

**EDILLO C. MONTEMAYOR, PETITIONER, VS. LUIS BUNDALIAN,
RONALDO B. ZAMORA, EXECUTIVE SECRETARY, OFFICE OF THE
PRESIDENT, AND GREGORIO R. VIGILAR, SECRETARY,
DEPARTMENT OF PUBLIC W...**

G.R. No. 149335. July 01, 2003

Ponente: PUNO, J.

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PUNO, J.:

In this petition for review on certiorari, petitioner EDILLO C. MONTEMAYOR assails the Decision of the Court of Appeals, dated April 18, 2001, affirming the decision of the Office of the President in Administrative Order No. 12 ordering petitioner's dismissal as Regional Director of the Department of Public Works and Highways (DPWH) for unexplained wealth.

Petitioner's dismissal originated from an unverified letter-complaint, dated July 15, 1995, addressed by private respondent LUIS BUNDALIAN to the Philippine Consulate General in San Francisco, California, U.S.A. Private respondent accused petitioner, then OIC-Regional Director, Region III, of the DPWH, of accumulating unexplained wealth, in violation of Section 8 of Republic Act No. 3019. Private respondent charged that in 1993, petitioner and his wife purchased a house and lot at 907 North Bel Aire Drive, Burbank, Los Angeles, California, making a down payment of US\$100,000.00. He further alleged that petitioner's in-laws who were living in California had a poor credit standing due to a number of debts and they could not have purchased such an expensive property for petitioner and his wife. Private respondent accused petitioner of amassing wealth from lahar funds and other public works projects.

Private respondent attached to his letter-complaint the following documents:

- a) a copy of a Grant Deed, dated May 27, 1993, where spouses David and Judith Tedesco granted the subject property to petitioner and his wife;
- b) a copy of the Special Power of Attorney (SPA) executed by petitioner and his wife in California appointing petitioner's sister-in-law Estela D. Fajardo as their attorney-in-fact, to negotiate and execute all documents and requirements to complete the purchase of the subject property; and,
- c) an excerpt from the newspaper column of Lito A. Catapusan in the Manila Bulletin, entitled "Beatwatch," where it was reported that a low-ranking, multimillionaire DPWH employee, traveled to Europe and the U.S. with his family, purchased an expensive house in California, appointed a woman through an SPA to manage the subject property and had hidden and unexplained wealth in the Philippines and in the U.S.

Accordingly, the letter-complaint and its attached documents were indorsed by the Philippine Consulate General of San Francisco, California, to the Philippine Commission Against Graft and Corruption (PCAGC)[1] for investigation. Petitioner, represented by counsel, submitted his counter-affidavit before the PCAGC alleging that the real owner of the subject property was his sister-in-law Estela Fajardo. Petitioner explained that in view of the

unstable condition of government service in 1991, his wife inquired from her family in the U.S. about their possible emigration to the States. They were advised by an immigration lawyer that it would be an advantage if they had real property in the U.S. Fajardo intimated to them that she was interested in buying a house and lot in Burbank, California, but could not do so at that time as there was a provision in her mortgage contract prohibiting her to purchase another property pending full payment of a real estate she earlier acquired in Palmdale, Los Angeles. Fajardo offered to buy the Burbank property and put the title in the names of petitioner and his wife to support their emigration plans and to enable her at the same time to circumvent the prohibition in her mortgage contract.

Petitioner likewise pointed out that the charge against him was the subject of similar cases filed before the Ombudsman.[2] He attached to his counter-affidavit the Consolidated Investigation Report[3] of the Ombudsman dismissing similar charges for insufficiency of evidence.

From May 29, 1996 until March 13, 1997, the PCAGC conducted its own investigation of the complaint. While petitioner participated in the proceedings and submitted various pleadings and documents through his counsel, private respondent-complainant could not be located as his Philippine address could not be ascertained. In the course of the investigation, the PCAGC repeatedly required petitioner to submit his Statement of Assets, Liabilities and Net Worth (SALN), Income Tax Returns (ITRs) and Personal Data Sheet. Petitioner ignored these directives and submitted only his Service Record. He likewise adduced in evidence the checks allegedly issued by his sister-in-law to pay for the house and lot in Burbank, California. When the PCAGC requested the Deputy Ombudsman for Luzon to furnish it with copies of petitioner's SALN from 1992-1994, it was informed that petitioner failed to file his SALN for those years.

After the investigation, the PCAGC, in its Report to the Office of the President, made the following findings: Petitioner purchased a house and lot in Burbank, California, for US\$195,000.00 (or P3.9M at the exchange rate prevailing in 1993). The sale was evidenced by a Grant Deed. The PCAGC concluded that the petitioner could not have been able to afford to buy the property on his annual income of P168,648.00 in 1993 as appearing on his Service Record. It likewise found petitioner's explanation as unusual, largely unsubstantiated, unbelievable and self-serving. The PCAGC noted that instead of adducing evidence, petitioner's counsel exerted more effort in filing pleadings and motion to dismiss on the ground of forum shopping. It also took against petitioner his refusal to submit his SALN and ITR despite the undertaking made by his counsel which raised the presumption that evidence willfully suppressed would be adverse if produced. The PCAGC concluded that as petitioner's acquisition of the subject property was manifestly out of proportion to his salary, it has been unlawfully acquired. Thus, it recommended petitioner's dismissal from service pursuant to Section 8 of R.A. No. 3019.

On August 24, 1998, the Office of the President, concurring with the findings and adopting the recommendation of the PCAGC, issued Administrative Order No. 12,[4] ordering petitioner's dismissal from service with forfeiture of all government benefits.

Petitioner's Motion for Reconsideration was denied. His appeal to the Court of Appeals was likewise dismissed.[5]

Hence, this petition for review where petitioner raises the following issues for resolution: first, whether he was denied due process in the investigation before the PCAGC; second, whether his guilt was proved by substantial evidence; and, third, whether the earlier dismissal of similar cases before the Ombudsman rendered the administrative case before the PCAGC moot and academic.

On the issue of due process, petitioner submits that the PCAGC committed infractions of the cardinal rules of administrative due process when it relied on Bundalian's unverified letter-complaint. He gripes that his

counter-affidavit should have been given more weight as the unverified complaint constitutes hearsay evidence. Moreover, petitioner insists that in ruling against him, the PCAGC failed to respect his right to confront and cross-examine the complainant as the latter never appeared in any of the hearings before the PCAGC nor did he send a representative therein.

We find no merit in his contentions. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[6] In the case at bar, the PCAGC exerted efforts to notify the complainant of the proceedings but his Philippine residence could not be located.[7] Be that as it may, petitioner cannot argue that he was deprived of due process because he failed to confront and cross-examine the complainant. Petitioner voluntarily submitted to the jurisdiction of the PCAGC by participating in the proceedings before it. He was duly represented by counsel. He filed his counter-affidavit, submitted documentary evidence, attended the hearings, moved for a reconsideration of Administrative Order No. 12 issued by the President and eventually filed his appeal before the Court of Appeals. His active participation in every step of the investigation effectively removed any badge of procedural deficiency, if there was any, and satisfied the due process requirement. He cannot now be allowed to challenge the procedure adopted by the PCAGC in the investigation.[8]

Neither can we sustain petitioner's contention that the charge against him was unsupported by substantial evidence as it was contained in an unverified complaint. The lack of verification of the administrative complaint and the non-appearance of the complainant at the investigation did not divest the PCAGC of its authority to investigate the charge of unexplained wealth. Under Section 3 of Executive Order No. 151 creating the PCAGC, complaints involving graft and corruption may be filed before it in any form or manner against presidential appointees in the executive department. Indeed, it is not totally uncommon that a government agency is given a wide latitude in the scope and exercise of its investigative powers. The Ombudsman, under the Constitution, is directed to act on any complaint likewise filed in any form and manner concerning official acts or omissions. The Court Administrator of this Court investigates and takes cognizance of, not only unverified, but even anonymous complaints filed against court employees or officials for violation of the Code of Ethical Conduct. This policy has been adopted in line with the serious effort of the government to minimize, if not eradicate, graft and corruption in the service.

It is well to remember that in administrative proceedings, technical rules of procedure and evidence are not strictly applied. Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.[9] This was afforded to the petitioner in the case at bar.

On the second issue, there is a need to lay down the basic principles in administrative investigations. First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint.[10] Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[11] Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.[12]

In the case at bar, petitioner admitted that the subject property was in his name. However, he insisted that it was his sister-in-law Estela Fajardo who paid for the property in installments. He submitted as proof thereof the checks issued by Fajardo as payment for the amortizations of the property. His evidence, however, likewise fail to convince us. First, the record is bereft of evidence to prove the alleged internal arrangement petitioner entered into with Fajardo. He did not submit her affidavit to the investigating body nor did she testify before it regarding her ownership of the Burbank property. Second, the checks allegedly issued by Fajardo to pay for the monthly amortizations on the property have no evidentiary weight as Fajardo's mere issuance thereof cannot prove petitioner's non-ownership of the property. Fajardo would naturally issue the checks as she was appointed by petitioner as attorney-in-fact and the latter would naturally course through her the payments for the Burbank property. Third, petitioner's own evidence contradict his position. We cannot reconcile petitioner's denial of ownership of the property with the loan statement[13] he adduced showing that he obtained a loan from the World Savings and Loan Association for \$195,000.00 on June 23, 1993 to finance the acquisition of the property. Then, three (3) years later, on May 30, 1996, petitioner and his wife executed a Quitclaim Deed[14] donating the Burbank property to his sisters-in-law Estela and Rose Fajardo allegedly to prove his non-ownership of the property. It is obvious that the Quitclaim Deed is a mere afterthought, having been executed only after a complaint for unexplained wealth was lodged against petitioner. Why the Quitclaim Deed included Rose Fajardo when it was only Estela Fajardo who allegedly owned the property was not explained on the record. Petitioner's evidence failed to clarify the issue as it produced, rather than settled, more questions.

Petitioner admitted that the Grant Deed over the property was in his name. He never denied the existence and due execution of the Grant Deed and the Special Power of Attorney he conferred to Estela Fajardo with respect to the acquisition of the Burbank property. With these admissions, the burden of proof was shifted to petitioner to prove non-ownership of the property. He cannot now ask this Court to remand the case to the PCAGC for reception of additional evidence as, in the absence of any errors of law, it is not within the Court's power to do so. He had every opportunity to adduce his evidence before the PCAGC.

Lastly, we cannot sustain petitioner's stance that the dismissal of similar charges against him before the Ombudsman rendered the administrative case against him before the PCAGC moot and academic. To be sure, the decision of the Ombudsman does not operate as *res judicata* in the PCAGC case subject of this review. The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers.[15] Petitioner was investigated by the Ombudsman for his possible criminal liability for the acquisition of the Burbank property in violation of the Anti-Graft and Corrupt Practices Act and the Revised Penal Code. For the same alleged misconduct, petitioner, as a presidential appointee, was investigated by the PCAGC by virtue of the administrative power and control of the President over him. As the PCAGC's investigation of petitioner was administrative in nature, the doctrine of *res judicata* finds no application in the case at bar.

Thus, we find that the Court of Appeals correctly sustained petitioner's dismissal from service as the complaint and its supporting documents established that he acquired a property whose value is disproportionate to his income in the government service, unless he has other sources of income which he failed to reveal. His liability was proved by substantial evidence.

IN VIEW WHEREOF, the petition is DISMISSED. No costs.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

- [1] Created under Executive Order No. 151, dated January 11, 1994, by then President Fidel V. Ramos and was subsequently abolished by his successor, former President Joseph Estrada through E.O. 253, dated July 18, 2000.
- [2] OMB-0-94-1172, OMB-0-94-1329 and OMB-0-94-1560.
- [3] Rollo at 162-173.
- [4] Id. at 54-60.
- [5] Decision, dated April 18, 2001; Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole; Rollo at 41-50.
- [6] Umali vs. Guingona, Jr., 305 SCRA 533 (2000); Audion Electric Co., Inc. vs. NLRC, 308 SCRA 340 (2000).
- [7] See Letter of PCAGC Chairman Dario Rama to the Solicitor General, dated April 4, 2002; Rollo at 90.
- [8] Emin vs. Chairman Corazon Alma de Leon, G.R. No. 139794, February 27, 2002.
- [9] Ocampo vs. Office of the Ombudsman, 322 SCRA 17 (2000).
- [10] Lorena vs. Encomienda, 302 SCRA 632 (1999); Cortez vs. Agcaoili, 294 SCRA 423 (1998).
- [11] Enrique vs. Court of Appeals, 229 SCRA 180 (1994).
- [12] Ramos vs. Secretary of Agriculture and Natural Resources, 55 SCRA 330 (1974).
- [13] See Supplement to the Petition; Rollo at 74.
- [14] Id. at 75-78.
- [15] Dinsay vs. Cioco, 264 SCRA 703 (1996).

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