

**ROSARIO N. LOPEZ, IN HER CAPACITY AS CHAIRMAN OF THE
PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), RICARDO G.
GOLPEO, IN HIS CAPACITY AS PCSO GENERAL MANAGER, MARIA
PAZ A. MAGSA...**

G.R. No. 144573. September 24, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Are decisions of the Ombudsman imposing the penalty of six (6) months and one (1) day suspension without pay immediately executory pending appeal?

Before us is a petition for certiorari under Rule 65 of the Rules of Court assailing the May 18, 2000 resolution[1] of the Court of Appeals[2] in CA-G.R. SP No. 57588, which granted respondent's prayer for the issuance of a Writ of Preliminary Mandatory Injunction enjoining the implementation of respondent's suspension pending appeal.

The antecedent facts are as follows: Private respondent Atty. Romeo A. Liggayu, Manager of the Legal Department and Resident Ombudsman of the Philippine Charity Sweepstakes Office (PCSO), was administratively charged before the Office of the Ombudsman with: 1) Violation of Republic Act No. 6770 (Ombudsman Act of 1989), for issuing a subpoena without authority purportedly in relation to OMB-0-99-0571 entitled, "FACT-FINDING AND INTELLIGENCE BUREAU versus MANUEL MORATO, et al."; and 2) complicity in the anomalous contracts entered into by PCSO and Golden Lion Films for the production of 1,092 episodes of "Ang Pangarap Kong Jackpot," subject matter of OMB-0-99-0571 and 0572 entitled, "FFIB vs. MANUEL MORATO, et al." and OMB-ADM-0-99-0254 entitled, "FFIB vs. ISRAEL G. ESTRELLA, et al."[3]

On January 6, 2000, the Office of the Ombudsman dismissed the charge against private respondent in connection with the said anomalous contracts of the PCSO but found him guilty of Conduct Prejudicial To The Best Interest Of The Service for issuing a subpoena in relation to OMB-0-99-0571 entitled, "FACT-FINDING AND INTELLIGENCE BUREAU versus MANUEL MORATO, et al.," in excess of his authority as Resident Ombudsman of PCSO. Thus, the Office of the Ombudsman imposed upon him the penalty of one (1) year suspension without pay.[4] Later, the penalty was modified to six (6) months and one (1) day suspension without pay.[5]

Private respondent's motion for reconsideration was denied.[6] On March 6, 2000, a petition for review was filed by the private respondent before the Court of Appeals via Rule 43 of the Rules of Court and prayed for the issuance of a temporary restraining order/and or writ of preliminary injunction to restrain the execution of the decision of the Office of the Ombudsman.

Meanwhile, on March 8, 2000, petitioners implemented the suspension of private respondent in compliance with the directive of the Office of the Ombudsman.

On March 16, 2000, the Court of Appeals issued a Temporary Restraining Order enjoining the Office of the Ombudsman from implementing the suspension order against private respondent.[7]

On March 20, 2000, private respondent filed an amended petition impleading the herein petitioners.[8] On motion of the Office of the Solicitor General, the Court of Appeals dropped the names of the impleaded members of the Office of the Ombudsman pursuant to Section 6, Rule 43 of the 1997 Rules of Civil Procedure.[9]

On May 18, 2000, a resolution was issued granting private respondent's prayer for the issuance of a Writ of Preliminary Mandatory Injunction against the execution of private respondent's suspension. In the same resolution, petitioners were asked to explain why they should not be cited in contempt of court for failing to comply with the Temporary Restraining Order dated March 16, 2000. The dispositive portion thereof reads:

WHEREFORE, premises considered, the "Urgent Motion for the Issuance of Writ of Preliminary Mandatory Injunction" is hereby granted. Let a writ of preliminary mandatory injunction be issued enjoining respondents from implementing immediately the assailed decision of the Ombudsman to suspend petitioner for six (6) months and one (1) day without pay pending final determination of the petition for review by petitioner before this Court.

It appearing that respondents failed to implement the resolution of the Court dated March 16, 2000 ordering the issuance of a temporary restraining order restraining respondents from enforcing the assailed decision dated January 6, 2000 and order dated February 4, 2000 of the Office of the Ombudsman, they are hereby ordered to explain within ten (10) days from notice why they should not be cited for indirect contempt of court.

SO ORDERED.[10]

On May 31, 2000, petitioners, by way of Explanation,[11] manifested to the Court of Appeals that they could not have complied with or implemented the TRO dated March 16, 2000 since they were not yet parties to the case at the time of its issuance. Even assuming that the order was applicable to them, the same was rendered moot and academic by petitioner's suspension on March 8, 2000.

On June 27, 2000, petitioners' motion for reconsideration was denied.[12] On the same date, the Court of Appeals ordered petitioners, under pain of contempt, to reinstate private respondent to his former position pending resolution of his appeal.[13] Hence, on July 7, 2000, private respondent was reinstated as Manager of the Legal Department and Resident Ombudsman of PCSO.[14]

In the present recourse, petitioners contend that the Court of Appeals gravely abused its discretion in enjoining the execution of petitioner's suspension pending appeal.

The petition is without merit.

Section 27 of Republic Act No. 6770[15] provides:

Section 27. Effectivity and Finality of Decisions. – (1) All provisionary 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.

x x x x x x x x.

Rule III, Section 7 of the Rules of Procedure of the Office of the Ombudsman,[16] states:

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.

Construing the above-quoted provisions, the Court held in *Lapid v. Court of Appeals*[17] that only orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision. It is only then that execution shall perforce issue as a matter of right. 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. As explained by the Court—

x x x Section 27 states that all provisionary 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, or a fine not equivalent to one month salary], is final and unappealable. As such the legal maxim “[expressio] 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.”[18]

Petitioners’ claim that the applicable provision is Rule 43, Section 12 of the 1997 Rule of Civil Procedure, which provides that “[t]he 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,” lacks merit. While it is true that in *Fabian v. Desierto*,[19] the Court declared unconstitutional Section 27 of Republic Act No. 6770, and all other provisions of law implementing the same, the declaration should be interpreted to mean that the said provisions are void only insofar as they provide that administrative appeals from the Office of the Ombudsman shall be taken to the Supreme Court. Under the 1997 Rules of Civil Procedure, the proper forum for administrative appeals from the Office of the Ombudsman is the Court of Appeals. The provisions of Section 27 of Republic Act No. 6770 and the Rules of Procedure of the Office of the Ombudsman with respect to the finality

and execution of decisions are not affected by the ruling in *Fabian v. Desierto*, and therefore still stand. It is a fundamental principle in statutory construction that a statute may be constitutional in one part and unconstitutional in another and that if the invalid part is severable from the rest, the portion which is unconstitutional may stand while that which is constitutional is stricken out and rejected. Whenever a statute contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of the court to so declare and to maintain the act insofar as it is valid. The separability clause found in Section 40 of Republic Act No. 6770 creates the presumption that the legislature intended separability, rather than complete nullity of the statute.[20]

Likewise, the Court finds unavailing the claim of petitioners that the stay of execution pending appeal from the order, directive or decision of the Office of the Ombudsman violates the equal protection clause for being unfair to government employees charged under the Civil Service Law, where the decisions in disciplinary cases are immediately executory. The legislature has seen fit to grant a stay of execution pending appeal from disciplinary cases where the penalty imposed by the Office of the Ombudsman is not public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary. 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 notwithstanding that later wisdom may recommend the inclusion.[21]

All told, the Court of Appeals committed no grave abuse of discretion in issuing the Writ of Preliminary Mandatory Injunction enjoining the execution of private respondent's suspension pending appeal. The penalty imposed on private respondent for Conduct Prejudicial To The Best Interest of The Service was six (6) months and one (1) day suspension without pay. Considering that private respondent appealed from the decision of the Office of the Ombudsman, the stay of execution of the penalty of suspension should therefore issue as a matter of right.

Finally, the Court of Appeals did not abuse its discretion in directing petitioners to explain within ten (10) days from notice why they should not be cited for indirect contempt of court for failing to implement the resolution dated March 16, 2000 restraining the execution pending appeal of the January 6, 2000 decision and February 4, 2000 order of the Office of the Ombudsman. It is within the inherent powers of the Court of Appeals to ensure compliance with its lawful orders.

WHEREFORE, in view of all the foregoing, the instant petition is DISMISSED, and the May 18, 2000 resolution of the Court of Appeals in CA-G.R. SP NO. 57588 is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Annex "A", Rollo, p. 31.

[2] Eleventh Division, composed of Associate Justices Rodrigo V. Cosico (ponente); Remedios Salazar-Fernando (member); and Godardo A. Jacinto (chairman).

[3] Rollo, pp. 93-94.

[4] *Ibid.*, p. 102.

[5] *Id.*, p. 103.

[6] Id., p. 132.

[7] Records, p. 63.

[8] Ibid., p. 67.

[9] Id., p. 255.

[10] Rollo, p. 33.

[11] Ibid., p. 36.

[12] Id., p. 34.

[13] Records, p. 312.

[14] Ibid., p. 357.

[15] Ombudsman Act of 1989.

[16] Administrative Order No. 07 dated April 10, 1990.

[17] 334 SCRA 738 [2000] .

[18] Ibid., at 749-750.

[19] 295 SCRA 470, 491 [1998] .

[20] Alcantara, Statutes, 1993 edition, pp. 207-208, citing *Barameda v. Moir*, 25 Phil. 44 [1913] ; *Government of the Philippine Island v. Springer*, 50 Phil. 259 [1927] ; *Lidasan v. Commission on Elections*, 21 SCRA 496 [1967] .

[21] *Lapid v. Court of Appeals*, *supra*, citing *Morales v. Subido*, 26 SCRA 150 [1968] .

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