement pending appeal. The Office of the Ombudsman also stated that it has uniformly adopted the provisions in the Local Government Code and Administrative Code that decisions in administrative disciplinary cases are immediately executory.

The Solicitor-General filed an additional comment[14] alleging that the petitioner did not question the executory character of the decision of the Ombudsman and that he is presenting this argument for the first time before the Supreme Court. The appellate court should be given an opportunity to review the case from this standpoint before asking the Supreme Court to review the resolutions of the Court of Appeals. The petitioner filed a consolidated Reply[15] to the Comments of the respondents.

After oral arguments before the Third Division of this Court on 5 April 2000, the Resolution[16] subject of the instant Motions for Reconsideration was issued. The Resolution provides as follows:

"From the pleadings filed by the parties and after oral arguments held on April 5, 2000, the petitioner represented by Atty. Augusto G. Panlilio, the respondent Ombudsman represented by its Chief Legal Counsel, and the National Bureau of Investigation and the Department of the Interior and Local Government represented by the Solicitor General, and after due deliberation, the Court finds that the respondents failed to establish the existence of a law mandating the immediate execution of a decision of the Ombudsman in an administrative case where the penalty imposed is suspension for one year. The immediate implementation of the decision of the Ombudsman against petitioner is thus premature.

WHEREFORE, the respondents are ordered to reinstate effective immediately the petitioner to the position of Governor of the Province of Pampanga. This case is hereby remanded to the Court of Appeals for resolution of the appeal in CA-GR. SP No. 564744 on the merits. Said court is hereby directed to resolve the same with utmost deliberate dispatch.

This is without prejudice to the promulgation of an extended decision."

From this 5 April 2000 Resolution, the Offices of the Solicitor-General and the Ombudsman filed the instant motions for reconsideration.

The sole issue addressed by our 5 April 2000 Resolution is whether or not the decision of the Office of the Ombudsman finding herein petitioner administratively liable for misconduct and imposing upon him a penalty of one (1) year suspension without pay is immediately executory pending appeal.

Petitioner was administratively charged for misconduct under the provisions of R.A. 6770, the Ombudsman Act of 1989. Section 27 of the said Act provides as follows:

"Section 27. Effectivity and Finality of Decisions. - All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on the following grounds:

X X X

Findings of fact of 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 shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45

of the Rules of Court."

The Rules of Procedure of the Office of the Ombudsman[17] likewise contain a similar provision. Section 7, Rule III of the said Rules provides as follows:

"Sec. 7. Finality 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 not 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 R.A. 6770."

It is clear from the above provisions that the punishment imposed upon petitioner, i.e. suspension without pay for one year, is not among those listed as final and unappealable, hence, immediately executory. Section 27 states that all provisional orders of the Office of the Ombudsman are immediately effective and executory; and that any order, directive or decision of the said Office imposing the penalty of censure or reprimand or suspension of not more than one month's salary is final and unappealable. As such the legal maxim "inclusion unius est exclusio alterius" finds application. The express mention of the things included excludes those that are not included. The clear import of these statements taken together is that all other decisions of the Office of the Ombudsman which impose penalties that are not enumerated in the said section 27 are not final, unappealable and immediately executory. An appeal timely filed, such as the one filed in the instant case, will stay the immediate implementation of the decision. This finds support in the Rules of Procedure issued by the Ombudsman itself which states that "(I)n 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 (should now be petition for review under Rule 43) shall have been filed by him as prescribed in Section 27 of R.A. 6770."

The Office of the Solicitor General insists however that the case of *Fabian vs. Desierto*[18] has voided Section 27 of R.A. 6770 and Section 7, Rule III of Administrative Order No. 07. As such, the review of decisions of the Ombudsman in administrative cases is now governed by Rule 43 of the 1997 Rules of Civil Procedure which mandates, under Section 12[19] thereof, the immediately executory character of the decision or order appealed from.

The contention of the Solicitor General is not well-taken. Our ruling in the case of *Fabian vs. Desierto* invalidated Section 27 of Republic Act No. 6770 and Section 7, Rule III of Administrative Order No.07 and any other provision of law implementing the aforesaid Act only insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. The only provision affected by the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the Rules of Court as the proper mode of appeal. All other matters included in said section 27, including the finality or non-finality of decisions, are not affected and still stand.

Neither can respondents find support in Section 12, Rule 43 of the 1997 Rules of Civil Procedure which provides as follows:

"Section 12. Effect of Appeal. The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just."

On this point, respondents contend that considering the silence of the Ombudsman Act on the matter of execution pending appeal, the above-quoted provision of the Rules of Court, which allegedly mandates the immediate execution of all decisions rendered by administrative and quasi-judicial agencies, should apply suppletorily to the provisions of the Ombudsman Act. We do not agree.

A judgment becomes "final and executory" by operation of law.[20] Section 27 of the Ombudsman Act provides that any order, directive or decision of the Office of the Ombudsman imposing a penalty of public censure or reprimand, or suspension of not more than one month's salary shall be final and unappealable. In all other cases, the respondent therein has the right to appeal to the Court of Appeals within ten (10) days from receipt of the written notice of the order, directive or decision. In all these other cases therefore, the judgment imposed therein will become final after the lapse of the reglementary period of appeal if no appeal is perfected[21] or, an appeal therefrom having been taken, the judgment in the appellate tribunal becomes final. It is this final judgment which is then correctly categorized as a "final and executory judgment" in respect to which execution shall issue as a matter of right.[22] In other words, the fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory.

The general rule is that judgments by lower courts or tribunals become executory only after it has become final and executory,[23] execution pending appeal being an exception to this general rule. It is the contention of respondents however that with respect to decisions of quasi-judicial agencies and administrative bodies, the opposite is true. It is argued that the general rule with respect to quasi-judicial and administrative agencies is that the decisions of such bodies are immediately executory even pending appeal.

The contention of respondents is misplaced. There is no general legal principle that mandates that all decisions of quasi-judicial agencies are immediately executory. Decisions rendered by the Securities and Exchange Commission[24] and the Civil Aeronautics Board,[25] for example, are not immediately executory and are stayed when an appeal is filed before the Court of Appeals. On the other hand, the decisions of the Civil Service Commission, under the Administrative Code[26], and the Office of the President under the Local Government Code[27], which respondents cite, are immediately executory even pending appeal because the pertinent laws under which the decisions were rendered mandate them to be so. The provisions of the last two cited laws expressly provide for the execution pending appeal of their final orders or decisions. The Local Government Code, under Section 68 thereof provides as follows:

"Section 68. Execution Pending Appeal. - An appeal shall not prevent a decision from becoming final and executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal."

Similarly, Book V, Title I, Subtitle A, Chapter 6, Section 47, par. (4) of the Administrative Code of 1987 provides:

"(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal."

Where the legislature has seen fit to declare that the decision of the quasi-judicial agency is immediately final and executory pending appeal, the law expressly so provides.

Section 12 of Rule 43 should therefore be interpreted as mandating that the appeal will not stay the award, judgment, final order or resolution unless the law directs otherwise.

Petitioner was charged administratively before the Ombudsman and accordingly the provisions of the Ombudsman Act should apply in his case. Section 68 of the Local Government Code only applies to administrative decisions rendered by the Office of the President or the appropriate Sanggunian against elective local government officials. Similarly, the provision in the Administrative Code of 1987 mandating execution

pending review applies specifically to administrative decisions of the Civil Service Commission involving members of the Civil Service.

There is no basis in law for the proposition that the provisions of the Administrative Code of 1987 and the Local Government Code on execution pending review should be applied suppletorily to the provisions of the Ombudsman Act as there is nothing in the Ombudsman Act which provides for such suppletory application. Courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided or intended by the lawmakers. An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion.[28]

And while in one respect, the Ombudsman Law, the Administrative Code of 1987 and the Local Government Code are in pari materia insofar as the three laws relate or deal with public officers, the similarity ends there. It is a principle in statutory construction that where there are two statutes that apply to a particular case, that which was specially designed for the said case must prevail over the other.[29] In the instant case, the acts attributed to petitioner could have been the subject of administrative disciplinary proceedings before the Office of the President under the Local Government Code or before the Office of the Ombudsman under the Ombudsman Act. Considering however, that petitioner was charged under the Ombudsman Act, it is this law alone which should govern his case.

Respondents, through the Office of the Solicitor General, argue that the ruling against execution pending review of the Ombudsman's decision grants a one-sided protection to the offender found guilty of misconduct in office and nothing at all to the government as the aggrieved party. The offender, according to respondents, can just let the case drag on until the expiration of his office or his reelection as by then, the case against him shall become academic and his offense, obliterated. As such, respondents conclude, the government is left without further remedy and is left helpless in its own fight against graft and corruption.

We find this argument much too speculative to warrant serious consideration. If it perceived that the fight against graft and corruption is hampered by the inadequacy of the provisions of the Ombudsman Act, the remedy lies not with this Court but by legislative amendment.

As regards the contention of the Office of the Ombudsman that under Sec. 13(8), Article XI of the 1987 Constitution, the Office of the Ombudsman is empowered to "(p)romulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law," suffice it to note that the Ombudsman rules of procedure, Administrative Order No. 07, mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary or fine equivalent to one month salary are still appealable and hence, not final and executory. Under these rules, which were admittedly promulgated by virtue of the rule-making power of the Office of the Ombudsman, the decision imposing a penalty of one year suspension without pay on petitioner Lapid is not immediately executory.

WHEREFORE, the Motions for Reconsideration filed by the Office of the Solicitor General and the Office of the Ombudsman are hereby DENIED for lack of merit.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Rollo, pp. 354-355.

- [2] Rollo, pp. 11-12.
- [3] Rollo, p. 12.
- [4] Rollo, pp. 53-73.
- [5] Rollo, p. 71.
- [6] Rollo, pp. 75-82.
- [7] Rollo, p. 18.
- [8] Rollo, pp. 5-35.
- [9] Rollo, p. 32.
- [10] Rollo, pp. 121-131.
- [11] Rollo, pp. 117-120.
- [12] Rollo, pp. 94-116.
- [13] Rollo, pp. 138-184 and pp. 265-287, respectively.
- [14] Rollo, pp. 288-314.
- [15] Rollo, pp. 319-340.
- [16] Rollo, pp. 354-355.
- [17] Administrative Order No. 07 dated 10 April 1990.

[18] 295 SCRA 470.

- [19]
- [20] City of Manila vs. Court of Appeals, 204 SCRA 362.
- [21] Ibid.
- [22] Investments, Inc. vs. Court of Appeals, 147 SCRA 1072.
- [23] Eudela vs. Court of Appeals, July 17, 1992.
- [24] Under P.D. 902-A, as amended, there is no provision which states the immediate execution of decisions rendered by the Securities and Exchange Commission. Section 6 thereof only provides as follows:

"XXX

The aggrieved party may appeal the order, decision, or ruling of the Commission sitting en banc to the Supreme Court by petition for review in accordance with the pertinent provisions of the Rules of Court."

- [25] "Republic Act No. 776. Section 48. Decisions, orders and/or rulings of the Board shall become final and conclusive after fifteen days from the date thereof unless appealed within said period to the Supreme Court by certiorari."
- [26] Executive Order No. 292.

[27] Republic Act No. 7160.

[28] Morales vs. Subido, 26 SCRA 150.

[29] Wil Wilhelmsen, Inc., et al vs. Baluyut, 83 SCRA 38.

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