

IGNACIA BALICAS, PETITIONER, VS. FACT-FINDING & INTELLIGENCE BUREAU (FFIB), OFFICE OF THE OMBUDSMAN, RESPONDENT.

G.R. No. 145972. March 23, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the Court of Appeals' decision[1] dated August 25, 2000 and resolution[2] of November 13, 2000 in CA-G.R. SP No. 56386, which affirmed the Ombudsman's decision[3] dismissing petitioner from government service for gross neglect of duty in connection with the tragedy at the Cherry Hills Subdivision in Antipolo City on August 3, 1999.

The antecedent facts as summarized in the Ombudsman's decision are as follows:

Based on the evidence adduced by the complainant, the following is the chronological series of events which led to the development of the CHS (Cherry Hills Subdivision):

August 28, 1990 — Philjas Corporation, whose primary purposes, among others are: to own, develop, subdivide, market and provide low-cost housing for the poor, was registered with the Securities and Exchange Commission (SEC).

February 19, 1991 — then City Mayor Daniel S. Garcia, endorsed to the Housing and Land Use Regulatory Board (HLURB) the proposed CHS.

Thereafter, or on 07 March 1991, based on the favorable recommendations of Mayor Garcia, respondent TAN, issued the Preliminary Approval and Locational Clearance (PALC) for the development of CHS.

On July 5, 1991, then HLURB Commissioner respondent TUNGPALAN issued Development Permit No. 91-0216 for "land development only" for the entire land area of 12.1034 hectares covered by TCT No. 35083 (now TCT 208837) and with 1,003 saleable lots/units with project classification B.P. 220 Model A-Socialized Housing (p. 96, Records), with several conditions for its development.

Three (3) days thereafter or on July 8, 1991, respondent JASARENO, allowed/granted the leveling/earth-moving operations of the development project of the area subject to certain conditions.

On November 18, 1991, then HLURB Commissioner AMADO B. DELORIA issued Certificate of Registration No. 91-11-0576 in favor of CHS, with License to Sell No. 91-11-0592 for the 1,007 lots/units in the subdivision.

Eventually, on December 10, 1991, respondent POLLISCO issued Small Scale Mining Permit (SSMP) No. IV-316 to Philjas to extract and remove 10,000 cu. meters of filling materials from the area where the CHS is located.

Thereafter, or on January 12, 1994, Philjas applied for a Small Scale Mining Permit (SSMP) under P.D. 1899 with the Rizal Provincial Government to extract and remove 50,000 metric tons of filling materials per annum

on CHS' 2.8 hectares.

Thus, on January 17, 1994, respondent MAGNO, informed ELIEZER I. RODRIGUEZ of Philjas that CHS is within the EIS System and as such must secure ECC from the DENR. Philjas was accordingly informed of the matter such that it applied for the issuance of ECC from the DENR-Region IV, on February 3, 1994.

On March 12, 1994, an Inspection Report allegedly prepared by respondent BALICAS, attested by respondent RUTAUQUIO and approved by respondent TOLENTINO re: field evaluation to the issuance of ECC, was submitted.

Consequently, on April 28, 1994, upon recommendations of respondent TOLENTINO, Philjas' application for ECC was approved by respondent PRINCIPE, then Regional Executive Director, DENR under ECC-137-R1-212-94.

A Mining Field Report for SSMP dated May 10, 1994 was submitted pursuant to the inspection report prepared by respondents CAYETANO, FELICIANO, HILADO and BURGOS, based on their inspection conducted on April 25 to 29, 1994. The report recommended, among others, that the proposed extraction of materials would pose no adverse effect to the environment.

Records further disclosed that on August 10, 1994, respondent BALICAS monitored the implementation of the CHS Project Development to check compliance with the terms and conditions in the ECC. Again, on August 23, 1995, she conducted another monitoring on the project for the same purpose. In both instances, she noted that the project was still in the construction stage hence, compliance with the stipulated conditions could not be fully assessed, and therefore, a follow-up monitoring is proper. It appeared from the records that this August 23, 1995 monitoring inspection was the last one conducted by the DENR.

On September 24, 1994, GOV. CASIMIRO I. YNARES, JR., approved the SSMP applied for by Philjas under SSMP No. RZL-012, allowing Philjas to extract and remove 50,000 metric tons of filling materials from the area for a period of two (2) years from date of its issue until September 6, 1996.[4]

Immediately after the tragic incident on August 3, 1999, a fact-finding investigation was conducted by the Office of the Ombudsman through its Fact-Finding and Intelligence Bureau (FFIB), which duly filed an administrative complaint with the Office of the Ombudsman against several officials of the Housing and Land Use Regulatory Board (HLURB), Department of Environment and Natural Resources (DENR), and the local government of Antipolo.

The charge against petitioner involved a supposed failure on her part to monitor and inspect the development of Cherry Hills Subdivision, which was assumed to be her duty as DENR senior environmental management specialist assigned in the province of Rizal.

For her part, petitioner belied allegations that monitoring was not conducted, claiming that she monitored the development of Cherry Hills Subdivision as evidenced by three (3) monitoring reports dated March 12, 1994, August 10, 1994 and August 23, 1995. She averred that she also conducted subsequent compliance monitoring of the terms and conditions of Philjas' Environmental Compliance Certificate (ECC) on May 19, 1997 and noted no violation thereon. She further claimed good faith and exercise of due diligence, insisting that the tragedy was a fortuitous event. She reasoned that the collapse did not occur in Cherry Hills, but in the adjacent mountain eastern side of the subdivision.

On November 15, 1999, the Office of the Ombudsman rendered a decision imposing upon petitioner the supreme penalty of dismissal from office for gross neglect of duty finding:

RESPONDENT BALICAS

Records show that she monitored and inspected the CHS [Cherry Hills Subdivision] only thrice (3), to wit:

- Inspection Report dated 12 March 1994
- Monitoring Report dated 10 August 1994
- Monitoring Report dated 23 August 1995

Verily, with this scant frequency, how can respondent Balicas sweepingly claim that there was no violation of ECC compliance and that she had done what is necessary in accordance with the regular performance of her duties. She herself recognized the fact that the “collapsed area is not the subdivision in question but the adjacent mountain eastern side of the CHS.” It is incumbent upon her to establish the same in her monitoring and inspection reports and make objective recommendations re: its possible adverse effect to the environment and to the residents of the CHS and nearby areas. Her defense that the position of the CHS shows the impossibility of checking the would-be adverse effect clearly established her incompetence. No expert mind is needed to know that mountains cause landslide and erosion. Cherry Hills Subdivision is a living witness to this.[5]

Petitioner seasonably filed a petition for review of the Ombudsman’s decision with the Court of Appeals. In its decision dated August 25, 2000, the Court of Appeals dismissed the petition for lack of merit and affirmed the appealed decision. It found that the landslide was a preventable occurrence and that petitioner was guilty of gross negligence in failing to closely monitor Philjas’ compliance with the conditions of the ECC given the known inherent instability of the ground where the subdivision was developed. The appellate court likewise denied petitioner’s motion for reconsideration in its resolution dated November 13, 2000.

Petitioner now comes to this Court for review on certiorari, under Rule 45 of the Rules of Civil Procedure, of the appellate court’s decision. She alleges that the Court of Appeals committed serious errors of law in affirming the Ombudsman’s conclusion that:

- There was gross negligence on the part of petitioner Balicas in the performance of her official duties as Senior Environmental Management Specialist (SEMS) of the Provincial Environment and Natural Resources Office (PENRO) Province of Rizal, DENR Region IV; and the alleged gross neglect of duty of petitioner warranted the imposition of the extreme penalty of dismissal from the service.
- The landslide which caused the death of several residents of the subdivision and the destruction of property is not a fortuitous event and therefore preventable.[6]

The main issues are whether or not the Court of Appeals committed serious errors of law in: (1) holding petitioner guilty of gross neglect of duty and (2) imposing upon her the extreme penalty of dismissal from office.

In order to ascertain if there had been gross neglect of duty, we have to look at the lawfully prescribed duties of petitioner. Unfortunately, DENR regulations are silent on the specific duties of a senior environmental management specialist. Internal regulations merely speak of the functions of the Provincial Environment and Natural Resources Office (PENRO) to which petitioner directly reports.

Nonetheless, petitioner relies on a letter[7] dated December 13, 1999 from the chief of personnel, DENR Region

IV, which defines the duties of a senior environmental management specialist as follows:

- Conducts investigation of pollution sources or complaints;
- Review[s] plans and specifications of proposes (sic) or existing treatment plants and pollution abatement structures and devices to determine their efficiency and suitability for the kind of pollutants to be removed and to recommend issuance or denial of permits;
- Conducts follow-up inspection of construction of pollution abatement/work and structures to oversee compliance with approved plans and specifications;
- Recommends remedial measures for the prevention, abatement and control of pollution;
- Prepares technical reports on pollution investigation and related activities; and
- Performs related work as assigned.

It is readily apparent that no monitoring duty whatsoever is mentioned in the said letter. The PENRO, on the other hand, is mandated to:

- conduct surveillance and inspection of pollution sources and control facilities and undertake/initiate measures relative to pollution-related complaints of the general public for appropriate referral to the regional office;
- comment on the project description, determine if the project fall within the Environmental Impact Statement (EIS) System[8] and submit the same to the regional office; and
- implement programs and projects related to environmental management within the PENRO.[9]

In addition, the PENRO is likewise tasked to monitor the project proponent's compliance with the conditions stipulated in the ECC, with support from the DENR regional office and the Environmental Management Bureau.[10] The primary purpose of compliance monitoring is to ensure the judicious implementation of sound and standard environmental quality during the development stage of a particular project. Specifically, it aims to:

- monitor project compliance with the conditions set in the ECC;
- monitor compliance with the Environmental Management Plan (EMP) and applicable laws, rules and regulations; and
- provide a basis for timely decision-making and effective planning and management of environmental measures through the monitoring of actual project impacts vis-à-vis predicted impacts in the EIS.[11]

Based on the foregoing, the monitoring duties of the PENRO mainly deal with broad environmental concerns, particularly pollution abatement. This general monitoring duty is applicable to all types of physical developments

that may adversely impact on the environment, whether housing projects, industrial sites, recreational facilities, or scientific undertakings.

However, a more specific monitoring duty is imposed on the HLURB as the sole regulatory body for housing and land development. It is mandated to encourage greater private sector participation in low-cost housing through (1) liberalization of development standards, (2) simplification of regulations and (3) decentralization of approvals for permits and licenses.[12]

P.D. No. 1586[13] prescribes the following duties on the HLURB (then Ministry of Human Settlements) in connection with environmentally critical projects requiring an ECC:

SECTION 4. Presidential Proclamation of Environmentally Critical Areas and Projects. — The President of the Philippines may, on his own initiative or upon recommendation of the National Environment Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements [now HLURB] shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamitous factors such as earthquake, floods, water erosion and others; and (d) perform such other functions as may be directed by the President from time to time. (Emphasis ours.)

The legal duty to monitor housing projects, like the Cherry Hills Subdivision, against calamities such as landslides due to continuous rain, is clearly placed on the HLURB, not on the petitioner as PENRO senior environmental management specialist. In fact, the law imposes no clear and direct duty on petitioner to perform such narrowly defined monitoring function.

In the related case of *Principe v. Fact-Finding and Intelligence Bureau*,[14] this Court found Antonio Principe, regional executive director for DENR Region IV who approved Philjas' application for ECC, not liable for gross neglect of duty. The Court reversed the decision of the Court of Appeals and thereby annulled the decision of the Ombudsman in OMB-ADM-09-661, dated December 1, 1999, dismissing Principe from the government service. We ordered his reinstatement with back pay and without loss of seniority.[15]

The rationale for our decision in *Principe* bears reiteration: the responsibility of monitoring housing and land development projects is not lodged with the DENR, but with the HLURB as the sole regulatory body for housing and land development. Thus, we must stress that we find no legal basis to hold petitioner, who is an officer of DENR, liable for gross neglect of the duty pertaining to another agency, the HLURB. It was grave error for the appellate court to sustain the Ombudsman's ruling that she should be dismissed from the service. The reinstatement of petitioner is clearly called for.

WHEREFORE, the petition is hereby GRANTED. The Court of Appeals' decision affirming the Ombudsman's dismissal of petitioner IGNACIA BALICAS from office is REVERSED and SET ASIDE, and petitioner's REINSTATEMENT to her position with back pay and without loss of seniority rights is hereby ordered.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 30-38. Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Buenaventura J. Guerrero and Mercedes Gozo-Dadole concurring.

[2] Id. at 39.

[3] CA Rollo, pp. 26-79.

[4] Rollo, pp. 30-32.

[5] CA Rollo, pp. 70-71.

[6] Rollo, p. 16.

[7] CA Rollo, p. 416.

[8] Presidential Decree No. 1586 defines the EIS system as:

SECTION 2. Environmental Impact Statement System. — There is hereby established an Environmental Impact Statement System founded and based on the environmental impact statement required, under Section 4 of Presidential Decree No. 1151, of all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities, for every proposed project and undertaking which significantly affect the quality of the environment.

[9] Revised Regulations on the Delineation of Functions and Delegation of Authorities Pursuant to Executive Order No. 192. DENR Administrative Order No. 38-90.

[10] DENR Administrative Order No. 96-37.

[11] Procedural Manual for DENR Administrative Order No. 96-37.

[12] Executive Order No. 90, dated December 17, 1986.

[13] Otherwise known as the Environmental Impact Statement System law, which took effect on June 11, 1978.

[14] G.R. No. 145973, 23 January 2002, 374 SCRA 460.

[15] Id. at 470.

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