

ANTONIO G. PRINCIPE, PETITIONER, VS. FACT-FINDING & INTELLIGENCE, BUREAU (FFIB), OFFICE OF THE OMBUDSMAN, RESPONDENTS.

G.R. No. 145973. January 23, 2002

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is a petition for review on certiorari seeking to reverse the decision of the Court of Appeals[1] affirming the Ombudsman's dismissal of petitioner from the government service for gross neglect of duty in connection with the collapse of the housing project at the Cherry Hills Subdivision, Antipolo City, on August 3, 1999.

The Facts

The facts, as found by the Court of Appeals, are as follows:

"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 recommendation 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 RUTAQUIO and approved by respondent TOLENTINO re: field evaluation to the issuance of ECC, was submitted.

"Consequently, on April 28, 1994, upon recommendation of respondent TOLENTINO, Philjas application for ECC was approved by respondent PRINCIPE, then Regional Executive Director, DENR under ECC-137-RI-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 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."[2]

On November 15, 1999, the Ombudsman rendered a decision finding petitioner Principe administratively liable for gross neglect of duty and imposing upon him the penalty of dismissal from office. The dispositive portion of the decision reads:

"WHEREFORE, premises considered xxx

xxx

x x x the following respondents are hereby found GUILTY as charged and meted the respective penalties provided under Section 22, Rule XIV of the Omnibus Rules, Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987, viz,:

1. xxx

5. Antonio G. Principe - Penalty of Dismissal from the Service for Gross Neglect of Duty.

xxx

SO ORDERED."[3]

On January 4, 2000, petitioner filed with the Court of Appeals a petition for review assailing the decision of the Ombudsman.[4]

On August 25, 2000, the Court of Appeals promulgated a decision denying the petition and affirming the decision of the Ombudsman.[5]

Hence, this appeal.[6]

The Issue

The issue raised is whether the Ombudsman may dismiss petitioner from the service on an administrative charge for gross neglect of duty, initiated, investigated and decided by the Ombudsman himself without substantial evidence to support his finding of gross neglect of duty because the duty to monitor and inspect the project was not vested in petitioner.

The Court's Ruling

Republic Act No. 6770, Section 15, prescribed the powers of the Ombudsman, as follows:

“Section 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:

“(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

“(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

“(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21[7] of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

“(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

“(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

“(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: Provided, further, that any publicity issued by the Ombudsman shall be balance, fair and true;

“(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

“(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

“(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

“(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

“(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.”[8]

The Ombudsman without taking into consideration the lawfully mandated duties and functions attached to petitioner’s position, immediately concluded that as the signing and approving authority of the ECC issued to PHILJAS, it was incumbent upon petitioner to conduct actual monitoring and enforce strict compliance with the terms and conditions of the ECC.

The applicable administrative orders provide that the function of monitoring environmental programs, projects and activities in the region is lodged with the Regional Technical Director, not with the Regional Executive Director, the position occupied by petitioner. Under DAO 38-1990, the following were the functions attached to the office of petitioner, to wit:

“I. REGULATORY MATTERS

“D. REGIONAL EXECUTIVE DIRECTOR

“1. Forest Management

“2. Land Management

“3. Mines and Geo-Sciences Development

“4. Environmental Management

“4.1 Issues authority to construct and permit to operate pollution control equipment/devices including the collection of corresponding fees/charges.

“4.2 Issues accreditation of pollution control office of industrial firms and local government entities.

“4.3 Hears/gathers evidences or facts on pollution cases as delegated by the Pollution Adjudication Board.

“4.4. Approves plans and issues permit for mine tailings disposal, including environmental rehabilitation plans.”[9]

Clearly, there is no mention of the responsibility of a regional executive director to monitor projects. More apropos is the description of the functions of a regional technical director, to wit:

“E. REGIONAL TECHNICAL DIRECTOR

“1. Forest Management

“2. Land Management

“3. Mines and Geo-Sciences Development

“4. Environmental Management

“4.1 Issues clearance certificate to vehicles which have passed the smoke-belching test.

“4.2 Issues pollution clearance and temporary permit to operate pollution control devices including the collection of corresponding fees/charges.

“4.3 Conducts monitoring and investigation of pollution sources and control facilities.

“4.4 Supervises, coordinates and monitors the implementation of environmental programs, projects and activities in the region.”[10] [emphasis supplied]

Furthermore, monitoring is defined in DAO No. 21, Series of 1992, as the activity designed to gauge the level of compliance with the conditions stipulated in the ECC,[11] and in the EIS[12] or PD[13] submitted.[14] This is the function of the PENR and CENR offices as mandated in DAO No. 37, Series of 1996.[15] Particularly, it

provided that:

“Section 10. Compliance Monitoring

“x x x

“b. Monitoring of compliance with the proponent’s ECC issued pursuant to an IEE,[16] and applicable laws, rules and regulations, shall be undertaken by the concerned PENRO and CENRO with support from the Regional Office and/or EMB whenever necessary.”

Hence, how could petitioner be guilty of neglecting a duty, which is not even his to begin with? Administrative liability could not be based on the fact that petitioner was the person who signed and approved the ECC, without proof of actual act or omission constituting neglect of duty.

In the absence of substantial evidence of gross neglect of petitioner, administrative liability could not be based on the principle of command responsibility.[17] The negligence of petitioner’s subordinates is not tantamount to his own negligence.

It was not within the mandated responsibilities of petitioner to conduct actual monitoring of projects. The principles governing public officers under the Revised Administrative Code of 1987 clearly provide that a head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.[18]

The investigation conducted by the Ombudsman refers to the tragic incident in Cherry Hills Subdivision, Antipolo Rizal, where several families lost lives and homes. Despite the fact that what was involved was a housing and land development project, petitioner, as the Regional Executive Director for Region IV, Department of Environment and Natural Resources, was found negligent because he was the one who signed and approved the ECC.

As heretofore stated, the responsibility of monitoring housing and land development projects is not lodged with the office of petitioner. The Administrative Code of 1987 spelled out the mandate of the Department of Environment and Natural Resources, the agency that has authority over petitioner, which reads:

“Section 1. Declaration of Policy.- (1) The State shall ensure for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as future generations.

“(2) The State shall likewise recognize and apply a true value system that takes into account social and environmental cost implications relative to the utilization, development and conservation of our natural resources.

“Section 2. Mandate.- (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy.

“(2) It shall, subject to law and higher authority, be in charge of carrying out the State’s constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country’s natural resources.”[19]

However, pursuant to Executive Order No. 90,[20] the Human Settlements Regulatory Commission, which became the Housing and Land Use Regulatory Board (HLURB), is the sole regulatory body for housing and land development.[21]

The Fallo

WHEREFORE, the Court REVERSES the decision of the Court of Appeals.[22] In lieu thereof, the Court annuls the decision of the Ombudsman in OMB-ADM-09-661, dated December 1, 1999, dismissing the petitioner from the government service, and orders his reinstatement with back pay and without loss of seniority.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] In CA-G. R. SP No. 56386, promulgated on August 25, 2000, Aquino, J., ponente, Guerrero, and Gozo-Dadole, JJ., concurring (Petition, Annex “A”, Rollo, pp. 37-45).

[2] Petition, Annex “A”, Rollo, pp. 37-45, at pp. 37-42.

[3] Comment filed by the Solicitor General, Rollo, pp. 80-103, at p. 89.

[4] Docketed as CA-G.R. SP No. 56386, CA Rollo, pp. 6-25.

[5] Petition, Annex “A”, Rollo, pp. 37-45.

[6] Filed on January 5, 2001, Petition, Rollo, pp. 9-35. We now give due course to the petition.

[7] Republic Act No. 6770, Section 21. Officials Subject To Disciplinary authority; Exceptions. - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. [emphasis supplied]

[8] Republic Act No. 6770, the Ombudsman Act of 1989.

[9] Petitioner’s Memorandum, Rollo, pp. 110-153, at pp. 123-124.

[10] Ibid., p. 124.

[11] Environmental Compliance Certificate.

[12] Environmental Impact Statement.

[13] Project Description.

[14] Sec. 3 (1.3.1.i), Article I, DAO No. 21, Series of 1992.

[15] Sec. 10(b), Article IV, DAO No. 37, Series of 1996.

[16] Initial Environmental Examination.

[17] Quisumbing v. Lachica, 112 Phil. 110, 114 [1961].

[18] Book I, Chapter 9, Section 38(3), Executive Order No. 292.

[19] Sections 1 and 2, Chapter 1, Book IV, Title XIV, Executive Order No. 292.

[20] Identifying the Government Agencies Essential for the National Shelter Program and Defining their Mandates, Creating the Housing and Urban Development Coordinating Council, Rationalizing Funding Sources and Lending Mechanisms for Home Mortgages and for other Purposes.

[21] Title 1, Section 1 (c) Human Settlements Regulatory Commission - The Human Settlements Regulatory Commission, renamed as the Housing and Land Use Regulatory Board, shall be the sole regulatory body for housing and land development. It is charged with encouraging greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations and decentralization of approvals for permits and license. Executive Order No. 90.

[22] In CA-G.R. SP No. 56386.

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