EDGARDO V. ESTARIJA, PETITIONER, VS. EDWARD F. RANADA AND THE HONORABLE OMBUDSMAN ANIANO A. DESIERTO (NOW SUCCEEDED BY HON. SIMEON MARCELO), AND HIS DEPUTY OMBUDSMAN FOR MINDANA...

G.R. NO. 159314. June 26, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the February 12, 2003 Decision[1] of the Court of Appeals in CA-G.R. SP No. 62557 which affirmed the October 2, 2000 Decision[2] of the Office of the Ombudsman-Mindanao in OMB-MIN-ADM-98-183.

The facts are as follows:

On August 10, 1998, respondent Edward F. Ranada, a member of the Davao Pilots Association, Inc. (DPAI) and Davao Tugboat and Allied Services, Inc., (DTASI) filed an administrative complaint for Gross Misconduct before the Office of the Ombudsman-Mindanao, against petitioner Captain Edgardo V. Estarija, Harbor Master of the Philippine Ports Authority (PPA), Port of Davao, Sasa, Davao City.[3]

The complaint alleged that Estarija, who as Harbor Master issues the necessary berthing permit for all ships that dock in the Davao Port, had been demanding monies ranging from P200 to P2000 for the approval and issuance of berthing permits, and P5000 as monthly contribution from the DPAI. The complaint alleged that prior to August 6, 1998, in order to stop the mulcting and extortion activities of Estarija, the association reported Estarija's activities to the National Bureau of Investigation (NBI). On August 6, 1998, the NBI caught Estarija in possession of the P5,000 marked money used by the NBI to entrap Estarija.

Consequently, the Ombudsman ordered petitioner's preventive suspension[4] and directed him to answer the complaint. The Ombudsman filed a criminal case docketed as Criminal Case No. 41,464-98, against Estarija for violation of Republic Act No. 3019, The Anti-Graft and Corrupt Practices Act, before the Regional Trial Court of Davao City, Branch No. 8.[5]

In his counter-affidavit[6] and supplemental counter-affidavit,[7] petitioner vehemently denied demanding sums of money for the approval of berthing permits. He claimed that Adrian Cagata, an employee of the DPAI, called to inform him that the DPAI had payables to the PPA, and although he went to the association's office, he was hesitant to get the P5,000 from Cagata because the association had no pending transaction with the PPA. Estarija claimed that Cagata made him believe that the money was a partial remittance to the PPA of the pilotage fee for July 1998 representing 10% of the monthly gross revenue of their association. Nonetheless, he received the money but assured Cagata that he would send an official receipt the following day. He claimed that the entrapment and the subsequent filing of the complaint were part of a conspiracy to exact personal vengeance against him on account of Ranada's business losses occasioned by the cancellation of the latter's sub-agency

agreement with Asia Pacific Chartering Phil., Inc., which was eventually awarded to a shipping agency managed by Estarija's son.

On August 31, 2000, the Ombudsman rendered a decision[8] in the administrative case, finding Estarija guilty of dishonesty and grave misconduct. The dispositive portion reads:

> WHEREFORE, premises considered, there being substantial evidence, respondent EDGARDO V. ESTARIJA is hereby found guilty of Dishonesty and Grave Misconduct and is hereby DISMISSED from the service with forfeiture of all leave credits and retirement benefits, pursuant to Section 23(a) and (c) of Rule XIV, Book V, in relation to Section 9 of Rule XIV both of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292). He is disqualified from re-employment in the national and local governments, as well as in any government instrumentality or agency, including government owned or controlled corporations. This decision is immediately executory after it attains finality. Let a copy of this decision be entered in the personal records of respondent EDGARDO V. ESTARIJA.
>
> PPA Manager Manuel C. Albarracin is hereby directed to implement this Office Decision after it attains finality.
>
> SO DECREED.[9]

Estarija seasonably filed a motion for reconsideration.[10] Estarija claimed that dismissal was unconstitutional since the Ombudsman did not have direct and immediate power to remove government officials, whether elective or appointive, who are not removable by impeachment. He maintains that under the 1987 Constitution, the Ombudsman's administrative authority is merely recommendatory, and that Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989", is unconstitutional because it gives the Office of the Ombudsman additional powers that are not provided for in the Constitution.

The Ombudsman denied the motion for reconsideration in an Order[11] dated October 31, 2000. Thus, Estarija filed a Petition for Review with urgent prayer for the issuance of a temporary restraining order and writ of preliminary prohibitory injunction before the Court of Appeals. The Court of Appeals, on February 12, 2003, dismissed the petition and affirmed the Ombudsman's decision.

The Court of Appeals held that the attack on the constitutionality of Rep. Act No. 6770 was procedurally and substantially flawed. First, the constitutionality issue was belatedly raised in the motion for reconsideration of the decision of the Ombudsman. Second, the petitioner was unable to prove the constitutional breach and failed to overcome the presumption of constitutionality in favor of the questioned statute.

The Court of Appeals affirmed the decision of the Ombudsman, holding that receiving extortion money constituted dishonesty and grave misconduct. According to the Court of Appeals, petitioner failed to refute the convincing evidence offered by the complainant. Petitioner presented affidavits executed by the high-ranking officials of various shipping agencies which were found by the Court of Appeals to be couched in general and loose terms, and according to the appellate court, could not be given more evidentiary weight than the sworn testimonies of complainant and other witnesses that were subjected to cross-examination.

Petitioner filed a motion for reconsideration but the Court of Appeals denied the same for lack of merit. Hence, the instant petition assigning the following errors:

(A) That certain basic factual findings of the Court of Appeals as hereunder specified, are not borne by any substantial evidence, or are contrary to the evidence on record, or that the Court of Appeals has drawn a conclusion or inference which is manifestly mistaken or is based on a misappreciation of the facts as to call for a corrective review by this Honorable Supreme Court;

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(B) That Republic Act No. 6770, otherwise known as the "Ombudsman's Act of 1989", is unconstitutional, or that the Honorable OMBUDSMAN does not have any constitutional direct and immediate power, authority or jurisdiction to remove, suspend, demote, fine or censure, herein Petitioner and all other government officials, elective or appointive, not removable by impeachment, consistent with Sec. 13, par. No. (3), Art XI, of the 1987 Philippine Constitution.

(C) That corollary to, or consistent with, the aforecited Second Reason, said REPUBLIC ACT No. 6770, as amended, is constitutionally impaired and invalid insofar as it is inconsistent with, or violative of, the aforecited constitutional provisions (Sec 13, No. 3, Art XI).

(D) That the issue of "jurisdiction" or constitutionality or validity of a law, statute, rule or regulation can be raised at any stage of the case, even by way of a motion for reconsideration after a decision has been rendered by the court or judicial arbiter concerned.

(E) That the DECISION of the Court of Appeals is contrary to jurisprudential law, specifically to the ruling of this Honorable SUPREME COURT in the case of "Renato A. Tapiador, Petitioner versus Office of the Ombudsman and Atty. Ronaldo P. Ledesma, Respondents, G.R No. 129124" decided on March 15, 2002.

(F) That assuming arguendo that the Honorable OMBUDSMAN does have such direct constitutional power to remove, suspend, etc. government officials not removable by impeachment, the DECISION rendered in said case OMB-MIN-ADM-98-[183], finding Petitioner "guilty of Dishonesty and Grave Misconduct" and directing his "dismissal from the service, with forfeiture of all leave credits and retirement benefits xxx", is still contrary to law and the evidence on record, or, at the very least, the charge of "Dishonesty" is not included in RANADA's administrative complaint and absolutely no evidence was presented to prove "Dishonesty" and the complaint which was limited to "[Grave] Misconduct" only;

(G) That further assuming arguendo that Petitioner is subject to direct administrative disciplinary authority by the Honorable OMBUDSMAN whether under the Constitution or RA 6770, and assuming that he is "guilty" of "Dishonesty and Grave Misconduct", the Court of Appeals violated Sec. 25 of R.A. 6770 for not considering and applying, several mitigating circumstances in favor of Petitioner and that the penalty (of dismissal with loss of benefits) imposed by OMBUDSMAN is violative of Sec. 25, of R.A. 6770 and is too harsh, inhumane, violative of his human dignity, human rights and his other constitutional right not to be deprived of his property and/or property rights without due process, is manifestly unproportionate to the offense for which Petitioner is being penalized, and, should, therefore, be substantially modified or reduced to make it fair, reasonable, just, humane and proportionate to the offense committed. (Emphasis supplied).[12]

Essentially, the issues for our resolution are: First, Is there substantial evidence to hold petitioner liable for dishonesty and grave misconduct? Second, Is the power of the Ombudsman to directly remove, suspend, demote, fine or censure erring officials unconstitutional?

On the first issue, petitioner claims that the factual findings of the Court of Appeals are not supported by substantial evidence, and that the Court of Appeals misappreciated the facts of the case.

Petitioner contends that he cannot be liable for grave misconduct as he did not commit extortion. He insists that he was merely prodded by Adrian Cagata to receive the money. He claims that as a bonded official it was not wrong for him to receive the money and he had authority to assist the agency in the collection of money due to the agency, e.g. payment for berthing permits. Moreover, he argues that the signing of berthing permits is only ministerial on his part and he does not have influence on their approval, which is the function of the berthing committee. Consequently, he avers, it makes no sense why he would extort money in consideration of the issuance of berthing permits.

We note that indeed petitioner has no hand in the approval of berthing permits. But, it is undisputed that he does decide on the berthing space to be occupied by the vessels. The berthing committee likewise consults him on technical matters. We note, too, that he claims he was only instructed to receive the money from Cagata, yet he admits that there was no pending transaction between the PPA and the DPAI.

In his Comment, the Ombudsman, through the Solicitor General, counters that petitioner raised questions of facts which are not reviewable by this Court. He argued that contrary to the petitioner's claim, the judgment of guilt for dishonesty and grave misconduct was based on the evidence presented. Petitioner was caught red-handed in an entrapment operation by the NBI. According to the Ombudsman, the entrapment of the petitioner met the test for a valid entrapment i.e. the conduct of the law enforcement agent was not likely to induce a normally law-abiding person, other than one who is ready and willing to commit the offense. The presumption in entrapment is that a law abiding person would normally resist the temptation to commit a crime that is presented by the simple opportunity to act unlawfully. Entrapment is contingent on the accused's predisposition to commit the offense charged, his state of mind, and his inclination before his exposure to government agents. Thus, entrapment is not made ineffectual by the conduct of the entrapping officers. When Estarija went to the office of Adrian Cagata to pick up the money, his doing so was indicative of his willingness to commit the crime.

In an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[13] Further, precedents tell us that the factual findings of the Office of the Ombudsman when supported by substantial evidence are conclusive,[14] and such findings made by an administrative body which has acquired expertise are accorded not only respect but even finality.[15]

As shown on the records, Estarija called the office of the DPAI and demanded the payment of the monthly contribution from Captain Zamora. Captain Zamora conveyed the demand to Ranada who in turn reported the matter to the NBI. Thereafter, an entrapment operation was staged. Adrian Cagata called Estarija to confirm the payment, and that the money was already available at their office. Accordingly, Estarija went to the DPAI office and collected the P5,000 marked money. Upon departure of Estarija from the office, the NBI operatives frisked him and recovered the P5,000 marked money.

We are unconvinced by Estarija's explanation of his conduct. He does not deny that he went to the DPAI office to collect the money and that he actually received the money. Since there was no pending transaction between the PPA and the DPAI, he had no reason to go to the latter's office to collect any money. Even if he was authorized to assist in the collection of money due the agency, he should have issued an official receipt for the transaction, but he did not do so. All told, we are convinced that there is substantial evidence to hold petitioner liable for grave misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. And when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.[16] We

are convinced that the decision of the Ombudsman finding petitioner administratively liable for grave misconduct is based on substantial evidence. When there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.[17]

The same findings sustain the conclusion that Estarija is guilty of dishonesty. The term dishonesty implies disposition to lie, cheat, deceive, or defraud, untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness, disposition to defraud, deceive or betray.[18] Patently, petitioner had been dishonest about accepting money from DPAI.

Now, the issue pending before us is: Does the Ombudsman have the constitutional power to directly remove from government service an erring public official?

At the outset, the Court of Appeals held that the constitutional question on the Ombudsman's power cannot be entertained because it was not pleaded at the earliest opportunity. The Court of Appeals said that petitioner had every opportunity to raise the same in his pleadings and during the course of the trial. Instead, it was only after the adverse decision of the Ombudsman that he was prompted to assail the power of the Ombudsman in his motion for reconsideration. The Court of Appeals held that the constitutional issue was belatedly raised in the proceedings before the Ombudsman, thus, it cannot be considered on appeal.

When the issue of unconstitutionality of a legislative act is raised, the Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very lis mota of the case.[19]

For our purpose, only the third requisite is in question. Unequivocally, the law requires that the question of constitutionality of a statute must be raised at the earliest opportunity. In Matibag v. Benipayo,[20] we held that the earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before a competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.

In Matibag, President Gloria Macapagal-Arroyo appointed, ad interim, Alfredo L. Benipayo as Chairman of the Commission on Elections (COMELEC). Ma. J. Angelina G. Matibag was the Director IV of the Education and Information Department (EID) but Benipayo reassigned her to the Law Department. Matibag sought reconsideration of her relief as Director of the EID and her reassignment to the Law Department. Benipayo denied her request for reconsideration. Consequently, Matibag appealed the denial of her request to the COMELEC en banc. In addition, Matibag filed a complaint against Benipayo before the Law Department for violation of the Civil Service Rules and election laws. During the pendency of her complaint before the Law Department, Matibag filed a petition before this Court assailing the constitutionality of the ad interim appointment of Benipayo and the other COMELEC Commissioners. We held that the constitutional issue was raised on time because it was the earliest opportunity for pleading the constitutional issue before a competent body.

In the case of Umali v. Guingona, Jr.,[21] the question of the constitutionality of the creation of the Presidential Commission on Anti-Graft and Corruption (PCAGC) was raised in the motion for reconsideration after the Regional Trial Court of Makati rendered a decision. When appealed, the Court did not entertain the constitutional issue because it was not raised in the pleadings in the trial court. In that case, the Court did not exercise judicial review on the constitutional question because it was belatedly raised and not properly pleaded, thus, it cannot be considered by the Court on appeal.

In this case, petitioner raised the issue of constitutionality of Rep. Act No. 6770 in his motion for the

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reconsideration of the Ombudsman's decision. Verily, the Ombudsman has no jurisdiction to entertain questions on the constitutionality of a law. Thus, when petitioner raised the issue of constitutionality of Rep. Act No. 6770 before the Court of Appeals, which is the competent court, the constitutional question was raised at the earliest opportune time. Furthermore, this Court may determine, in the exercise of sound discretion, the time when a constitutional issue may be passed upon.[22]

In assailing the constitutionality of Rep. Act No. 6770, petitioner contends that the Ombudsman has only the powers enumerated under Section 13,[23] Article XI of the Constitution; and that such powers do not include the power to directly remove, suspend, demote, fine, or censure a government official. Its power is merely to recommend the action to the officer concerned. Moreover, petitioner, citing Tapiador v. Office of the Ombudsman,[24] insists that although the Constitution provides that the Ombudsman can promulgate its own rules of procedure and exercise other powers or perform such functions or duties as may be provided by law, Sections 15,[25] 21,[26] 22[27] and 25[28] of Rep. Act No. 6770 are inconsistent with Section 13, Article XI of the Constitution because the power of the Ombudsman is merely to recommend appropriate actions to the officer concerned.

For the State, the Solicitor General maintains that the framers of the 1987 Constitution did not intend to spell out, restrictively, each act which the Ombudsman may or may not do, since the purpose of the Constitution is to provide simply a framework within which to build the institution. In addition, the Solicitor General avers that what petitioner invoked was merely an obiter dictum in the case of Tapiador v. Office of the Ombudsman.

We find petitioner's contentions without merit. Among the powers of the Ombudsman enumerated in Section 13, Article XI of the Constitution are:

> Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> - Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
>
> - Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
>
> - Direct the Officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> - Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
>
> - Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
>
> - Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
>
> - Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
>
> - Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Rep. Act No. 6770 provides for the functional and structural organization of the Office of the Ombudsman. In passing Rep. Act No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office.[29] Moreover, the legislature has vested the Ombudsman with broad powers to enable him to implement his own actions.[30]

In Ledesma v. Court of Appeals,[31] we held that Rep. Act No. 6770 is consistent with the intent of the framers of the 1987 Constitution. They gave Congress the discretion to give the Ombudsman powers that are not merely persuasive in character. Thus, in addition to the power of the Ombudsman to prosecute and conduct investigations, the lawmakers intended to provide the Ombudsman with the power to punish for contempt and preventively suspend any officer under his authority pending an investigation when the case so warrants. He was likewise given disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies except members of Congress and the Judiciary.

We also held in Ledesma that the statement in Tapiador v. Office of the Ombudsman that made reference to the power of the Ombudsman is, at best, merely an obiter dictum and cannot be cited as a doctrinal declaration of this Court.[32]

Lastly, the Constitution gave Congress the discretion to give the Ombudsman other powers and functions. Expounding on this power of Congress to prescribe other powers, functions, and duties to the Ombudsman, we quote Commissioners Colayco and Monsod during the interpellation by Commissioner Rodrigo in the Constitutional Commission of 1986 on the debates relative to the power of the Ombudsman:

> MR. RODRIGO: Let us go back to the division between the powers of the Tanodbayan and the Ombudsman which says that:
> The Tanodbayan . . . shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.
>
> The powers of the Ombudsman are enumerated in Section 12.

MR. COLAYCO: They are not exclusive.

MR. RODRIGO: So, these powers can also be exercised by the Tanodbayan?

MR. COLAYCO: No, I was saying that the powers enumerated here for the Ombudsman are not exclusive.

MR. RODRIGO: Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislature may vest him with powers taken away from the Tanodbayan, may it not?

MR. COLAYCO: Yes.

MR. MONSOD: Yes.

x x x x

MR. RODRIGO: And precisely, Section 12(6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." x x x

MR. COLAYCO: Madam President, that is correct.

MR. MONSOD: Madam President, perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to

give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, the Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO: Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD: I agree with the Commissioner.

MR. RODRIGO: Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD: Yes, because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law — the last one, P.D. No. 1630 — did not follow the main thrust; instead it created the Tanodbayan (2 record, 270-271). (emphasis supplied)

x x x x

MR. MONSOD (reacting to statements of Commissioner Blas Ople): May we just state that perhaps the [H]onorable Commissioner has looked at it in too much of an absolutist position. The Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We did not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability (emphasis supplied).[33]

Thus, the Constitution does not restrict the powers of the Ombudsman in Section 13, Article XI of the 1987 Constitution, but allows the Legislature to enact a law that would spell out the powers of the Ombudsman. Through the enactment of Rep. Act No. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress, and the Judiciary.[34] To conclude, we hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound. The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary.

WHEREFORE, the petition is DENIED. The assailed Decision dated February 12, 2003 of the Court of Appeals in CA-G.R. SP No. 62557 and Resolution dated July 28, 2003 are hereby AFFIRMED.

No costs.

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SO ORDERED.

Panganiban, C.J., Puno, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.
Ynares-Santiago, J., on leave.

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[1] Rollo, pp. 49-60. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Marina L. Buzon, and Danilo B. Pine concurring.

[2] Id. at 153-165.

[3] Rollo, pp. 46-47.

[4] CA rollo, pp. 65-67.

[5] Id. at 120.

[6] Rollo, pp. 74-93.

[7] Id. at 118-128.

[8] Id. at 153-165.

[9] Id. at 164-165.

[10] Id. at 166-182.

[11] Id. at 183-188.

[12] Id. at 17-18.

[13] Avancena v. Liwanag, A.M. No. MTJ-01-1383, July 17, 2003, 406 SCRA 300, 303.

[14] Republic Act No. 6770 (1989), Sec. 27(2).

[15] Advincula v. Dicen, G.R. No. 162403, May 16, 2005, 458 SCRA 696, 712.

[16] Bureau of Internal Revenue v. Organo, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.

[17] Morong Water District v. Office of the Deputy Ombudsman, G.R. No. 116754, March 17, 2000, 328 SCRA 363, 373.

[18] Philippine Amusement and Gaming Corporation v. Rilloraza, G.R. No. 141141, June 25, 2001, 359 SCRA 525, 540.

[19] Arceta v. Mangrobang, G.R. No. 152895, June 15, 2004, 432 SCRA 136, 140.

[20] G.R. No. 149036, April 2, 2002, 380 SCRA 49.

[21] G.R. No. 131124, March 29, 1999, 305 SCRA 533.

[22] Matibag v. Benipayo, supra note 20 at 65.

[23] Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[24] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

[25] SEC. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;
(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;
(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;
(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: Provided, That the Ombudsman under its rules and regulations may determine what cases may not be made public: Provided, further, That any publicity issued by the Ombudsman shall be balanced, fair and true;
(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government,

> and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
> (8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
> (9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;
> (10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;
> (11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.
> The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

[26] SEC. 21. Officials Subject To Disciplinary Authority; Exceptions. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

[27] SEC. 22. Investigatory Power. – The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

[28] SEC. 25. Penalties. – (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

[29] Uy v. Sandiganbayan, G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 660.

[30] Id. at 666.

[31] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

[32] Id. at 449.

[33] Acop v. Office of the Ombudsman, G.R. Nos. 120422 and 120428, September 27, 1995, 248 SCRA 566, 576-579.

[34] Supra note 26.

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