

DR. PEDRO F. GOBENCIONG, PETITIONER, VS. HON. COURT OF APPEALS, DEPUTY OMBUDSMAN (VISAYAS), REGIONAL DIRECTOR OF THE DEPARTMENT OF HEALTH, REGION VIII, AND FLORA DELA PEÑA, RESP...*G.R. No. 159883. March 31, 2008*

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-159883/>**VELASCO JR., J.:****The Petitions**

Before the Court are these three petitions, two interposed under Rule 45 and one under Rule 65 of the Rules of Court. These petitions stemmed from OMB-VIS-ADM-97-0370 entitled Dr. Flora de la Peña v. Dr. Rafael C. Omega, Chief of Hospital, Dr. Pedro F. Gobenciong, Administrative Officer IV, Crisologo R. Babula, Supply Officer IV, et al., all of Eastern Visayas Regional Medical Center, Tacloban City.

The first, a Petition for Review on Certiorari under Rule 45, docketed as G.R. No. 159883, seeks to nullify the Decision[1] and Resolution[2] dated November 26, 2002 and August 27, 2003, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 49585, denying petitioner Gobenciong's petition for certiorari under Rule 65 and, thus, effectively affirming the assailed Order[3] dated August 24, 1998 of the Deputy Ombudsman-Visayas, preventively suspending him from office.

In the second, a Petition for Certiorari under Rule 65 and docketed as G.R. No. 168059, the Office of the Ombudsman assails, as tainted with grave abuse of discretion, the Decision[4] dated April 29, 2005 of the CA in CA-G.R. SP No. 61687, which set aside the Ombudsman's Decision[5] of March 21, 2000 and Order of August 10, 2000 Order[6] in OMB-VIS-ADM-97-0370 but only insofar as it imposed a penalty of one-year suspension on Gobenciong.

The third, a Petition for Review on Certiorari under Rule 45, docketed as G.R. No. 173212, seeks to set aside the Decision and Resolution[7] dated April 29, 2005 and May 29, 2006, respectively, of the CA in CA-G.R. SP No. 61687, which sustained the aforesaid March 21, 2000 and August 10, 2000 rulings in OMB-VIS-ADM-97-0370.

On January 17, 2006, the Court ordered the consolidation of G.R. No. 159883 with G.R. No. 168059, both to be considered as en banc cases.[8] The consolidation of G.R. No. 173212 with the first two cases later followed.[9]

The Facts

During the period material, Gobenciong held the position of Administrative Officer IV in Eastern Visayas Regional Medical Center (EVRMC), a public hospital in Tacloban City. On December 3, 1996, the appropriate EVRMC office issued Requisition and Issue Voucher No. (RIV) EO-1-96 for one unit hemoanalyzer (also called particle counter), among other items. On its face, RIV EO-1-96 carried, for the hemoanalyzer, the specifications "electric 220V, 50 feed shelves capacity" with a handwritten unit price quotation of PhP 1,195,998.

After public bidding where Alvez Commercial, Inc. (Alvez) emerged as the best bidder, Purchase Order No. (PO) EO-5-96 dated December 9, 1996 was issued covering two units of nebulizer and one unit particle counter with specifications “23 Parameters, Genius, Italy, electric 220V, fully automated” at the unit price as aforesated.

As hospital documents would show, the nebulizers and the hemoanalyzer appeared to have been delivered on December 20, 1996 and accepted by Engr. Jose M. Jocano, Jr. and Supply Officer III Crisologo R. Babula, per Certification of Acceptance they signed to attest having accepted all the articles delivered by Alvez per Sales Invoice No. 0786. Similarly, Babula signed Sales Invoice No. 0786 to acknowledge receipt in good condition of the articles covered thereby. In addition, it was made to appear in a Commission on Audit (COA) Inspection Report that Jocano and Gobenciong had certified as correct the finding/recommendation that the two nebulizers and the hemoanalyzer had been inspected as to quality and quantity as per Sales Invoice No. 0786.

On December 26, 1996, Disbursement Voucher No. (DV) 101-9612-1986, for PhP 1,161,817.35, net of creditable VAT, was prepared. Gobenciong, among others, signed the voucher to attest that the expense covered thereby was necessary, lawful, and incurred under his direct supervision. Appended to DV 101-9612-1986 were documents adverted to earlier, such as Sales Invoice No. 0786, the Certification of Acceptance, the COA Inspection Report, PO EO-5-96, and RIV EO-1-96.

The issuance on December 27, 1996 of Landbank Check No. 456359 in the amount of PhP 1,161,817.35 in favor of Alvez, which then purportedly issued Receipt No. 0815, followed.

On March 31, 1997, or little over three months after the supposed delivery of the hemoanalyzer, Alvez addressed a letter to EVRMC to assure the hospital that it would be replacing the yet to-be-delivered slightly defective hemoanalyzer with another unit. On April 1, 1997, Alvez actually delivered the promised replacement—a Genius particle counter with Serial No. 36162. It was installed on April 2, 1997 and inspected the following day by Jocano and Gobenciong.

The instant case started when Dr. Flora dela Peña, Head of the EVRMC Laboratory Unit, filed, on June 20, 1997, an administrative complaint before the Office of the Ombudsman-Visayas, charging Gobenciong, Jocano, Babula, and three other EVRMC officers with Falsification of Public Documents and Misconduct. The complaint was docketed as OMB-VIS-ADM-97-0370.

In a related move, dela Peña also filed a complaint with the Department of Health (DOH) which forthwith formed a committee to look likewise into the alleged anomalous purchase of the expensive hemoanalyzer. The investigation culminated in the filing by the DOH Secretary of a Formal Charge^[10] dated October 29, 1997 for Grave Misconduct, Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service against Gobenciong and three others.

Ombudsman Ordered Preventive Suspension

On August 24, 1998, the Deputy Ombudsman-Visayas, upon dela Peña’s motion, issued an Order, placing all, except one, of the respondents in OMB-VIS-ADM-97-0370 under preventive suspension and directed the proper DOH officer to immediately implement the Order.^[11]

Following his receipt on November 9, 1998 of a copy of the said order, Gobenciong wrote Dr. Lilia O. Arteche, DOH Regional Director for Region VIII, requesting the deferment of the implementation of the preventive suspension until after his to-be-filed motion for reconsideration shall have been resolved.

Conformably with the Ombudsman’s directive,^[12] Arteche, via a Memorandum^[13] dated November 11, 1998, informed the affected respondents in OMB-VIS-ADM-97-0370 that their six-month preventive suspension shall

take effect immediately upon their receipt of the memorandum.

On November 12, 1998, Gobenciong sought reconsideration of the August 24, 1998 preventive suspension order. But due to the virtual denial of his plea for the deferment of his preventive suspension, Gobenciong, without awaiting the Office of the Ombudsman's action on his motion for reconsideration, went to the CA on a petition for certiorari, with a plea for the issuance of temporary restraining order (TRO). The petition was docketed as CA-G.R. SP No. 49585.

On November 19, 1998, the CA issued a TRO enjoining then Deputy Ombudsman-Visayas Arturo Mojica and Arteche from implementing the order of preventive suspension in OMB-VIS-ADM-97-0370.[14]

As later developments would show, the TRO, while duly served, evidently went unheeded, for Gobenciong failed to get back to his work or get his salary until after the lapse of the suspension period in May 1999. This turn of events impelled Gobenciong to move that Arteche and Mojica be cited in contempt. The CA, however, did not act on the motion.

The Ruling of the Ombudsman in OMB-VIS-ADM-97-0370

Before the CA could resolve CA-G.R. SP No. 49585, the Ombudsman rendered on March 21, 2000 a Decision, finding Gobenciong and several others guilty in OMB-VIS-ADM-97-0370. The decretal portion of the Ombudsman's Decision partly reads:

WHEREFORE, finding substantial evidence to hold respondents RAFAEL C. OMEGA, PEDRO F. GOBENCIONG, CRISOLOGO R. BABULA, and JOSE M. JOCANO of Conduct Grossly Prejudicial to the Best Interest of the Service, it is respectfully recommended that they be meted the penalty of SUSPENSION FROM THE SERVICE FOR ONE (1) YEAR WITHOUT PAY.[15] (Emphasis added.)

The above guilty verdict was mainly predicated on the finding that the Certification of Acceptance and the COA Inspection Report, among other documents, were falsified, there being no actual delivery on December 20, 1996 of the covered hemoanalyzer. There was thus no legal basis for the issuance of DV 101-9612-1986 and the corresponding Landbank check for Php 1,161,817.35.

Subsequently, Gobenciong, et al. moved for reconsideration, but the Ombudsman, by an Order of August 10, 2000, denied their motion.

In due time, Gobenciong appealed from the above decision and order to the appellate court, the appeal docketed as CA-G.R. SP No. 61687.

On November 16, 2000, the Office of the Ombudsman-Visayas, through Director Virginia P. Santiago, by an Order,[16] directed the DOH Regional Office No. VIII to immediately implement its Decision and impose the penalties decreed therein, which, in the case of Gobenciong, was one-year suspension from office without pay.

On December 11, 2000, Gobenciong moved that Santiago be cited in contempt of court[17] for issuing the November 16, 2000 Order despite being notified of his appeal in CA-G.R. SP No. 61687. Like his earlier similar motion, this motion was neither denied nor granted by the CA.

The Ruling of the Court of Appeals in CA-G.R. SP No. 49585

Long after the issuance of the Decision dated March 21, 2000 in OMB-VIS-ADM-97-0370, the CA, on November 26, 2002, rendered a Decision in CA-G.R. SP No. 49585, denying Gobenciong's petition for certiorari assailing the directive, and the implementation thereof, for the immediate execution of his preventive suspension. Dispositively, the CA wrote:

WHEREFORE, the foregoing premises considered, the petition for certiorari is DENIED DUE COURSE and hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.[18]

The CA dismissed Gobenciong's petition on the strength of Section 24 in relation to Sec. 27 of Republic Act No. (RA) 6770, otherwise known as the Ombudsman Act of 1989. The interplay of both sections expressly empowers the Ombudsman, under defined conditions, to preventively suspend, for a maximum period of six months, all but three categories of public officials and employees under investigation by his office and to direct the immediate implementation of the corresponding suspension order.

Gobenciong's motion for reconsideration of the above decision was rejected by the appellate court on August 27, 2003.

Hence, the Petition for Review on Certiorari in G.R. No. 159883.

The Ruling of the Court of Appeals in CA-G.R. SP No. 61687

On April 29, 2005, the CA, on the postulate that the disciplinary authority of the Office of the Ombudsman is merely recommendatory, rendered its Decision in CA-G.R. SP No. 61687, partially granting due course to Gobenciong's appeal and effectively modifying the Decision dated March 21, 2000 of the Ombudsman. The decretal portion of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case and SETTING ASIDE the Decision dated March 21, 2000 and the Order dated August 10, 2000 rendered and issued by the Office of the Ombudsman in OMB-VIS-ADM-97-0370 insofar as said office directly imposes upon the petitioner the penalty of suspension from the service for one (1) year without pay.[19]

Invoked as part of the ratio decidendi of the CA Decision was *Tapiador v. Office of the Ombudsman*,[20] which the appellate court viewed as declaring that the disciplinary power of the Ombudsman in administrative cases is limited only to recommending to the disciplining authority the appropriate penalty to be meted out. In the concrete, as gleaned from the CA Decision, this means that the Ombudsman cannot compel the DOH to impose the penalty recommended in its underlying Decision of March 21, 2000.

Therefrom, the parties availed themselves of different remedies to contest before this Court the above decision of the CA.

The Office of the Ombudsman, ascribing grave abuse of discretion on the part of the appellate court, assailed the above decision through a Petition for Certiorari under Rule 65, docketed as G.R. No. 168059.[21]

On the other hand, Gobenciong filed his Motion for Partial Reconsideration of the Decision dated April 29, 2005,[22] which the CA denied via its Resolution dated May 29, 2006. Thus, the instant Petition for Review on Certiorari filed by Gobenciong, now docketed as G.R. No. 173212.

In the meantime, on January 16, 2005, Gobenciong retired from the service.

The Issues

In G.R. No. 159883, petitioner Gobenciong submits that the CA erred:

A.

x x x WHEN IT UPHELD THE IMPLEMENTATION OF THE PREVENTIVE SUSPENSION ORDER

DESPITE THE [TRO] IT ISSUED AND THE CONTINUED DEFIANCE OF PUBLIC RESPONDENTS OF THE [TRO].

B.

x x x IN NOT HOLDING PUBLIC RESPONDENTS GUILTY OF CONTEMPT OF COURT FOR DEFYING THE [TRO].

C.

x x x WHEN IT UPHELD THE IMPLEMENTATION OF THE PREVENTIVE SUSPENSION ORDER –

- DESPITE THE FACT THAT ITS IMPLEMENTATION VIOLATED PETITIONER’S RIGHT TO DUE PROCESS OF LAW;

- DESPITE THE FACT THAT ITS IMPLEMENTATION VIOLATED PETITIONER’S RIGHT TO THE EQUAL PROTECTION OF THE LAWS; AND

- DESPITE THE FACT THAT TO DO SO WOULD SANCTION AN UNCONSTITUTIONAL APPLICATION OF SECTIONS 27(1) AND THE SECOND PARAGRAPH OF SECTION 24 OF [RA] 6770.

In G.R. No. 168059, petitioner Office of the Ombudsman raises the following grounds for the allowance of its petition:

I.

THE CONSTITUTION DOES NOT BAR THE OFFICE OF THE OMBUDSMAN FROM EXERCISING ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC OFFICIALS AND EMPLOYEES IN GENERAL.

II.

CONGRESS CONSTITUTIONALLY CLOTHED THE OFFICE OF THE OMBUDSMAN WITH FULL ADMINISTRATIVE DISCIPLINARY AUTHORITY IN GENERAL, COMPLETE WITH ALL THE REQUISITE COMPONENTS AS CONTAINED IN [RA] 6770, CONSIDERING THAT:

A. THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;

B. CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, AND IN THE EXERCISE OF ITS PLENARY LEGISLATIVE POWERS, ENACTED [RA] 6770 PROVIDING THEREIN THE OMBUDSMAN’S FULL AND COMPLETE ADMINISTRATIVE DISCIPLINARY POWER AND DUTY;

C. THERE IS NOTHING IN THE SAID STATUTORY GRANT OF ADMINISTRATIVE DISCIPLINARY POWER WHICH CAN BE REMOTELY CONSIDERED INCONSISTENT WITH THE 1987 CONSTITUTION; AND

D. VESTING THE OMBUDSMAN WITH FULL DISCIPLINARY AUTHORITY IS ABSOLUTELY IN CONSONANCE WITH THE SOVEREIGN INTENT, AS EXPRESSED BY THE LETTER OF, AND IN THE DELIBERATIONS ON, THE 1987 CONSTITUTION, I.E., THE INTENT TO CREATE AN EFFECTIVE, RATHER THAN EFFETE, PROTECTOR OF THE PEOPLE INSULATED FROM POLITICAL INFLUENCE.

III.

THE DISCIPLINARY AUTHORITY GRANTED TO THE OMBUDSMAN INCLUDES THE AUTHORITY

TO DETERMINE THE PENALTY AND TO CAUSE THE SAME TO BE IMPLEMENTED BY THE HEAD OF AGENCY CONCERNED, CONSIDERING THAT:

A. [RA] 6770 CONTAINS EXPRESS PROVISIONS GRANTING THE OMBUDSMAN THE AUTHORITY TO DETERMINE AND CAUSE THE IMPLEMENTATION OF ADMINISTRATIVE PENALTIES;

B. A DISCIPLINARY POWER BEREFT OF THE NECESSARY COMPONENT OF DETERMINING THE PENALTY AND CAUSING THE IMPLEMENTATION THEREOF IS OTIOSE;

C. EVEN ASSUMING THAT THE IMPLEMENTATION OF PENALTIES ASSESSED BY THE OMBUDSMAN IS SUBJECT TO SECTION 13(3), ART. XI OF THE CONSTITUTION, AND THE INDEPENDENT FIRST PART OF SECTION 15(3) OF [RA] 6770, THE LATTER PROVISIONS STILL EMPOWER THE OMBUDSMAN TO “ENSURE COMPLIANCE” WITH ITS “RECOMMENDATIONS”; AND

D. A CONTRARY RULE CAN ONLY RESULT IN FURTHER LEGAL AND PRACTICAL ABSURDITIES.

IV.

THE RELIANCE BY THE HONORABLE [CA] ON THE OBITER DICTUM IN TAPIADOR VS. OFFICE OF THE OMBUDSMAN, x x x DISPOSSESSING THE OMBUDSMAN OF ITS DISCIPLINARY AUTHORITY, CONSTITUTES A GRAVE ERROR CONSIDERING THAT:

A. SUCH A PASSING STATEMENT MUST BE INTERPRETED TO MEAN THAT THE OMBUDSMAN CANNOT “DIRECTLY” IMPLEMENT ITS ADMINISTRATIVE DECISIONS; AND

B. SUCH A STATEMENT IS AND HAS REMAINED AN OBITER DICTUM WHICH DOES NOT HAVE THE STATUS OF A LEGAL DOCTRINE.

In G.R. No. 173212, petitioner Gobenciong argues that the CA committed errors of law:

A.

x x x WHEN IT DID NOT DECLARE AS UNCONSTITUTIONAL [RA] 6770, SECTIONS 15 (1), 19, AND 21, [INSOFAR] AS THEY GRANT TO THE OMBUDSMAN AND HIS DEPUTIES THE AUTHORITY TO INVESTIGATE AND PROSECUTE ANY ACT OR OMISSION, ADMINISTRATIVE OR OTHERWISE, OF ANY PUBLIC OFFICER OR EMPLOYEE, OR TO TAKE OVER, AT ANY STAGE, FROM ANY INVESTIGATORY AGENCY OF GOVERNMENT, THE INVESTIGATION OF SUCH CASES, FOR BEING AN INVALID DELEGATION OF LEGISLATIVE AUTHORITY.

B.

x x x WHEN IT DID NOT DECLARE AS UNCONSTITUTIONAL [RA] 6770, SECTIONS 15 (1), 19, 21, 24 AND 25, [INSOFAR] AS THEY GRANT TO THE OMBUDSMAN AND HIS DEPUTIES THE AUTHORITY TO INVESTIGATE, PROSECUTE AND PENALIZE, ANY ACT OR OMISSION, ADMINISTRATIVE OR OTHERWISE, OF ANY PUBLIC OFFICER OR EMPLOYEE, OR TO TAKE OVER, AT ANY STAGE FROM ANY INVESTIGATORY AGENCY OF GOVERNMENT, THE INVESTIGATION OF SUCH CASES, AND TO IMPOSE SUSPENSION, EITHER PREVENTIVE OR AS PENALTY, FOR BEING VIOLATIVE OF PETITIONER’S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS.

C.

x x x WHEN IT ACQUIESCED TO THE DEPUTY OMBUDSMAN (VISAYAS)’S VIOLATION OF [RA] 6770, THE OMBUDSMAN LAW.

D.

x x x WHEN IT UPHELD THE DECISION OF THE DEPUTY OMBUDSMAN (VISAYAS) FINDING PETITIONER GUILTY OF CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.

E.

x x x IN REFUSING TO CITE DIRECTOR VIRGINIA PALANCA-SANTIAGO OF THE OFFICE OF THE DEPUTY OMBUDSMAN (VISAYAS) IN CONTEMPT OF COURT.

The grounds relied upon and the errors assigned may be reduced into three issues, to wit: first, whether the preventive suspension ordered by the Ombudsman is immediately executory, the filing in due time of a motion to reconsider the corresponding order notwithstanding; second, whether the disciplinary power of the Ombudsman is merely recommendatory and excludes the authority to “ensure compliance” of his “recommendations”; and third, whether RA 6770, on the ground of undue delegation of legislative authority and under the equal protection clause, is unconstitutional insofar as it grants the Ombudsman and his deputies the authority “to investigate, prosecute and penalize any act or omission, administrative or otherwise, of any public officer or employee, or to take over, at any stage, from any investigatory agency of Government, the investigation of such cases.”

The Court’s Ruling

There is nothing novel about the underlying determinative issues raised by any of the petitioners. The Court, in a catena of recent cases, has for the most part fully settled them; and the corresponding dispositions in those cases militate against Gobenciong’s cause, as articulated in his twin Petitions for Review on Certiorari, but augur well for the Ombudsman’s petition.

First Main Issue: Provisionary Orders of the Ombudsman Immediately Executory

As Gobenciong argues, his timely filing of a motion for reconsideration of the subject preventive suspension order stripped such order of its otherwise quality of immediacy. He points out that while Sec. 27 of RA 6770 provides for the immediate execution of provisionary orders of the Ombudsman, Sec. 8, Rule III of the Ombudsman Rules of Procedure, which is purportedly derived from said Sec. 27, intentionally omitted the matter of immediate execution. Pushing the point, Gobenciong would then argue that this omission contextually worked to repeal part of said Sec. 27. To Gobenciong, the repeal is within the Ombudsman’s power to effect under the last paragraph of Sec. 27, RA 6770.

Prescinding from the foregoing premises, Gobenciong would posit the view that the immediate implementation of his preventive suspension, despite his having moved for reconsideration, violated his right to due process and to the equal protection of law. In this regard, he cites the more lenient, but just as applicable and effective, Civil Service law which allows an appeal from an order of preventive suspension and does not consider the same as immediately executory.

Finally, Gobenciong makes reference to the matter of the CA having issued a TRO, which both the DOH and the Deputy Ombudsman-Visayas ignored, and to the CA’s subsequent refusal to resolve his contempt motion.

We are not convinced.

Repeals by implication are not favored, as laws are presumed to be passed with full knowledge of all existing legislations on the subject. In order that one law or what passes for one may operate to repeal another law, the two laws must be inconsistent, that is, the former must be so repugnant as to be irreconcilable with the latter act.[23]

Even as we concede the Ombudsman's authority to amend certain procedural rules of RA 6770, we agree with the CA's holding on the absence of an irreconcilable conflict, vis-à-vis the implementation of a preventive suspension order, between Sec. 27 of RA 6770 and Sec. 8, Rule III of the Ombudsman Rules of Procedure. For reference, we reproduce the pertinent provisions of both issuances:

Sec. 27 of RA 6770

Sec. 27. Effectivity and Finality of Decisions.—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 movants. The motion for reconsideration shall be resolved within three (3) days from filing; Provided, That only one motion for reconsideration shall be entertained.

x x x 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.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.[24]

Sec. 8, Rule III of the Ombudsman Rules of Procedure

Sec. 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 by the respondent on 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 officers shall resolve the same within five (5) days from receipt thereof.

Indeed, there exists no irreconcilable inconsistency between the two sets of provisions respecting the immediate implementability of a preventive suspension order emanating from the Ombudsman. As it were, the conflict concerns only the period for filing a motion for reconsideration. What was once the five-day reglementary period fixed under Sec. 27(2), RA 6770 is now 10 days under Sec. 8, Rule III, Ombudsman Rules of Procedure. Apart from this change, both sections in question can validly be harmonized and given effect at the same time.

We cannot, accordingly, subscribe to Gobenciong's contention that Sec. 27(1), RA 6770 is deemed repealed for not being incorporated or carried into the Ombudsman Rules of Procedure. For, if this outlandish posture of Gobenciong is, under the premises, pushed to its logical conclusion, then any and all related provisions of RA 6770 not touched upon in the Ombudsman Rules of Procedure would be considered abrogated, regardless of the absence of real conflicts. The Court need not belabor the absurdity of Gobenciong's logic.

Reading and harmonizing together the aforequoted Sec. 27(1) of RA 6770 and Sec. 8, Rule III of the Ombudsman Rules of Procedure, it is at once apparent that the immediately executory quality of a preventive suspension order

does not preclude the preventively suspended respondent from seeking reconsideration of such order. In fine, the existence and availment, if this be the case, of the right to move for reconsideration does not *motu proprio* stay the immediate execution of the provisional order of preventive suspension. The unqualified use of the phrase “immediately effective and executory” in Sec. 27(1) of RA 6770 suggests this conclusion.

An order of preventive suspension is a preliminary step in an administrative investigation. And it is usually made immediately effective and executory to prevent the respondent from using his/her position or office to influence prospective witnesses or tamper with the records which may be vital to the prosecution of the case.[25]

At any rate, RA 6770 itself contains limiting bars to the exercise by the Ombudsman or his deputies of the power to impose preventive suspension. Sec. 24 of RA 6770 thus provides:

Sec. 24. Preventive Suspension.—The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent’s continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Expounding on the limitation adverted to, the Court has held that a preventive suspension order shall issue only if the Ombudsman, or any of his deputies, exercising sound judgment, determines that the evidence of guilt is strong and that any of the three conditions set forth in Sec. 24 of RA 6770 is present. Thus, in *Garcia v. Mojica*, the Court held that the Ombudsman and his deputies have the discretion to exercise such determination, thus:

There can be no question in this case as to the power and authority of respondent Deputy Ombudsman to issue an order of preventive suspension against an official like the petitioner, to prevent that official from using his office to intimidate or to influence witnesses or to tamper with records that might be vital to the prosecution of the case against him.[26]

As things thus stand, the Office of the Ombudsman can, as a matter of statutory empowerment, validly order the immediate execution of a preventive suspension after determining the propriety of the imposition, regardless of the remedy of reconsideration made available under the law to the suspended respondent. Accordingly, Gobenciong’s lament about his right to due process, being violated as a result of the immediate implementation of his preventive suspension, has really no legal leg to stand on. And if only to stress a point, a preventive suspension, not being a penalty for an administrative infraction, is impossible without prior hearing.

The foregoing considered, the matters of the issuance by the CA of a TRO bearing on the implementation of the preventive suspension in question and Gobenciong’s unacted contempt motions have become moot and academic, for the preventive suspension had been served and the CA had, for all intents and purposes, denied the said motions.

This brings us to the issue of the alleged violation of the equal protection clause. Gobenciong parlays the theory that the application of RA 6770, which authorizes the Ombudsman to impose a six-month preventive suspension, instead of the civil service provisions of the Administrative Code, which limits the disciplining authority’s prerogative to only imposing a prevention suspension for a period not exceeding 90 days, violates the equal protection guarantee.

We are not persuaded. At its most basic, the equal protection clause is against undue favor and individual or class privilege, as well as hostile discrimination; it does not demand absolute equality. The fundamental guarantee is not breached by a law which applies only to those persons falling within a specified class, if it applies alike to all persons within such class and provided further that there is a substantial distinction between those who fall within such class and those who do not.[27] In *Miranda v. Sandiganbayan*, where the issue of equal protection was raised, albeit the 60-day preventive suspension limit under the Local Government Code was involved, we ruled against any violation of the constitutional proscription against the equal protection of the law, thus:

In essence, [the dissenting opinion] avers that there is no substantial distinction between preventive suspensions handed down by the Ombudsman and those imposed by executive officials. On the contrary, there is a world of difference between them. The Constitution has endowed the Ombudsman with unique safeguards to ensure immunity from political pressure. Among these statutory protections are fiscal autonomy, fixed term of office and classification as an impeachable officer. This much was recognized by this Court in the earlier cited case of *Garcia v. Mojica*. Moreover, there are stricter safeguards for imposition of preventive suspension by the Ombudsman. The Ombudsman Act of 1989 requires that the Ombudsman determine: (1) that the evidence of guilt is strong; and (2) that any of the following circumstances are present: (a) the charge against such officer or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.[28]

Second Main Issue: Ombudsman has power to ensure compliance with imposition of penalties pursuant to his administrative disciplinary authority

The Office of the Ombudsman's assertion, about being in possession of full administrative disciplinary authority over public officials and employees, except impeachable officials, members of Congress, and the Judiciary, including the power to determine the penalty therefor and to cause the same to be implemented by the head of the government agency concerned, is correct. Jurisprudence on the matter is settled. Accordingly, any suggestion that its power to remove, suspend, or censure is merely advisory or recommendatory has to be rejected outright. And the CA's reference to *Tapiador*[29] to underpin its conclusion on the recommendatory nature of the Ombudsman's disciplinary authority is misplaced and erroneous, the cited portion of *Tapiador* being a mere obiter dictum. The Court made this abundantly clear in *Ledesma v. Court of Appeals*[30] and subsequently in *Office of the Ombudsman v. Court of Appeals*. [31] In *Ledesma*, we held that the pronouncement in *Tapiador* on the authority of the Ombudsman is at most an obiter dictum, which cannot be cited as a doctrinal pronouncement of the Court, ratiocinating as follows:

Petitioner insists that the word "recommend" be given its literal meaning; that is, that the Ombudsman's action is only advisory in nature rather than one having any binding effect, citing *Tapiador v. Office of the Ombudsman*, thus:

. . . Besides, assuming arguendo, that petitioner were (sic) administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service ... Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.

For their part, the Solicitor General and the Office of the Ombudsman argue that the word "recommend" must be taken in conjunction with the phrase "and ensure compliance therewith." The proper interpretation of the Court's statement in *Tapiador* should be that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and direct and compel the head of the office or agency concerned to implement the penalty imposed. In other words, it merely concerns the procedural aspect of the Ombudsman's functions and not its jurisdiction.

We agree with the ratiocination of public respondents. Several reasons militate against a literal interpretation of the subject constitutional provision. Firstly, a cursory reading of Tapiador reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an obiter dictum and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.[32] (Emphasis ours.)

For good measure, we further stated:

x x x That the refusal, without just cause, of any officer to comply with an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action, is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law. x x x By stating that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions of the Constitution and in RA 6770 intended that the implementation of the order be coursed through the proper officer, which in this case would be the head of the BID.[33]

In Office of the Ombudsman, on the core issue of whether the Ombudsman can only recommend, but cannot impose, administrative sanctions over erring public officers and employees, the Court reiterated its ruling in Ledesma, observing:

In the present case, the Court similarly upholds the Office of the Ombudsman's power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, in the exercise of its administrative disciplinary authority. The exercise of such power is well founded in the Constitution and Republic Act No. 6770.[34]

And to put to rest any uncertainty that might have been occasioned by a misreading of Tapiador, we proceeded to explain in Office of the Ombudsman that the Office of the Ombudsman's basic constitutional mandate as "[protector] of the people" is embodied in Sec. 13[35] of RA 6770, while its specific constitutional functions are substantially reiterated in Sec. 15[36] of the same RA. Thus, the authority of the Ombudsman to conduct administrative investigations is of constitutional origin, proceeding as it does from Sec. 13(1), Article XI of the Constitution,[37] which reads:

Sec. 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.

Not to be overlooked of course is RA 6770 which grants, as it were, the Ombudsman full administrative disciplinary authority as said statute is replete with provisions that, to borrow from Office of the Ombudsman:

cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[38]

Among others, the provisions cited in Office of the Ombudsman were Secs. 19,[39] 21,[40] 22,[41] 23,[42] and 25[43] of RA 6770.

As a final point, in Office of the Ombudsman, we stressed that the history of RA 6770 bears out the conclusion

that Congress intended the Office of the Ombudsman to be “an activist watchman,” not merely a passive one,[44] possessing full administrative disciplinary authority, including the power to impose the penalty of removal and to prosecute a public officer or employee found to be at fault. The Court, in *Uy v. Sandiganbayan*,[45] gave validation to the legislative intent adverted to.

The parallel holdings in *Ledesma* and *Office of the Ombudsman* would later be echoed in a slew of cases, among the latest of which were *Commission on Audit, Regional Office No. 13, Butuan City v. Hinampas*[46] and *Office of the Ombudsman v. Santiago*. [47]

Third Main Issue: RA 6770 provisos granting investigative, prosecutorial and disciplinary powers to the Ombudsman not unconstitutional

We now come to the concluding inquiry.

Gobenciong asseverates that the grant unto the Ombudsman under RA 6770 of the power to take over a disciplinary case, at any stage of the investigation, to investigate any act or omission, administrative, or otherwise, and to direct the implementation of a preventive suspension order constitutes unconstitutional delegation of authority. He describes the exercise by the Ombudsman and his deputies of such powers as a “roving commission,” devoid of any limitation and check-and-balance mechanism, adding that RA 6770 does not provide any guiding standard. To Gobenciong, such unbridled power and “wide and sweeping authority” are “laden with perilous opportunities for partiality and abuse, and even corruption.”

We are not persuaded.

As earlier discussed, the Office of the Ombudsman is a creature of the Constitution. The framers of the 1987 Constitution intended the office to be strong and effective, with sufficient bite and muscle to enable it to carry out its mandate as protector of the people against the inept, abusive, and corrupt in the Government. They, however, left it to Congress to invest the office with more broad powers to enforce its own action.[48] And so it was that RA 6770 was enacted empowering, under Sec. 15(1) thereof, the Ombudsman “to take over, at any stage, from any investigatory agency of government, the investigation of cases [of which he has primary jurisdiction].”

Clearly then, the espoused theory of undue delegation of authority is untenable. For, in the ultimate analysis, it is the 1987 Constitution no less which granted and allowed the grant by Congress of sweeping prosecutorial, investigatory, and disciplinary powers to the Ombudsman.

Lest it be overlooked, the unconstitutionality of a law must clearly be demonstrated. It cannot be predicated on speculations or hypothetical fears that its provisions may be perverted or the powers granted abused. All powers are susceptible to misuse and abuse, but that is hardly a reason to strike down the law. While the Court may declare a law or portions thereof unconstitutional, it is imperative that the petitioner shows a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one.[49] And it is basic that the matter of constitutionality shall, as a rule, be considered if it is the *lis mota* of the case and raised and argued at the earliest opportunity. *Estarija v. Ranada* formulates the rule in the following wise:

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 person 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.

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*, 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.[50]

The issue of constitutionality was not raised at the earliest possible opportunity; this means before the Office of the Ombudsman, or at least before the CA. Withal, it cannot now be considered in Gobenciong's petitions for review. This is not to say, however, that what Gobenciong considers as a question of a constitutional nature is absolutely necessary to the disposition of this case.

Finally, Gobenciong's submission about the Office of the Ombudsman taking over the case from the DOH strikes us as a clear case of a misleading afterthought. For the fact of the matter is that the Deputy Ombudsman-Visayas did not wrest jurisdiction from the DOH over the administrative aspect of this "ghost delivery" case. Far from it. The records tend to show that the Office of Ombudsman-Visayas took cognizance of and assumed jurisdiction of what would later be OMB-VIS-ADM-97-0370 on June 20, 1997 when dela Peña filed her complaint for falsification and misconduct against Gobenciong and other hospital officials. This was four months before the DOH formally charged Gobenciong, et al. on October 29, 1997 with an offense arising from the anomalous procurement of a hemoanalyzer. The mere filing of the formal charge, without more, did not as it cannot oust the Office of the Ombudsman of its jurisdiction over the administrative case. Jurisdiction, once it attaches, continues until the case is concluded.

WHEREFORE, the petitions in G.R. Nos. 159883 and 173212 are hereby DISMISSED for lack of merit, and the appealed Decision and Resolution dated November 26, 2002 and August 27, 2003, respectively, of the CA in CA-G.R. SP No. 49585 are AFFIRMED IN TOTO. The petition for certiorari in G.R. No. 168059 is hereby GRANTED, and the assailed Decision and Resolution dated April 29, 2005 and May 29, 2006, respectively, of the CA in CA-G.R. SP No. 61687 are ANNULLED and SET ASIDE. Accordingly, the Decision dated March 21, 2000 and the Order dated August 10, 2000 of the Ombudsman in OMB-VIS-ADM-97-0370 are hereby REINSTATED and AFFIRMED IN TOTO.

Costs against Dr. Pedro F. Gobenciong.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Reyes, and Leonardo-de Castro, JJ., concur.

Nachura, J., no part. Signed pleading as Solicitor General.

[1] Rollo (G.R. No. 159883), pp. 30-37. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam.

[2] Id. at 39-40.

[3] Id. at 41-43. Per Graft Investigation Officer (GIO) I Allan Francisco S. Garciano, reviewed by GIO III Virginia Palanca-Santiago, recommended by Deputy Ombudsman for the Visayas Arturo C. Mojica, and approved by Ombudsman Aniano A. Desierto on October 16, 1998.

[4] Rollo (G.R. No. 168059), pp. 103-114. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzas.

[5] Rollo (G.R. No. 173212), pp. 71-77. Per GIO I Allan Francisco S. Garciano, reviewed by Director Virginia

Palanca-Santiago, recommended by the OIC, Office of the Ombudsman-Visayas Nicanor J. Cruz, Jr., and approved by the Ombudsman on May 19, 2000.

[6] Id. at 78-80.

[7] Id. at 62-63.

[8] Rollo (G.R. No. 159883), p. 137.

[9] Id. at 213C.

[10] Id. at 82-83.

[11] Supra note 3, at 43.

[12] Rollo (G.R. No. 159883), p. 45.

[13] Id. at 46.

[14] Id. at 49.

[15] Supra note 5, at 76-77.

[16] Rollo (G.R. No. 173212), pp. 81-82.

[17] Id. at 85-88, dated December 8, 2000.

[18] Supra note 1, at 36.

[19] Supra note 4, at 114.

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

[21] The Office of the Ombudsman earlier filed a Motion for Partial Reconsideration; rollo (G.R. No. 168059), pp. 135-144.

[22] Id. at 194-207.

[23] Dipidio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun, G.R. No. 157882, March 30, 2006, 485 SCRA 586, 612.

[24] The penultimate paragraph of Sec. 27 providing for a direct appeal in administrative disciplinary cases from the Ombudsman to the Supreme Court had been declared unconstitutional in Fabian v. Desierto, G.R. No. 129742, September 16, 1998, 295 SCRA 470.

[25] Alonzo v. Capulong, G.R. No. 110590, May 10, 1995, 244 SCRA 80, 86; citations omitted.

[26] G.R. No. 139043, September 10, 1999, 314 SCRA 207, 221; citing Gloria v. Court of Appeals, G.R. No. 131012, April 21, 1999, 306 SCRA 287; Yasay, Jr. v. Desierto, G.R. No. 134495, December 28, 1998, 300 SCRA 494.

[27] See Tiu v. Guingona, G.R. No. 127410, Jan. 20, 1999, 301 SCRA 278 and Ichong v. Hernandez, 101 Phil. 1155 (1957).

[28] G.R. No. 154098, July 27, 2005, 464 SCRA 165, 196.

[29] Supra note 20.

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

[31] G.R. No. 160675, June 16, 2006, 491 SCRA 92.

[32] Supra note 30, at 448-449.

[33] Supra note 30, at 449-450.

[34] Supra note 31, at 108.

[35] Sec. 13. Mandate.—The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

[36] 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 his primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases;

(2) Direct x x x 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 procedures, 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;

x x x x

(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[.]

[37] See Garcia, *supra* note 26, at 218.

[38] *Supra* note 31, at 116.

[39] Sec. 19. Administrative Complaints.—The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions; x x x

[40] 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.

[41] 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.

[42] Sec. 23. Formal Investigation.—(1) Administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.

(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, x x x. Any delay without just cause in acting on any referral made by the Office of the Ombudsman shall be a ground for administrative action against the officers or employees to whom such referrals are addressed and shall constitute a graft offense x x x.

[43] 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, x x x.

[44] Office of the Ombudsman, *supra* note 31, at 119.

[45] G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651.

[46] G.R. Nos. 158672, 160410, 160605, 160627 & 161099, August 7, 2007, 529 SCRA 245.

[47] G.R. No. 161098, September 13, 2007, 533 SCRA 305.

[48] Ledesma, *supra* note 30, at 452-453.

[49] Cawaling, Jr. v. Commission on Elections, October 26, 2001, G.R. Nos. 146319 & 146342, 368 SCRA 453, 457.

[50] G.R. No. 159314, June 26, 2006, 492 SCRA 652, 664.

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