

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. HONORABLE COURT OF APPEALS AND FORMER DEPUTY OMBUDSMAN FOR THE VISAYAS ARTURO C. MOJICA, RESPONDENTS.

G.R. NO. 146486. March 04, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a “petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, and alternatively, an original special civil action for certiorari under Sec. 1, Rule 65” of the Decision[1] of the Court of Appeals of 18 December 2000 in CA-G.R. SP No. 58460 entitled, Arturo C. Mojica, Deputy Ombudsman for the Visayas v. Ombudsman Aniano Desierto, Over-all Deputy Ombudsman Margarito Gervacio, Jr. and the Committee of Peers composed of Deputy Ombudsman Jesus F. Guerrero, Deputy Ombudsman Rolando Casimiro and Special Prosecutor Leonardo P. Tamayo.

The case had its inception on 29 December 1999, when twenty-two officials and employees of the Office of the Deputy Ombudsman (OMB) for the Visayas, led by its two directors, filed a formal complaint[2] with the Office of the Ombudsman requesting an investigation on the basis of allegations that then Deputy Ombudsman for the Visayas, herein private respondent Arturo Mojica, committed the following:

- Sexual harassment against Rayvi Padua-Varona;
- Mulcting money from confidential employees James Alueta and Eden Kiamco; and
- Oppression against all employees in not releasing the P7,200.00 benefits of OMB-Visayas employees on the date the said amount was due for release.

The complainants further requested that an officer-in-charge from the OMB-Manila be appointed to manage their office to prevent the Deputy Ombudsman from harassing witnesses and wielding his influence over them. To underscore the seriousness of their intentions, they threatened to go on a mass leave of absence, and in fact took their cause to the media.[3]

The subsequent events, as stated by the Ombudsman and adopted by the Court of Appeals,[4] are as follows:

The Ombudsman immediately proceeded to the OMB-Visayas office in Cebu City to personally deal with the office rebellion. Reaching Cebu, the Ombudsman was informed by Petitioner that Petitioner wanted to proceed to Manila, apparently because of his alienation and the fear for reprisal from his alleged lady victims’ husbands. Petitioner in fact already had a ticket for the plane leaving two hours later that day. The Ombudsman assented to the quick movement to Manila for Petitioner’s safety and the interest of the Office’s operations. Subsequently, the Ombudsman installed Assistant Ombudsman Nicanor J. Cruz as the Officer-in-Charge of OMB-Visayas.

Acting on the formal complaint against petitioner, the Ombudsman directed his Fact-Finding and Intelligence Bureau (FFIB) to conduct a verification and fact-finding investigation on the matter. The FFIB, later in its

Report, found the evidence against Petitioner strong on the charges of acts of extortion, sexual harassment and oppression. The FFIB report was referred by the Ombudsman to a constituted Committee of Peers composed of the Deputy Ombudsman for Luzon, The Special Prosecutor and the Deputy Ombudsman for the Military.

The Committee of Peers initially recommended that the investigation be converted into one solely for purposes of impeachment. However, this recommendation was denied by the Ombudsman after careful study, and following the established stand of the Office of the Ombudsman that the Deputy Ombudsmen and The Special Prosecutor are not removable through impeachment. As succinctly (sic) stated by the Ombudsman in his Memorandum dated March 27, 2000 (in reiteration of the March 13, 2000 Order of Overall Deputy Ombudsman) -

Acting on your query as to whether or not the Ombudsman confirms or affirms the disapproval by Overall Deputy Ombudsman Margarito P. Gervacio, Jr., of your recommendation to conduct instead an investigation of the complaint against Deputy Ombudsman Arturo C. Mojica solely for the purpose of impeachment, I hereby confirm the action of disapproval.

X X X

Moreover, as demonstrated in many previous cases against Deputy Ombudsman Arturo C. Mojica, Deputy Ombudsman Manuel B. Casclang, Deputy Ombudsman Jesus F. Guerrero, Special Prosecutor Leonardo P. Tamayo and former Overall Deputy Ombudsman Francisco A. Villa, the official position of the Office is that the Constitution, R.A. 6770 and the Supreme Court in Zaldivar vs. Gonzales, G.R. No. 80578, 19 May 1988, exclude the Deputy Ombudsman and the Special Prosecutor from the list of impeachable officials and the Jarque case involves Ombudsman Aniano A. Desierto as respondent, hence, the mention therein of the Deputy Ombudsmen is merely an obiter dictum. Two of your present members in fact participated in the investigation of the previous Mojica cases and thereafter recommended the dismissal thereof for lack of merit.

In the same Memorandum, the Ombudsman directed the Committee of Peers to evaluate the merits of the case and if warranted by evidence, to conduct administrative and criminal investigation(s) immediately thereafter. Upon evaluation, the Committee recommended the docketing of the complaint as criminal and administrative cases. The Committee of Peers' Evaluation dated 30 March 2000, stated as follows:

On the basis of the foregoing facts, duly supported with sworn-statements executed by all concerned parties, the undersigned members of the COP find sufficient cause to warrant the conduct of preliminary investigation and administrative adjudication against Deputy Ombudsman Arturo C. Mojica for the following criminal and administrative offenses, namely:

I. CRIMINAL

Violation of Section 3, paragraph[s] (b) and (e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act);

Violation of R.A. 7877 (Anti-Sexual Harassment Act of 1995),

II. ADMINISTRATIVE

- a. Dishonesty
- b. Grave Misconduct
- c. Oppression
- d. Conduct grossly prejudicial to the best interest of the service
- e. Directly or indirectly having financial and material interest in any transaction requiring the approval of his Office; (Section 22, paragraphs (A), (C), (N), (T) and (U), Rule XIV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987".)

Accordingly, let the instant case be docketed separately, one for the criminal case and another for the

administrative case covering all the offenses specified above and, thereafter, a formal investigation be simultaneously and jointly conducted by the Committee of Peers, pursuant to Administrative Order No. 7.

Accordingly, on 6 April 2000, the Committee of Peers (COP) directed the herein private respondent Mojica in OMB-0-00-0615 entitled, Padua-Varona v. Mojica, for violation of Republic Act No. 7877 (Anti-Sexual Harassment Act of 1995) and Sec. 3, par. (b) and (c) of Rep. Act No. 3019 (Anti-Graft and Corrupt Practices Act) to submit his controverting evidence.

On 10 April 2000, the complainants in OMB-0-00-0615 filed a Motion to Place Respondent Under Preventive Suspension,[5] claiming that the offenses for which private respondent Mojica was charged warranted removal from office, the evidence against him was strong, and that Mojica's continued stay in office would prejudice the case, as he was harassing some witnesses and complainants to recant or otherwise desist from pursuing the case.

On the same date, the Ombudsman issued a Memorandum[6] to the COP, directing them to conduct administrative proceedings in OMB-ADM-0-00-0316 entitled, OMB Visayas Employees v. Mojica (for dishonesty, grave misconduct, oppression, conduct grossly prejudicial to the best interest of the service, and directly or indirectly having financial and material interest in any transaction requiring the approval of his office), and submit a recommendation on the propriety of putting Mojica under preventive suspension.

Subsequently, the COP issued an Order[7] in OMB-ADM-0-00-0316 finding prima facie evidence against Mojica and requiring him to submit an answer to the above-mentioned offenses within ten days, as well as his counter-affidavit and supporting evidence.[8]

Aggrieved, the private respondent filed a petition[9] for Certiorari before the Court of Appeals praying that a resolution be issued:

- issuing a Temporary Restraining Order (TRO) upon the filing of the petition to enjoin and restrain the respondents, (the Ombudsman, the Over-all Deputy Ombudsman, the Committee of Peers, and the Special Prosecutor) their agents and representatives, from suspending the petitioner (herein private respondent Mojica);
- thereafter, converting said TRO into a Writ of Preliminary Injunction;
- after hearing, a decision be rendered declaring the following acts of the Ombudsman null and void ab initio:
 - detailing and assigning indefinitely the petitioner to OMB-Manila "in a [special] capacity," thus effectively demoting/suspending petitioner, and preventing him from preparing his defense;
 - authorizing or directing the docketing of the complaints against the petitioner, which is equivalent to authorizing the filing of the administrative and/or criminal cases against the petitioner, who is an impeachable official;
 - denying the request of petitioner for leave of absence, which acts were done without lawful authority, in a malevolent and oppressive manner and without jurisdiction.

On 04 May 2000, the Court of Appeals resolved to grant the prayer for Temporary Restraining Order and required the Ombudsman to comment and show cause why no writ of preliminary injunction should be issued, which reads in part:

Meanwhile, to maintain the status quo and in order to forestall the petition at bench from becoming moot and academic, and considering that upon examination of the records we believe that there is an urgent need for the issuance of a temporary restraining order to prevent great and irreparable injury that would result to herein petitioner before the matter could be heard on notice, the herein respondents, their agents and representatives

acting for and in their behalf or under their authority, are hereby enjoined and restrained from proceeding with the hearing of the Motion to Place Respondent Under Preventive Suspension dated April 10, 2000, which hearing is set on May 9, 2000 at 2:00 o'clock in the afternoon and/or from conducting any further proceedings relative to the suspension from (o)ffice of the herein petitioner until further order and/or notice from this Court.[10]

Nevertheless, on 6 June 2000, the COP issued an Order[11] in both OMB-0-00-0615 and OMB-ADM-0-00-0316 to the effect that having failed to submit the required counter-affidavits despite the lapse of seventeen days from the expiration of the extended reglementary period for filing the same, respondent Mojica was deemed to have waived his right to present his evidence. The COP thus deemed both criminal and administrative cases submitted for resolution on the basis of the evidence on record.

Thus, on 13 June 2000, the private respondent thus filed an urgent motion[12] before the Court of Appeals to enjoin the Ombudsman from taking any action whatsoever in the criminal and administrative cases aforementioned. The following day, the private respondent filed another urgent motion, this time praying that the Court of Appeals issue an order requiring the Ombudsman to show cause why it should not be cited for contempt for failing to conform with the 4 May 2000 Resolution of the Court of Appeals. On 20 June 2000, the Court of Appeals directed[13] the Ombudsman to comment on the above pleadings, and to comply with the former's Temporary Restraining Order of 4 May 2000.

The parties subsequently exchanged various pleadings that culminated in a Resolution[14] by the Court of Appeals on 5 July 2000 that, among other things, directed the issuance of a writ of preliminary injunction enjoining all therein respondents from taking any action whatsoever in cases No. OMB-0-00-0615 (criminal) and No. OMB-ADM-0-00-0316 (administrative) against Mojica, and deemed the instant petition submitted for resolution on the merits upon the submission of the comment or explanation on the appellate court's show cause Resolution of 20 June 2000.

Meanwhile, on 19 June 2000, the Office of the Deputy Ombudsman for the Military directed the private respondent Mojica ostensibly to answer a different set of charges for "violation of Art. 266 and Sec. 3(e) of Rep. Act No. 3019" (OMB-00-0-1050) and for "grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of the service"[15] (OMB-ADM-0-00-0506). Feeling that this was merely an attempt at circumventing the directives of the Court of Appeals, Mojica filed an urgent motion before the Court of Appeals for respondents to show cause again why they should not be cited for contempt.

By way of opposition, the Ombudsman pointed out that the writ of preliminary injunction issued by the appellate court was against any action taken in cases No. OMB-0-00-0615 and No. OMB-ADM-0-00-0316, and not against any new cases filed against the private respondent thereafter. The Ombudsman further pointed out that since Mojica's term of office had already expired as of 6 July 2000, the private respondent could no longer invoke his alleged immunity from suit.

On 14 August 2000, the Office of the Deputy Ombudsman for the Military issued an order deeming that cases No. OMB-0-00-1050 and No. OMB-ADM-0-00-0506 had been deemed submitted for resolution on the basis of the evidence at hand. On 17 August 2000, the private respondent filed an urgent motion for the immediate issuance of an order enjoining the Ombudsman from taking any further action whatsoever in OMB-ADM-0-00-0506 and OMB-0-00-1050.[16]

On 18 December 2000, despite the expiration of private respondent Mojica's term of office, the Court of Appeals nevertheless rendered the assailed Decision[17] on the grounds of public interest.

In essence, the appellate court held that although the 1987 Constitution, the deliberations thereon, and the

commentaries of noted jurists, all indicate that a Deputy Ombudsman is not an impeachable official, it was nevertheless constrained to hold otherwise on the basis of this Court's past rulings. Thus, the dispositive portion thereof reads:

WHEREFORE, in view of the foregoing, the order of the Committee of Peers in its Evaluation dated March 30, 2000 directing the docketing separately of the criminal case as well as the administrative case against the petitioner is hereby SET ASIDE and DECLARED NULL AND VOID. Accordingly, the complaints in Criminal Case No. OMB-0-00-0615 and Administrative Case No. OMB-ADM-0-00-0316, respectively, filed against the petitioner are hereby DISMISSED. All acts or orders of the Ombudsman, the Overall Deputy Ombudsman and the Committee of Peers, subjecting the petitioner [herein private respondent] to criminal and administrative investigations, or pursuant to such investigations, are likewise hereby DECLARED INVALID.[18]

Thereupon, on 15 January 2001, the Office of the Ombudsman filed before this Court "a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, and alternatively, an original special civil action for certiorari under Sec. 1, Rule 65 of the same rules," of the above decision, on the following grounds:

I

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN ERRONEOUSLY RULING THAT PRIVATE RESPONDENT, AS THEN DEPUTY OMBUDSMAN FOR THE VISAYAS, IS AN IMPEACHABLE OFFICIAL, CONSIDERING THAT THE PLAIN TEXT OF SEC. 2, ART. XI OF THE 1987 CONSTITUTION, AS WELL AS THE INTENT OF THE FRAMERS THEREOF, EXCLUDES A DEPUTY OMBUDSMAN FROM THE LIST OF IMPEACHABLE OFFICIALS.

II

THE PRINCIPLE OF STARE DECISIS ET NON QUIETA MOVERE MAY NOT BE INVOKED TO PERPETUATE AN ERRONEOUS OBITER DICTUM.

III

THE HONORABLE COURT OF APPEALS HAS NO JURISDICTION TO ORDER THE DISMISSAL OF A CRIMINAL CASE AGAINST A RETIRED DEPUTY OMBUDSMAN, WHICH IS STILL PENDING PRELIMINARY INVESTIGATION BEFORE PETITIONER OMBUDSMAN.[19]

At the outset, it bears noting that instead of assailing the Court of Appeals Decision solely by petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioner lodged the present petition "alternatively" as "an original special civil action for certiorari under Sec. 1, Rule 65 of the same rules."

It is settled that the appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the 1997 Rules of Civil Procedure. Rule 45 is clear that the decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. Under Rule 45, the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of motion for reconsideration.[20]

The records show that following the petitioner's receipt on 5 January 2001 of a copy the Court of Appeals Decision, it filed the present petition on 16 January 2001, well within the reglementary period so indicated.

We go now into the substantive aspect of this case, where we are presented an attack upon a prior interpretation of Article XI, Sec. 2 in relation to Article XI, Sec. 8 of our Constitution.

The interpretation in question first appears in *Cuenco v. Fernan*,^[21] a disbarment case against then Associate Justice Marcelo Fernan filed by Atty. Miguel Cuenco, a former member of the House of Representatives, where we held in part:

There is another reason why the complaint for disbarment here must be dismissed. Members of the Supreme Court must, under Article VIII (7)(1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution). To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [8] in relation to Article XI [2], *id.*), a majority of the members of the Commission on Elections (Article IX [C] in relation to Article XI [1] [1][2], *id.*), and the members of the Commission on Audit who are not certified public accountants (Article XI [D] [1] [1], *id.*), all of whom are constitutionally required to be members of the Philippine Bar. (Emphasis supplied.)

Barely two months later, we issued another Resolution in *In Re: Raul M. Gonzales*,^[22] concerning the same charges for disbarment brought against Justice Fernan, wherein we cited the above ruling to underscore the principle involved in the case, that "[a] public officer who under the Constitution is required to be a member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer."^[23]

In 1995, we subsequently anchored our Resolution in *Jarque v. Desierto*,^[24] a disbarment case against then Ombudsman Aniano Desierto, on the above ruling, adding that:

. . . [T]he court is not here saying that the Ombudsman and other constitutional officers who are required by the Constitution to be members of the Philippine Bar and are remova[ble] only by impeachment, are immunized from liability possibly for criminal acts or for violation of the Code of Professional Responsibility or other claimed misbehavior. What the Court is saying is that there is here a fundamental procedural requirement which must be observed before such liability may be determined and enforced. The Ombudsman or his deputies must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Ombudsman be thus terminated by impeachment, he may then be held to answer either criminally or administratively – e.g., in disbarment proceedings – for any wrong or misbehavior which may be proven against him in appropriate proceedings. (Emphasis supplied)

Finally, in *Lastimosa-Dalawampu v. Deputy Ombudsman Mojica and Graft Investigator Labella*,^[25] the Court, citing its Resolution in *Jarque v. Desierto*,^[26] dismissed, in a minute resolution, the complaint for disbarment against the herein private respondent Mojica in his capacity as Deputy Ombudsman for the Visayas, stating that:

Anent the complaint for disbarment against respondent Arturo C. Mojica in his capacity as Deputy Ombudsman for Visayas, suffice it to state that a public officer whose membership in the Philippine Bar is a qualification for the office held by him and removable only by impeachment cannot be charged with disbarment during his membership (*In Re: Raul M. Gonzales*, 160 SCRA 771, 774 [1988]; *Cuenco vs. Fernan*, 158 SCRA 29, 40 [1988]). And we have held in the case of *Jarque vs. Desierto* (A.C. No. 4509, En Banc Resolution December 5, 1995), that the Ombudsman or his deputies must first be removed from office via impeachment before they may be held to answer for any wrong or misbehavior which may be proven against them in disbarment proceedings.

The above Resolution was subsequently made the basis of the appellate court's assailed Decision of 18 December 2000. Thus, in holding that a Deputy Ombudsman is an impeachable officer, the appellate court stated that it had

to “defer to the loftier principle of adherence to judicial precedents, otherwise known as the doctrine of Stare Decisis.... necessary for the uniformity and continuity of the law and also to give stability to society.”[27]

Nevertheless, the court a quo took pains to point out that the 1987 Constitution, the deliberations thereon, and the opinions of constitutional law experts all indicate that the Deputy Ombudsman is not an impeachable officer.

Is the Deputy Ombudsman, then, an impeachable officer? Section 2, Article XI of the 1987 Constitution, states that:

Sec. 2. The President, the Vice-President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

To determine whether or not the Ombudsman therein mentioned refers to a person or to an office, reference was made by the appellate court to the Records of the Constitutional Commission, as well as to the opinions of leading commentators in constitutional law. Thus:

. . . It appears that the members of the Constitutional Commission have made reference only to the Ombudsman as impeachable, excluding his deputies. The pertinent portions of the record read, to wit:

...

MR. REGALADO. Yes, thank you.

On Section 10, regarding the Ombudsman, there has been concern aired by Commissioner Rodrigo about who will see to it that the Ombudsman will perform his duties because he is something like a guardian of the government. This recalls the statement of Juvenal that while the Ombudsman is the guardian of the people, “Quis custodiet ipsos custodies,” who will guard the guardians? I understand here that the Ombudsman who has the rank of a chairman of a constitutional commission is also removable only by impeachment.

MR. ROMULO. That is the intention, Madam President.

MR. REGALADO. Only the Ombudsman?

MR. MONSOD. Only the Ombudsman.

MR. REGALADO. So not his deputies, because I am concerned with the phrase “have the rank of.” We know, for instance, that the City Fiscal of Manila has the rank of a justice of the Intermediate Appellate Court, and yet he is not a part of the judiciary. So I think we should clarify that also and read our discussions into the Record for purposes of the Commission and the Committee.

MR. ROMULO. Yes. If I may just comment: the Ombudsman in this provision is a rank in itself really. That is how we look at it. But for purposes of government classification and salary, we thought we have to give him a recognizable or an existing rank as a point of reference more than anything else.

MR. REGALADO. Yes, but my concern is whether or not he is removable only by impeachment, because Section 2 enumerates the impeachable officials, and it does not mention public officers with the rank of constitutional commissioners.

MR. ROMULO. But we do mention them as the Ombudsman is mentioned in that enumeration. We used the word “Ombudsman” because we would like it to be his title; we do not want him called “Chairman” or “Justice.” We want him called Ombudsman.

...

(Records of the 1986 Constitutional Commission, Vol. II, July 26, 1986, pp. 273-274)

MR. DAVIDE. I will not insist.

On lines 13 and 14, I move for the deletion of the words “and the Ombudsman.” The Ombudsman should not be placed on the level of the President and the Vice-President, the members of the judiciary and the members of the Constitutional Commissions in the matter of removal from office.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We regret we cannot accept the amendment because we feel that the Ombudsman is at least on the same level as the Constitutional Commissioners and this is one way of insulating it from politics.

MR. DAVIDE. Madam President, to make the members of the Ombudsman removable only by impeachment would be to enshrine and install an officer whose functions are not as delicate as the others whom we wanted to protect from immediate removal by way of an impeachment.

MR. MONSOD. We feel that an officer in the Ombudsman, if he does his work well, could be stepping on a lot of toes. We would really prefer to keep him there but we would like the body to vote on it, although I would like to ask if we still have a quorum, Madam President.

THE PRESIDENT. Do we have a quorum? There are members who are in the lounge.

The Secretary-General and the pages conduct an actual count of the Commissioners present.

THE PRESIDENT. We have a quorum.

MR. MONSOD. May we restate the proposed amendment for the benefit of those who were not here a few minutes ago.

MR. DE LOS REYES. Madam President, parliamentary inquiry. I thought that amendment was already covered in the amendment of Commissioner Rodrigo. One of those amendments proposed by Commissioner Rodrigo was to delete the word “Ombudsman” and, therefore, we have already voted on it.

MR. DAVIDE. Madam President, may I comment on that.

THE PRESIDENT. Yes, the Gentleman may proceed.

MR. DAVIDE. The proposed amendment of Commissioner Rodrigo was the total deletion of the Office of the Ombudsman and all sections relating to it. It was rejected by the body and, therefore, we can have individual amendments now on the particular sections.

THE PRESIDENT. The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment. Is that right?

MR. DAVIDE. Yes, Madam President.

MR. RODRIGO. Before we vote on the amendment, may I ask a question?

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. The Ombudsman, is this only one man?

MR. DAVIDE. Only one man.

MR. RODRIGO. Not including his deputies.

MR. MONSOD. No.

...

(Ibid., p. 305, emphasis supplied)

Moreover, this Court has likewise taken into account the commentaries of the leading legal luminaries on the Constitution as to their opinion on whether or not the Deputy Ombudsman is impeachable. All of them agree in unison that the impeachable officers enumerated in Section 2, Article XI of the 1986 Constitution is exclusive. In their belief, only the Ombudsman, not his deputies, is impeachable. Foremost among them is the erudite Justice Isagani A. Cruz (ret.), who opined:

The impeachable officers are the President of the Philippines, the Vice-President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman. (see Art. XI, Sec. 2) The list is exclusive and may not be increased or reduced by legislative enactment. The power to impeach is essentially a non-legislative prerogative and can be exercised by the Congress only within the limits of the authority conferred upon it by the Constitution. This authority may not be expanded by the grantee itself even if motivated by the desire to strengthen the security of tenure of other officials of the government.

It is now provided by decree (see P.D. No. 1606) that justices of the Sandiganbayan may be removed only through process of impeachment, the purpose evidently being to withdraw them from the removal power of the Supreme Court. This prohibition is of dubious constitutionality. In the first place, the list of impeachable officers is covered by the maxim “expressio unius est exclusio alterius.” Secondly, Article VIII, Section 11, of the Constitution states that all judges of inferior courts – and this would include the Sandiganbayan – are under the disciplinary power of the Supreme Court and may be removed by it. This view is bolstered by the last sentence of Article XI, Section 2, which runs in full as follows:

Sec. 2. The President, the Vice-President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Cruz, Isagani A., Philippine Political Law, 1996 ed., pp. 333-334)

Equally worth noting is the opinion of no less than Rev. Fr. Joaquin G. Bernas, S.J., himself who was a member of the Constitutional Commission which drafted the 1987 Constitution, (who) asserted:

Q. Is the list of officers subject to impeachment found in Section 2 exclusive?

A. As presently worded, yes.

(Bernas, Joaquin G., S.J., The 1987 Philippine Constitution, A Reviewer-Primer, 1997 ed., p. 401)

Last but certainly not the least is the equally erudite Representative Antonio B. Nachura himself, who, as a professor of law, commented that the enumeration of impeachable officers in Section 2, Article XI of the 1987 Constitution, is exclusive. (Nachura, Antonio B., Outline/Reviewer in Political Law, 1998 ed., p. 192)[28]

From the foregoing, it is immediately apparent that, as enumerated in Sec. 2 of Article XI of the 1987 Constitution, only the following are impeachable officers: the President, the Vice President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman.[29]

How then to explain our earlier pronouncement in *Cuenco v. Fernan*, as later cited in *In Re: Raul M. Gonzales, Jarque v. Desierto* and *Lastimosa-Dalawampu v. Dep. Ombudsman Mojica* and *Graft Investigator Labella*? By way of reiteration, said Resolution reads in part:

. . . To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [2][8] in relation to Article XI [2]), . . . all of whom are constitutionally required to be members of the Philippine Bar.[30] (Emphasis supplied)

In cross-referencing Sec. 2, which is an enumeration of impeachable officers, with Sec. 8, which lists the qualifications of the Ombudsman and his deputies, the intention was to indicate, by way of obiter dictum, that as with members of this Court, the officers so enumerated were also constitutionally required to be members of the bar.

A dictum is an opinion that does not embody the resolution or determination of the court, and made without argument, or full consideration of the point. Mere dicta are not binding under the doctrine of stare decisis.[31]

The legal maxim "stare decisis et non quieta movere" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.[32]

The succeeding cases of *In Re: Raul M. Gonzales and Jarque v. Desierto* do not tackle the impeachability of a Deputy Ombudsman either. Nor, for that matter, does *Lastimosa-Dalawampu v. Deputy Ombudsman Mojica and Graft Investigator Labella*, which, as previously mentioned, is a minute resolution dismissing a complaint for disbarment against the herein private respondent on the basis of the questioned obiter in *Cuenco v. Fernan* and the succeeding cases without going into the merits.

Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not stare decisis of the question presented.[33]

As to whether or not the private respondent, then Deputy Ombudsman for the Visayas, may be held criminally and/or administratively liable, we likewise resolve the issue in favor of the petitioner.

The rule that an impeachable officer cannot be criminally prosecuted for the same offenses which constitute grounds for impeachment presupposes his continuance in office.[34] Hence, the moment he is no longer in office because of his removal, resignation, or permanent disability, there can be no bar to his criminal prosecution in the courts.[35]

Nor does retirement bar an administrative investigation from proceeding against the private respondent, given that, as pointed out by the petitioner, the former's retirement benefits have been placed on hold in view of the provisions of Sections 12[36] and 13[37] of the Anti-Graft and Corrupt Practices Act.

WHEREFORE, the Order of the Court of Appeals dated 18 December 2000 is hereby REVERSED and SET ASIDE. The complaints in Criminal Case No. OMB-0-00-0615 and Administrative Case No. OMB-ADM-0-00-0316 are hereby REINSTATED and the Office of the Ombudsman is ordered to proceed with the investigation relative to the above cases.

SO ORDERED.

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

[1] Penned by Associate Justice B.A. Adefuin-de la Cruz, with Associate Justices Salome A. Montaya and Renato C. Dacudao concurring.

- [2] CA Rollo, p. 121.
- [3] CA Decision, Rollo, p. 34.
- [4] Id., pp. 33-63.
- [5] CA Rollo, p. 40.
- [6] CA Rollo, p. 46.
- [7] Dated 25 April 2000, CA Rollo, pp. 44-45.
- [8] CA Rollo, p. 44.
- [9] CA Rollo, pp. 2-15.
- [10] CA Rollo, pp. 48-49.
- [11] CA Rollo, p. 90.
- [12] CA Rollo, p. 91.
- [13] CA Rollo, pp. 104-106.
- [14] CA Rollo, pp. 161-166.
- [15] CA Rollo, p. 212.
- [16] CA Rollo, p. 239.
- [17] CA Rollo, p. 33.
- [18] Rollo, pp. 62-63.
- [19] Rollo, p. 19.
- [20] Asian Transmission Corporation v. Court of Appeals, G.R. No. 144664, 15 March 2004, citing San Miguel Corporation v. Court of Appeals, G.R. No. 146775, 30 January 2002, 375 SCRA 311.
- [21] Administrative Case No. 3135, 17 February 1988, 158 SCRA 29.
- [22] Captioned as follows: In Re: First Indorsement from Honorable Raul M. Gonzales dated 16 March 1988 requesting Honorable Justice Marcelo B. Fernan to Comment on an Anonymous Letter-Complaint (Adm. Matter No. 88-4-5433, 15 April 1988, 160 SCRA 771).
- [23] Id. at 774.
- [24] A.C. No. 4509, 5 December 1995, 250 SCRA xi, xiv.
- [25] Administrative Case No. 4683 (Resolution), 06 August 1997.
- [26] Supra, note 24.
- [27] Citing Lee, German G., Handbook of Legal Maxims, p. 151, 1998 ed.; citing Padilla, Civil Law, Vol. I, 1971 ed., Rollo, p. 18.
- [28] CA Rollo, pp. 47-50.
- [29] Presently Simeon V. Marcelo.

[30] In Re: Raul M. Gonzales, *supra*, note 22.

[31] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, G.R. No. 134284, 01 December 2000, 346 SCRA 663, citing 20 Am Jur 2d, Courts § 39.

[32] *Negros Navigation Co. v. Court of Appeals*, G.R. No. 110398, 7 November 1997, 281 SCRA 534, citing *J.M. Tuason & Inc. v. Mariano*, G.R. No. L-33140, 23 October 1978, 85 SCRA 644.

[33] *Negros Navigation Co. v. Court of Appeals*, *ibid.*, citing *Eubanks v. State*, Tex. Civ. App., 203 S.W. 2d 339, 342 (1947).

[34] *Estrada v. Desierto*, G.R. Nos. 146710-15, 03 April 2001, 356 SCRA 108, Mendoza, J., concurring, citing *Lecaroz v. Sandiganbayan*, G.R. No. L-56384, 22 March 1984, 128 SCRA 324.

[35] *Ibid.*

[36] Sec. 12. Termination of Office. – No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

[37] Sec. 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title Seven Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may already have been separated from service, has already received such benefits he shall be liable to retribute the same to the government.

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