

**MANUEL D. LAXINA, SR., PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, EVANGELINE URSAL, HON. JOSE E. LINA, JR., IN HIS
CAPACITY AS SECRETARY OF THE DEPARTMENT OF INTERIOR AND
LOCAL GO...**

G.R. No. 153155. September 30, 2005

Ponente: TINGA, J.

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TINGA, J.:

The instant petition seeks the review of the 24 April 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66412, affirming the 2 July 2001 Memorandum Order[2] and the 1 August 2001 Order[3] of the Office of the Ombudsman in OMB-ADM-00-0350,[4] imposing upon petitioner the penalty of dismissal from office with forfeiture of material benefits pursuant to Sec. 25(2) of Republic Act (R.A.) No. 6770.[5]

Petitioner Manuel D. Laxina, Sr. was Barangay Chairman of Brgy. Batasan Hills, Quezon City. On 15 December 1998, Evangeline Ursal ("Ursal"), Barangay Clerk of Batasan Hills, Quezon City, filed with the National Bureau of Investigation (NBI) a complaint for attempted rape against petitioner. Petitioner was subsequently charged with sexual harassment before the Regional Trial Court of Quezon City.[6]

On 13 March 2000, Ursal brought before the Department of Interior and Local Government (DILG) a complaint-affidavit charging petitioner with grave misconduct for the alleged attempted rape. However, the DILG referred the complaint to the Quezon City Council ("City Council") for appropriate action. Said complaint was docketed as Adm. Case No. 00-13 before the City Council.[7]

Thereafter, on 30 March 2000, Ursal filed with the Office of the Ombudsman a similar complaint-affidavit charging petitioner with grave misconduct, docketed as OMB ADM Case No. 0-00-0350.[8] Petitioner filed his counter-affidavit and attached thereto the affidavits of two witnesses. On 15 August 2000, the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman exonerated petitioner from the charge, dismissing the complaint for lack of substantial evidence.[9] However, on 2 July 2001, upon review, and with the approval of the Ombudsman, petitioner was found guilty of grave misconduct and meted the penalty of dismissal, with forfeiture of material benefits, per its Memorandum Order.[10]

Petitioner sought reconsideration of the adjudication, alleging lack of jurisdiction on the part of the Ombudsman, but the motion was denied.[11]

Meanwhile, Ursal asked the City Council to waive its jurisdiction in favor of the Ombudsman.[12] The City Council merely noted Ursal's motion.[13]

On 20 August 2001, the AAB issued an order directing Quezon City Mayor Feliciano R. Belmonte, Jr. to implement the 2 July 2001 Memorandum Order and to submit a compliance report.[14] Mayor Belmonte issued an implementing order, notifying petitioner of his dismissal from service and enjoining him to cease and desist from performing his duties as barangay captain.[15]

Petitioner sought the review of the Ombudsman's Memorandum Order before the CA, arguing that: (i) the Office of the Ombudsman did not have jurisdiction over the administrative complaint; (ii) Ursal's filing of the same administrative case before the Office of the Ombudsman and the City Council through the DILG warranted the dismissal of both cases; and (iii) petitioner was denied due process in the proceedings before the Ombudsman.[16]

In its Decision promulgated on 24 April 2002, the CA dismissed the petition for lack of merit. According to the CA, petitioner participated in the proceedings before the Ombudsman and questioned the Ombudsman's jurisdiction for the first time only in his motion for reconsideration, or after the Ombudsman had found him guilty of grave misconduct. Thus, he is estopped from impugning the jurisdiction of the Ombudsman over the case.[17] The CA found the Ombudsman's assumption of jurisdiction justified since it became aware of the earlier case before the City Council only when petitioner filed his motion for reconsideration.[18] In addition, the CA stated that the Ombudsman was justified in not dismissing the administrative cases as a penalty for forum-shopping because petitioner and Ursal are in *pari delicto*. [19] Neither was petitioner deprived of administrative due process since he was allowed to present evidence and said evidence were passed upon by the Ombudsman, the CA added.[20]

Before this Court, petitioner seeks the dismissal of the administrative charge against him anchored on the following assignment of errors:

- THE PUBLIC RESPONDENTS COMMITTED A GRAVE ERROR OF LAW IN REFUSING TO DISMISS THE CASES AGAINST PETITIONER ON THE GROUND OF "FORUM SHOPPING" AND MISAPPLYING INSTEAD THE PRINCIPLE OF ESTOPPEL.
- THE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW WHEN IT REFUSED TO PREVENT PUBLIC RESPONDENTS FROM PREMATURELY IMPLEMENTING THE MEMORANDUM ORDER DISMISSING PETITIONER – A DULY ELECTED OFFICIAL – DESPITE THE FACT THAT THE ORDER IS NOT YET FINAL AND EXECUTORY CONTRARY TO THE DOCTRINE LAID DOWN BY THE SUPREME COURT IN "LAPID VS. COURT OF APPEALS", 329 SCRA 771.
- THE RESPONDENTS AND THE COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW IN VIOLATING THE RIGHT OF PETITIONER TO DUE PROCESS IN DECREETING HIS DISMISSAL OF PETITIONER WITHOUT SUBSTANTIAL EVIDENCE AND WITHOUT CONSIDERING THE EVIDENCE OF PETITIONER.[21]

Petitioner likewise seeks the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin public respondents from implementing the Order of the Ombudsman and to reinstate him to the position of Barangay Chairman of Brgy. Batasan Hills, Quezon City.

Petitioner claims that estoppel cannot apply to him because he never invoked the jurisdiction of the Ombudsman, much less sought affirmative relief therefrom.[22] Arguing that he has no obligation to disclose the fact that there is another identical case pending before another forum since he is not the one who instituted the identical cases,[23] he reiterates the rule that when two or more courts have concurrent jurisdiction, the first to validly acquire jurisdiction takes it to the exclusion of the other or the rest.[24]

On the second assignment of error, petitioner claims that he is entitled to the injunctive relief as prayed for in his petition before the CA. He asserts that Adm. Order No. 7, as amended by Adm. Order No. 14-A of the Office of the Ombudsman, decreeing that all administrative orders, directives and decisions rendered by the said office are immediately executory notwithstanding the perfection of an appeal unless a temporary restraining order shall have first been secured, is contrary to the expressed mandate of R.A. No. 6770. Moreover, citing the case of *Lapid v. Court of Appeals*, [25] petitioner claims that an appeal if timely filed stays the immediate implementation of a

decision, and that the fact that the Ombudsman Act has given the parties the right to appeal should carry with it the stay of said decision pending appeal.[26]

Lastly, petitioner maintains that he was deprived of administrative due process when the Ombudsman refused to consider his evidence and rendered a decision that is not supported by substantial evidence.[27] Questioning the findings of fact made by the Ombudsman, claiming that these were "speculations, surmises, probabilities, half-truths and other unfounded/unsupported hearsay evidence,"[28] petitioner invokes the principles employed in a prosecution for the crime of rape[29] and points out that the Ombudsman did not adhere to these principles.[30]

In his Comment,[31] Mayor Belmonte substantially reiterates the findings and reasoning of the CA Decision. He notes that the injunctive reliefs prayed for by petitioner are improper as he had already issued an implementing order dismissing petitioner from service, and another person has been sworn into office as Barangay Chairman of Brgy. Batasan Hills, Quezon City.[32]

Meanwhile, the Office of the Ombudsman, through the Office of the Solicitor General (OSG), while advancing the same reasoning as the appellate court's additionally argues that the City Council's assumption of jurisdiction over the case will not deprive the Ombudsman of its constitutional mandate to give justice to the victims of oppressive acts of public officials and to protect the citizenry from illegal acts or omissions of any government official.[33] Even assuming that there was forum-shopping, petitioner is estopped from questioning the technical defect.[34] Besides, technical rules of procedure should be applied with liberality, and at any rate, in administrative proceedings, technical rules of procedure and evidence are not strictly applied, the OSG emphasizes.[35]

The petition must be denied.

At the onset, it must be stressed that the rule on forum-shopping applies only to judicial cases or proceedings,[36] and not to administrative cases. Petitioner has not cited any rule or circular on forum-shopping issued by the Office of the Ombudsman or that of the City Council. In fact, it was only on 15 September 2003 that the Ombudsman, in Administrative Order No.17, S. 2003, required that a Certificate of Non-Forum Shopping be attached to the written complaint against a public official or employee. Supreme Court Administrative Circulars Nos. 04-94 and 28-91[37] adverted to by petitioner mention only initiatory pleadings in a court of law when another case is pending before other tribunals or agencies of the government as the pleadings to which the rule on forum-shopping applies, thus:

The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, cross-claim, third (fourth, etc.) party complaint, or complaint-in-intervention, petition, or application wherein a party asserts his claim for relief.

Ursal filed identical complaint-affidavits before the City Council, through the DILG, and the Office of the Ombudsman. A review of the said complaints-affidavits shows that far from being the typical initiatory pleadings referred to in the above-mentioned circulars, they merely contain a recital of the alleged culpable acts of petitioner. Ursal did not make any claim for relief, nor pray for any penalty for petitioner.

Petitioner claims that the Ombudsman has no jurisdiction over the case since the City Council had earlier acquired jurisdiction over the matter. The Court is not convinced.

The mandate of the Ombudsman to investigate complaints against erring public officials, derived from both the Constitution[38] and the law[39] gives it jurisdiction over the complaint against petitioner. The Constitution has named the Ombudsman and his Deputies as the protectors of the people who shall act promptly on complaints filed in any form or manner against public officials or employees of the government.[40] To fulfill this mandate,

R.A. No. 6770, or the Ombudsman Act of 1989, was enacted, giving the Ombudsman or his Deputies jurisdiction over complaints on all kinds of malfeasance, misfeasance and non-feasance^[41] against officers or employees of the government, or any subdivision, agency or instrumentality therefor, including government-owned or controlled corporations, and the disciplinary authority over all elective and appointive officials, except those who may be removed only by impeachment or over members of Congress and the Judiciary.^[42] On the other hand, under R.A. No. 7160 or the Local Government Code, the sangguniang panlungsod or sangguniang bayan has disciplinary authority over any elective barangay official.^[43] Without a doubt, the Office of the Ombudsman has concurrent jurisdiction with the Quezon City Council over administrative cases against elective officials such as petitioner.

The Ombudsman was not aware of the pending case before the Quezon City Council when the administrative complaint was filed before it. There was no mention of such complaint either in the complaint-affidavit or in the counter-affidavit of petitioner. Thus, the Ombudsman, in compliance with its duty to act on all complaints against officers and employees of the government, took cognizance of the case, made its investigation, and rendered its decision accordingly.

As explained quite frequently, a party may be barred from raising questions of jurisdiction where estoppel by laches has set in. Estoppel by laches is failure or neglect for an unreasonable and unexplained length of time to do what, by exercising due diligence, ought to have been done earlier, warranting a presumption that the party entitled to assert it has either abandoned it or has acquiesced to the correctness and fairness of its resolution. This doctrine is based on grounds of public policy which for peace of society requires the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally an issue of inequity or unfairness of permitting a right or claim to be enforced or espoused.^[44]

Petitioner is also estopped from questioning the jurisdiction of the Ombudsman. A perusal of the records shows that he participated in the proceedings by filing his counter-affidavit with supporting evidence. Neither did he inform the Ombudsman of the existence of the other administrative complaint of which he is presumably aware at the time the proceedings in the Ombudsman were on-going. It was only when the Ombudsman rendered an adverse decision that he disclosed the proceedings before the Quezon City Council and raised the issue of jurisdiction. Thus, it has been held that participation in the administrative proceedings without raising any objection thereto bars the parties from raising any jurisdictional infirmity after an adverse decision is rendered against them.^[45]

Another submission made by petitioner is that he was deprived of his right to administrative due process when he was dismissed from service without substantial evidence and without consideration of the evidence he proffered. He raises as a defense Ursal's failure to state the actual date of commission of the alleged attempted rape, the impossibility of the assault, and the affidavits of his other subordinates.^[46] Calling attention to the weakness of Ursal's evidence, he states that such evidence is not sufficient to establish the crime of rape, in whatever stage.^[47] Finally, he argues that as testament to his innocence, his constituents voted him to a third term.^[48]

Again, the Court is not impressed.

Petitioner was accorded the opportunity to be heard. He was required to answer the formal charge and given a chance to present evidence in his behalf. He was not denied due process. More importantly, the decision of the Ombudsman is well supported by substantial evidence.

A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that respondent has committed the acts stated in the complaint or formal charge.^[49] Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion. This is different from the degree of proof required in criminal proceedings, which calls for a finding of guilt beyond reasonable doubt.[50] Petitioner's reliance on the rules on prosecution for the crime of rape is therefore misplaced. What is at issue in the case before the Ombudsman is whether his acts constitute grave misconduct, and not whether he is guilty of the crime of attempted rape.

There is no basis for believing petitioner's claim that the Ombudsman had refused to consider his evidence. As properly observed by the CA,[51] the Ombudsman passed upon petitioner's evidence which, however, was found bereft of credibility. In fact, unfortunately for petitioner at that, the Ombudsman and the CA discovered Ursal's allegations more credible, supported and corroborated as they were by the medical findings, the NBI reports and the surrounding circumstances.

One final point. The Court notes that the order made by the Ombudsman requiring Mayor Belmonte to implement the Memorandum Order dated 2 July 2001 dismissing petitioner was made even though the Memorandum Order had not yet attained finality.[52] Under the Ombudsman Act, a motion for reconsideration may be filed within five (5) days after receipt of the written notice, while 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 order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court. [53]

Petitioner received a copy of the Memorandum Order on 23 July 2001, and filed his motion for reconsideration on 27 July 2001. The motion was denied in the Order dated 1 August 2001, copy of which was received by petitioner on 21 August 2001. Petitioner thereafter filed his petition with the CA on 31 August 2001, or within the reglementary period provided by the Rules.[54]

Thus, it was improper for the Ombudsman to order the implementation of the Memorandum Order before it could become final and executory. In *Lapid v. Court of Appeals*,[55] this Court held that the import of Section 27 of the Ombudsman Act 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.[56] An appeal timely filed, such as the one filed in the instant case, will therefore stay the immediate implementation of the decision.[57] Thus:

In all these other cases therefore, the judgment imposed therein will become final after the lapse of the reglementary period of appeal if no appeal is perfected or, an appeal therefrom having been taken, the judgment in the appellate tribunal becomes final. It is this final judgment which is then correctly categorized as a "final and executory judgment" in respect to which execution shall issue as a matter of right. In other words, 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.[58]

However, the implementation sought to be enjoined is already *fait accompli*. Petitioner had already stepped down and a new barangay chairman for Brgy. Batasan Hills had already been sworn in. Injunction would not lie anymore, as the acts sought to be enjoined have already been accomplished or consummated.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated 24 April 2002 is AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 70-83.

[2]Id. at 126-132.

[3] Id. at 133-137.

[4]Entitled "Evangeline F. Ursal v. Manuel D. Laxina, Sr."

[5] Ombudsman Act of 1989.

[6] Rollo, p. 71.

[7] Id. at 148.

[8] Id. at 72.

[9]Id. at 117-125.

[10] Id. at 126-132.

[11] Id. at 133-137.

[12] Id. at 180-181.

[13] Entitled "Waiver of Jurisdiction by the Quezon City Council to the Office of the Ombudsman"; id. at 182.

[14] Id. at 74-75.

[15] Id. at 75-76.

[16] Id. at 95.

[17] Id. at 78.

[18] Id. at 78-79.

[19] Id. at 79.

[20] Id. at 80-81.

[21] Id. at 25.

[22] Id.. at 28.

[23] Id. at 31.

[24] Id. at 33.

[25] 390 Phil. 236 (2000).

[26] Rollo, p. 41.

[27] Id. at 43.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Id. at 226-241.

[32] Id. at 240.

[33] Id. at 262.

[34] Id. at 263.

[35] Id. at 264.

[36] *Lucente v. Evangelista*, 444 Phil. 721 (2003).

[37] The text of the circulars is embodied in Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure.

[38] Sec. 12, Art. XI, 1987 Constitution.

[39] R.A. No. 6770, Sec. 16.

[40] *Supra* note 38.

[41] *Supra* note 39.

[42] R.A. No. 6670, Sec. 21.

[43] R.A. No. 7160, Sec. 60.

[44] *Sps. Agbada v. Inter-Urban Developers, Inc.*, 438 Phil. 168, 187-188 (2002).

[45] *Centeno v. Centeno*, 397 Phil. 170, 178 (2000).

[46] *Rollo*, pp. 43-50.

[47] Id. at 47.

[48] Id. at 55.

[49] *Velasquez v. Hernandez*, G.R. No. 150732, 31 August 2004, 437 SCRA 357, 369.

[50] *Ibid.*

[51] *Rollo*, p. 81.

[52] Petitioner's motion for reconsideration was filed on 27 July 2001, four days after his receipt of the 2 July 2001 Memorandum Order.

[53] R.A. No. 6770, Sec. 27.

[54] *Rollo*, p. 87.

[55] *Supra* note 25.

[56] Sec. 27 of R.A. No. 6770 reads:

Sec. 27. Effectivity and Finality of Decisions. — (1) All provisional 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 any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by 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 (1) 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.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[57] Supra note 25 at 247.

[58] Id. at 249.

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