ARMANDO F. CHAN, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS CAPACITY AS OMBUDSMAN, ANTONIO A. ODEJERTE, BORONGAN, EASTERN SAMAR, DAVID P. ADONGAY, JR., AND VIRGILIO G. ALERI...

G.R. No. 159298. July 06, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Armando F. Chan (petitioner) assails in his Petition for Review on Certiorari under Rule 45 of the Rules of Court the August 29, 2002 Decision[1] of the Court of Appeals (CA), docketed as CA-G.R. SP No. 68022, affirming the March 1, 2001 Decision of the Office of the Ombudsman (Ombudsman), as well as the CA's July 25, 2003 Resolution, denying his Motion for Reconsideration.[2]

The material facts are of record.

In his Affidavit-Complaint,[3] docketed as OMB-ADM-0-99-0431, petitioner charged before the Ombudsman the following officials of the Department of Public Works and Highways (DPWH), Northern Samar Engineering District, Catarman: District Engineer Antonio A. Odejerte (Odejerte), Assistant District Engineer Serafin V. Perez (Perez), Construction Section Chief David P. Adongay, Jr. (Adongay), and Assistant Construction Engineer Virgilio G. Aleria (Aleria), for grave misconduct and conduct prejudicial to the best interest of the service allegedly committed by taking advantage of their official functions to implement a barangay sports facilities project (subject project) in Sitio Barikig, Barangay Urdaneta, Lavezares, Northern Samar, marred by the following irregularities:

First, the public funds used for the subject project were realigned from a five-seater public toilet project in Sitio Barikig, Barangay San Miguel, Lavezares, Northern Samar, in violation of existing regulations in that the site for the subject project is the private property of Nonilon Ebdane and Moises Parane, as shown by tax declarations issued in their names.

Second, the project cost of P239,126.95 is excessive and unconscionable considering that the construction work undertaken consisted of mere excavation and filling, and was completed within 15 days or half of the contract period.

Third, the photograph[4] of the project site taken on August 28, 1998 shows that the subject project is non-existent, contrary to the Statement of Time Lapsed and Work Accomplished[5] and Certificate of Completion[6] issued by Aleria on March 14, 1998 and the Certificate of Acceptance[7] issued on March 18, 1998 by Bienvenido Cagsawa (Cagsawa), who was the Barangay Chairman of Barangay Enriqueta, not Barangay Urdaneta where the subject project is situated.

In their Counter-Affidavits[8] and Joint Rejoinder-Affidavit,[9] Odejerte, Aleria, Adongay and Perez explained that the questioned realignment is supported by official documents,[10] including a February 12, 1998 letter[11]

by Department of Budget and Management (DBM) Undersecretary Virgilio A. Ifurung, informing DPWH Secretary Gregorio R. Vigilar that DBM does not object to the said realignment. As to whether the project site is private property, respondents claimed that the same is government-owned because it was sold by Moises Parane to Raymundo Daza (Daza)[12] who, in turn, donated the property to Barangay Urdaneta, Lavezares, Northern Samar by virtue of an October 15, 1997 Deed of Donation (Annex "1") [13] executed by the donor and an October 31, 1997 Affidavit of Acceptance (Annex "1-a") [14] issued by the donee through Barangay Chairman Donato Parina (Parina), both registered as Document No. 638, Page No. 27, Book No. II, Series of 1997, of the notarial record of Atty. Serafin Clutario.[15] Regarding the scope and cost of the subject project, respondents clarified that, as the February 3, 1998 Contract Agreement covered only the first phase of said project, its scope is limited to mere site development undertaken through excavation and filling; and that the cost of the first phase reached P239,126.95 because the topography of the area required so much volume of cutting and filling to be done.[16] Finally, to prove that the subject project had been completed and turned over, respondents presented photographs[17] of the project site and a Certificate of Acceptance[18] issued by Parina.

After trial, the Overall Deputy Ombudsman, Margarito P. Gervacio Jr., approved a Decision dated March 1, 2001, provisionally dismissing OMB-ADM-0-99-0431,[19] thus:

> WHEREFORE, premises considered, the instant complaint against Engineers ANTONIO A. ODEJERTE, DAVID P. ADONGAY, JR. and VIRGILIO G. ALERIA is hereby provisionally DISMISSED, without prejudice to its refiling if circumstances on the result of the post-audit examination report warrants. The complaint against SERAFIN V. PEREZ, JR. is DISMISSED for having been rendered moot and academic.
>
> The Resident Auditor of DPWH-Northern Samar Engineering District, Catarman, Northern Samar, is hereby directed to complete its post-audit examination in the questioned project without further delay and after which, to immediately inform this Office of the result of the said post audit examination within five (5) days upon completion of the same.
>
> SO ORDERED.[20]

Petitioner then went to the CA on a Petition for Certiorari[21] under Rule 65 of the Rules of Court but the same was dismissed by the CA in the August 29, 2002 Decision assailed herein. He filed a Motion for Reconsideration which the CA denied in the assailed Resolution dated July 25, 2003.

Hence, the present petition raising the following issues:

I

> Whether or not the Court of Appeals committed grave abuse of discretion when it completely deviated from the legal definition and the required quantum of proof of substantial evidence in upholding the decision of the Office of the Ombudsman despite the glaring circumstances that the latter's decision was done capriciously, whimsically or wantonly tantamount to grave abuse of discretion.
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> II
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> Whether or not the Court of Appeals, in ruling out [that] certiorari under Rule 65 of the Rules of Court is not proper remedy, misconstrued or misapplied the doctrine laid down in Tirol and Fabian.
>
> III
>
> Whether or not the Court of Appeals correctly applied in the present case the rule that [a] Petition for Certiorari will fail unless a motion for reconsideration is filed.

We resolve the second and third issues ahead of the first.

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Citing Fabian v. Desierto,[22] the CA held that petitioner should have filed, not a Petition for Certiorari under Rule 65, but a Petition for Review under Rule 43, as this is the proper remedy from the March 1, 2001 Ombudsman Decision. While it acknowledged that a Petition for Certiorari may also be filed, the CA held that petitioner's recourse to it was not proper because the acts of the Ombudsman which petitioner sought to be corrected consisted of mere errors in judgment which do not amount to abuse of discretion. It also found his petition premature for omitting to file a motion for reconsideration with the Ombudsman.[23]

The CA is not entirely correct.

Following our ruling in Fabian v. Desierto, the Ombudsman issued Administrative Order No. 17 dated September 15, 2003, amending Section 7, Rule III (Procedure in Administrative Case) of Administrative Order No. 07[24] which reads as follows:

> Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
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> x x x x
>
> A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.(Emphasis ours)

The foregoing rule is based on Section 27 of Republic Act No. 6770[25] which provides:

> SEC. 27. Effectivity and Finality of Decisions. - (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory.
>
> x x x x
>
> 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 month's salary shall be final and unappealable. x x x (Emphasis ours)

Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in Barata v. Abalos,[26] if a sentence of censure, reprimand or one-month suspension is considered final and unappealable, so should exoneration.

Being final and unappealable, a judgment of exoneration is not correctible by motion for reconsideration under Section 8[27] of the Procedure in Administrative Cases in the Ombudsman. In Ombudsman v. Alano,[28] we reversed the Ombudsman for entertaining a motion for reconsideration and modifying its earlier judgment absolving respondent Alano of the administrative charge, thus:

> From the above constitutional and statutory provisions and Rule, there are two instances where a decision, resolution or order of the Ombudsman becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary.
>
> In the instant case, petitioner, in its Resolution dated August 14, 1998, exonerated respondent of the

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> administrative charge. It is implicit in Section 27 of R.A. No. 6770 and Section 7, Rule III of Administrative Order No. 07 that a decision absolving or exonerating respondent of the charge is final and unappealable, meaning, immediately executory. In Alba v. Nitorreda, we upheld the validity of the provisions of Section 27 of R.A. No. 6770 and Section 7, Rule III of Administrative Order No. 07 providing for the immediate finality and non-appealability of the decisions, orders, resolutions, or directives of the Ombudsman in certain cases and declaring that such provisions do not infringe on the due process clause, for the right of appeal is not a natural right, nor a part of due process; it is merely a statutory privilege and may be exercised only in the manner provided by law.
>
> In sum, petitioner, by issuing its Orders dated March 17 and August 12, 1999 modifying its final and immediately executory Resolution of August 14, 1998 exonerating respondent, committed a reversible error.

With more reason, exoneration cannot be appealed by a petition for review under Rule 43 with the CA.[29]

Nonetheless, it is a settled jurisprudence that a judgment exonerating the respondent in an administrative case may be questioned for arbitrariness or oppressiveness by way of a petition for certiorari under Rule 65.[30] Thus, the remedy taken by herein petitioner in filing a Petition for Certiorari with the CA assailing the March 1, 2001 Ombudsman Decision dismissing the administrative case against respondents was proper. It was also seasonably filed, notwithstanding the lack of a motion for reconsideration for no such prior recourse is allowed under the rule aforequoted.

Whether the Petition for Certiorari filed with the CA had merit, however, is another matter.

Petitioner does not question the dismissal of the administrative complaint against Serafin V. Perez.[31] It is only the provisional dismissal of OMB-ADM-0-99-0431 as against respondents Odejerte, Adongay, and Aleria which remains in question.

In its March 1, 2001 Decision, the Ombudsman rejected the allegations of petitioner that the subject project was overpriced and that it was non-existent, thus:

> Anent the issue on overpricing, there being no single evidence submitted by the complainant and respondents having fully explained that the amount of P239,126.95 is not excessive, the mere allegation of the complainant sans proof to support it, must fail.
>
> We also find merit in respondents' claim that nothing is questionable if the assailed project was implemented and completed ahead of time. We cannot but agree that government projects completed early or on time should be lauded rather than condemned.
>
> x x x x
>
> With regard to the second issue, i.e., whether or not the assailed project was constructed, we rule in the affirmative. Taking the evidence of the complainant as against that of the respondents, we cannot but conclude that the sports facilities were really constructed.
>
> The complainant based his allegations solely on the picture of the site where the disputed project is supposed to have been constructed, which evidence cannot be given greater weight than those adduced by the respondents.
>
> On the other hand, the respondents proved the existence of the assailed project by presenting the following pieces of evidence:
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> - Statement of Time Elapsed and Work Accomplished dated March 14, 1998 signed by respondents Virgilio Aleria, David Adongay, Serafin Perez, Jr. and Antonio Odejerte showing the completion of the sports facilities at Sitio Barikig, Lavezares, Norther Samar;

- Certification of Completion dated March 18, 1998 signed by Virgilio Aleria proving completion of the subject facilities;

- Certificate of Acceptance dated March 18, 1998 signed by Donato Parina, Brgy. Chairman of Brgy. Urdaneta, in behalf of Sitio Barikig, Brgy. Urdaneta, Lavezares, Northern Samar;

- Inspection Report dated March 18, 1998 signed by Virgilio Aleria, Victorio de Silva, Sandy Pua, Maximo Resuello, Jr., David Adongay, Jr., Serafin Perez, Jr. and Antonio Odejerte proving that the subject facility was completed and inspected; and

- Pictures showing the completed Phases I, II and III of the constructed Barangay Sports Complex at Sitio Barikig, Lavezares, Northern Samar.

These pieces of documentary evidence undoubtedly negated the complainant's allegation that the sports facilities never existed. The herein respondents have in their favor the presumption of regularity in the performance of duty. As testified to by witnesses Bartolome Tan, Jr. former Resident Auditor, Arnulfo V. Galenzoga, Resident Auditor and Mrs. Elvira Dones, Records Officer, all of DPWH - Northern Samar Engineering District, the documetns are genuine. Besides, it would have been impossible for the abovenamed government officials/employees to sign, approve, certify and accept a completed project that is non-existent, knowing fully welll the dire consequences of false representations.[32]

The CA correctly sustained the foregoing views of the Ombudsman. Petitioner's evidence on these particular issues was controverted overwhelmingly by the aforecited evidence of respondents. Petitioner appears to have conceded as much for he no longer traversed these issues in his Petition.

The issue that petitioner continues to harp on in the present petition is whether the project site is a private property or a public property.[33]

Respondents presented Annexes "1" and "1-a" to prove that the project site was donated by Daza to Barangay Urdaneta and that the latter accepted the donation. They also presented a July 10, 1997 Deed of Sale of Coconut Land to show that prior to the donation, Daza had acquired the project site from Parane.[34]

In his Reply-Affidavit,[35] however, petitioner presented an October 15, 1997 Deed of Donation (Annex "A") and an October 21, 1997 Certificate of Acceptance (Annex "A-1") registered also as Document No. 638, Page No. 27, Book No. II, Series of 1997, of the notarial record of Atty. Serafin Clutario, but are materially different from Annexes "1" and "1-a" of respondents, in the following aspects:

a) Annex "A" states that the donation is in favor of Barangay Enriqueta while Annex "1" states that the donation is in favor of Barangay Urdaneta;

b) the second witness to Annex "A" is different from the second witness to Annex "1";

c) Annex "A-1" cites Resolution No. 7 of the Sangguniang Barangay of Enriqueta as basis of the acceptance while in Annex "1-a", acceptance is based on Resolution No. 4 of the Sangguniang Barangay of Urdaneta;

d) in Annex "A-1", acceptance of the donation was made by Cagsawa as Barangay Chairman of Barangay Enriqueta while in Annex "1-a", acceptance was made by Parina as Barangay Chairman of Barangay Urdaneta; and

e) Annexes "A" and "A-1" are certified true copies of the documents on file with the Regional Trial Court of Allen, Northern Samar while Annexes "1" and "1-a" are authenticated copies of documents on file with the DPWH District Office.

Clearly, the two sets of documents are conflicting. Such disparity, however, cannot be resolved by us here and

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now for the issue - whether the donee is Barangay Enriqueta or Barangay Urdaneta - is purely factual, one best left to the post-audit jurisdiction of the Commission on Audit. Besides, there is no necessity for us to look into said issue because, regardless of which set of documents should prevail, one conclusion is inevitable - that at the time the subject project was implemented, the project site had already become public property by virtue of the donation effected. Petitioner's objection to the project as having been built on private property is therefore specious.

In fine, the CA is correct in denying the petition to annul the subject Decision of the Ombudsman.

WHEREFORE, the petition is DENIED for lack of merit.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, andNachura, JJ., concur.

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[*] The Court of Appeals, as respondent, is deleted from the title of the petition, per Section 4, Rule 45 of the RULES OF COURT.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with the concurrence of Associate Justices Romeo J. Callejo, Sr. (now a retired member of the Supreme Court) and Danilo B. Pine; rollo, p. 35.

[2] Id. at 49.

[3] Id. at 54-56.

[4] Id. at p. 62.

[5] Id. at 60.

[6] Id. at 61.

[7] CA rollo, p. 63.

[8] Id. at 65 and 79.

[9] Id. at 97 and 121.

[10] Id. at 72-75.

[11] Id. at 76.

[12] Id. at 121.

[13] Id. at 70.

[14] Id. at 71.

[15] Id.

[16] Volume Computation, id. at 89.

[17] Id. at 112 and 119-120.

[18] Id. at 77.

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[19] As to the criminal aspect docketed as OMB-VIS-CRIM-99-0666, the same was also dismissed in a Resolution dated October 27, 2001 approved by Deputy Ombudsman for the Visayas Primo C. Miro; id. at 270.

[20] Id. at 48.

[21] Id. at 2.

[22] 356 Phil. 787, 804 (1998).

[23] CA Decision, rollo, p. 42-45.

[24] RULES OF PROCEDURE in the Office of the Ombudsman

[25] THE OMBUDSMAN Act of 1989.

[26] 411 Phil. 204, 212 (2001).

[27] Section 8. Motion for Reconsideration or Reinvestigation; Grounds. - Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant. Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

[28] G.R. No. 149102, February 15, 2007.

[29] Republic of the Philippines v. Francisco, G.R. No. 163089, December 6, 2006, citing Herrera v. Bohol, 466 Phil. 905, 911 (2004).

[30] Barata v. Abalos, Jr., supra note 26; Enemecio v. Office of the Ombudsman, 464 Phil. 102, 113 (2004).

[31] Petitioner did not implead Serafin V. Perez as respondent.

[32] CA rollo, pp. 44-46.

[33] Rollo, pp. 15-28.

[34] While this document was mentioned in the March 1, 2001 Ombudsman Decision (p. 13), there is no copy thereof in the records.

[35] CA rollo, p. 81.

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