OFFICE OF THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS (SIXTEENTH DIVISION) AND NICOMEDES ARMILLA, DELIA BATASIN-IN, JAMES FUENTES, OSCAR GADOR, SANTOS GUIGAYOMA,JR., CLARITO...

G.R. NO. 160675. June 16, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The Office of the Ombudsman filed the instant petition for review on certiorari assailing the Decision[1] dated October 30, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 69313, which had declared that the Office of the Ombudsman has no power to impose the penalty of suspension. According to the appellate court, its power is limited only to the recommendation of the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault.

Factual and Procedural Antecedents

Joan and Thomas Corominas, and Maria Constancia Corominas-Lim filed with the Office of the Ombudsman (Visayas) a criminal complaint for violation of Article 281 (Other Forms of Trespass) of the Revised Penal Code against herein Edmondo Arregadas, Nicomedes Armilla, Delia Batasin-in, James Fuentes, Oscar Gador, Santos Guigayoma, Jr., Clarito Miñoza, Nelson Obeso, Senen Seriño, Ernesto Naraja, and Martin Yase, all employees of the Department of Environment and Natural Resources (DENR), Regional Office No. VII, Banilad, Mandaue City. The case was docketed as OMB-VIS-CRIM-99-1227. The same criminal complaint was also treated by the Office of the Ombudsman as an administrative complaint for abuse of authority and misconduct. The administrative case was docketed as OMB-VIS-ADM-99-1044.

It was alleged that the above-named DENR employees conspired to enter the parcel of land owned by the Corominas family without seeking permission from the latter or their representative and despite the big "NO TRESPASSING" sign attached to the perimeter fences enclosing the said property.

Except for Arregadas, who executed his own affidavit, Armilla, et al. executed a joint counter-affidavit decrying the charge against them as malicious, unfounded and untrue. By way of refutation, they alleged that they entered the Corominas landholding pursuant to the Order dated September 14, 1999 of the Regional Trial Court (RTC) of Cebu City, Branch 9 thereof, in connection with Civil Case No. CEB-17639 (entitled Republic of the Philippines v. Larrazabal, et al.), involving a complaint for annulment and cancellation of title.

The said Order stated:

> WHEREFORE, the Court hereby Grants the Motion. The Court hereby orders the relocation survey of the questioned lots and the Sudlon National Park based on the technical description of the official government cadastral survey duly approved by the Republic of the Philippines, Bureau of Lands. Expenses for the relocation survey shall be shouldered jointly by plaintiff and plaintiff-intervenors. Reasonable notice of the

date/dates of relocation survey should be furnished the defendants through their counsels and to this Court.

SO ORDERED.[2]

In compliance with the foregoing order, the DENR Regional Executive Director issued Travel Order Nos. 99-10-19, 11-01, and 99-11-11 authorizing Armilla, et al. to "conduct relocation survey of the corners of Proclamation No. 56, S-36 and Lot No. 18454, Cad. 12 Ext."[3] Consequently, on October 25, 1999, Armilla, et al., as the designated DENR Survey Team, together with two members of the Philippine National Police (PNP), Cebu City Police Office, paid a courtesy call to the barangay captain of Sudlon II to inform him that they would conduct a relocation survey of the Sudlon National Park. However, the barangay captain was not around so the team requested the barangay secretary to relay the message to him.

The following day, the DENR Survey Team, the members of the PNP and two barangay tanods of Sudlon II, Cebu City, commenced the relocation survey. The team initially identified the Municipal Boundary Movement (MBM) No. 8, similar to City Boundary Movement (CBM) 15, Cad. 12 Extension Cebu Cadastre, as the tie point reference. Thereafter, with the use of the Electronic Distance Measuring (EDM) and Theodolite, it was able to relocate the boundary of the Sudlon National Park in accordance with the RTC Order in Civil Case No. CEB-17639, and to establish corners 17, 18, 19, and 20 within 15 days.

To establish and monument corners 20 and 21, the DENR Survey Team asked permission from a person inside Lot No. 18466 to be allowed to put a stake inside the said lot to serve as a traverse station. On November 12, 1999, the team was able to establish and monument corner 20 inside Lot No. 18466. On the other hand, it had difficulty in establishing corner 21 because it fell on a very steep slope.

The DENR Survey Team then submitted its Report[4] dated November 25, 1999 together with the Sketch Plan and notified the RTC in Civil Case No. CEB-17639 that the relocation survey of the lot subject thereof and the Sudlon National Park had been completed and terminated.

Armilla, et al. concluded their joint counter-affidavit by vehemently denying the charge that they, conspiring with each other, trespassed on the Corominas property. They maintained that they were merely acting in the performance of their official functions and complying with a court order. Moreover, they could not defy the said court order and the travel orders, lest they be punished for contempt of court or subjected to disciplinary action. They intimated that the sole reason that complainants filed the charge against them was to prevent the DENR from filing a reversion case against the owners of Lot No. 18466, a portion of which was ascertained to be within the Sudlon National Park.[5]

For his part, Arregadas averred in his counter-affidavit that he was not part of the DENR Survey Team tasked to relocate and monument the western boundary corners of the Sudlon National Park. He met with the group briefly on October 25, 1999 but since then, he had not returned nor had been physically present inside the said park or area that he had allegedly trespassed on. Hence, the charge against him was baseless and malicious.[6]

In the Resolution[7] dated August 31, 2001, Charina Navarro-Quijano, Graft Investigation Officer (GIO) I of the Office of the Ombudsman, dismissed the criminal complaint in OMB-VIS-CRIM-99-1227 for lack of probable cause. The said resolution was recommended for approval by Virginia Palanca-Santiago, GIO III, and approved by the Primo C. Miro, Deputy Ombudsman for the Visayas.

However, in the administrative case (OMB-VIS-ADM-99-1044), the Office of the Ombudsman rendered the Decision[8] dated October 24, 2001, finding that, except for Arregadas, the other named DENR employees are guilty of simple misconduct and imposed on them the penalty of suspension for one month. The decretal portion of the decision reads:

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> WHEREFORE, premises considered, it is hereby deemed that respondents, namely: Nicomedes Rivera Ar[m]illa; Delia Batasin-in; James Magalona Fuentes; Oscar Tatongoy Gador; Santos Guigayoma, Jr.; Clarito Umerez Minoza; Ernesto Subingsubing Naraja; Nelson Obeso; Senen Calaurian Sereno; and, Martin Yococa Yase are guilty of Simple Misconduct, and are hereby meted the penalty of suspension for one month.
>
> The complaint against Edmondo Ar[r]egadas is hereby dismissed for insufficiency of evidence.[9]

A motion for reconsideration thereof was filed by Armilla, et al. but the same was denied by the Office of the Ombudsman in the Order[10] dated January 10, 2002.

Armilla, et al. thus filed with the CA a petition for certiorari alleging grave abuse of discretion on the part of the Office of the Ombudsman in finding them guilty of simple misconduct and imposing on them the penalty of one month suspension. They alleged that they could not be guilty of simple misconduct considering that they simply complied with a court order and directive of their superiors for them to conduct a relocation survey of the Sudlon National Park. In addition, they pointed out that the ownership ofthe Corominas family over a parcel of land within the said park was still in issue; hence, no right of the said family had been violated in conducting the court-ordered survey. Armilla, et al. also assailed the denial of their motion for reconsideration on the ground that under Republic Act No. 6770 (RA 6770)[11] a decision imposing the penalty of not more than one month is final and unappealable.

In its Decision dated October 30, 2003, the appellate court granted the petition of Armilla, et al. It affirmed the finding of the Office of the Ombudsman that Armilla, et al. were guilty of simple misconduct. However, it ruled that the Office of the Ombudsman committed grave abuse of discretion in imposing on them the penalty of suspension for one month. Citing the case of Tapiador v. Office of the Ombudsman,[12] the appellate court declared that the Office of the Ombudsman's power is limited only to the recommendation of the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. Accordingly, it has no power to impose the penalty of suspension on Armilla, et al.

The dispositive portion of the assailed CA decision reads:

> WHEREFORE, the Petition for Certiorari is hereby GRANTED. The decision of the Office of the Ombudsman dated October 24, 2001, as well as the Order dated January 10, 2002 in OMB-VIS-ADM-99-1044 is hereby SET ASIDE.
>
> SO ORDERED.[13]

Aggrieved, the Office of the Ombudsman forthwith sought recourse to this Court.

The Petitioner's Arguments

In support of its petition, the Office of the Ombudsman (the petitioner) alleges as follows:

> WITH DUE RESPECT, THE COURT OF APPEALS (SIXTEENTH DIVISION) SERIOUSLY ERRED IN ITS DECISION DATED OCTOBER 30, 200[3] IN CA-G.R. SP NO. 69313 WHEN IT AGREED IN THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN IN THE ADMINISTRATIVE DISCIPLINARY CASE OMB-VIS-ADM-99-1044, BUT NONETHELESS PROCEEDED TO REVERSE AND SET ASIDE THE OMBUDSMAN DECISION THEREIN CITING ONLY THE OBITER DICTUM IN THE CASE OF TAPIADOR V. OFFICE OF THE OMBUDSMAN, G.R. NO. 129124, 15 MARCH 2002 (SECOND DIVISION) TO THE EFFECT THAT THE OFFICE OF THE OMBUDSMAN HAS NO AUTHORITY TO DIRECTLY DISMISS AN ERRING PUBLIC OFFICIAL OR EMPLOYEE FROM GOVERNMENT SERVICE, CONSIDERING THE FOLLOWING:(I) THE PASSING STATEMENT IN TAPIADOR V. OFFICE OF THE OMBUDSMAN, G.R. NO. 129124, 15 MARCH 2002 HAS REMAINED AN OBITER DICTUM WHICH DOES NOT HAVE THE STATUS OF A BINDING PRECEDENT;

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(II) SEC. 13, ART. XI OF THE 1987 CONSTITUTION VESTS THE OFFICE OF THE OMBUDSMAN NOT ONLY WITH THE AUTHORITY TO "RECOMMEND" ADMINISTRATIVE SANCTIONS ON ERRING PUBLIC SERVANTS BUT ALSO WITH THE POWER TO ENSURE COMPLIANCE WITH ITS "RECOMMENDATION"; FURTHER, IT IS THE CONSTITUTIONAL INTENDMENT TO LEAVE TO THE LEGISLATURE THE PREROGATIVE TO FURTHER DEFINE OR REINFORCE SUCH ADMINISTRATIVE DISCIPLINARY AUTHORITY;

(III) SECS. 13, 15(1) AND (3), 16, 19, 21, AND 25 OF REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989) CLOTHE THE OFFICE OF THE OMBUDSMAN WITH ALL THE CONCOMITANT PREROGATIVES OF A POWER TO DISCIPLINE, INCLUDING THE POWER TO ASSESS PENALTIES AND TO CAUSE THE SAME TO BE MINISTERIALLY IMPLEMENTED BY THE CONCERNED AGENCY, AND WHICH FULL ADMINISTRATIVE DISCIPLINARY POWER HAS TIME AND TIME AGAIN BEEN VALIDATED AND AFFIRMED BY THE HONORABLE COURT;

(IV) THE GENERAL ADMINISTRATIVE DISCIPLINARY AUTHORITY OF THE OFFICE OF THE OMBUDSMAN, WHICH IS SIMILAR TO ITS PLENARY AND UNQUALIFIED CRIMINAL INVESTIGATORY POWER, INCLUDES THE LESSER POWER OF IMPLEMENTATION OF DULY-ISSUED JUDGMENTS; AND

(V) A GENERAL APPLICATION OF THE TAPIADOR OBITER DICTUM LEADS TO PARALYZING CONFUSION, LEGAL CHAOS AND UNREASONABLE ABSURDITIES, AS WELL AS TO THE ACCELERATION OF THE CRIPPLING AND DEBILITATING EFFECTS OF INEFFICIENCY AND GRAFT AND CORRUPTION.[14]

Petitioner assails the appellate court's reliance on Tapiador in declaring that the power of the Office of the Ombudsman is limited only to the recommendation of the penalty of removal, suspension, demotion, fine, censure or prosecution of a public officer or employee found to be at fault. According to petitioner, the statement made by the Court in Tapiador relating to the Office of the Ombudsman's lack of authority to impose a penalty is mere obiter dictum.

Petitioner submits that apart from the powers and functions of the Office of the Ombudsman enumerated in the Constitution, it expressly authorized Congress to grant the Office of the Ombudsman additional powers. Pursuant to this constitutional fiat, Congress enacted Republic Act No. 6770 vesting in the Ombudsman full administrative disciplinary powers. Citing the pertinent provisions[15] in Republic Act No. 6770, petitioner posits that it possesses the following powers: "(1) [it] can, on its own, investigate any apparent illegality, irregularity, impropriety, or inefficiency committed by any public officer or employee not excepted from its disciplinary authority; (2) it can and must act on administrative complaints against them; (3) it can conduct administrative adjudication proceedings; (4) it can determine their guilt; (5) at its discretion, it can fix the penalty in case of guilt; (6) it can order the head of the office or agency to which the guilty public officer belongs to implement the penalty imposed; and (7) it can ensure compliance with the implementation of the penalty it fixed."[16]

By declaring that the Office of the Ombudsman can only recommend, but cannot directly impose, the penalty in administrative cases, the appellate court allegedly, in effect, nullified and invalidated the provisions of Republic Act No. 6770 relating to its administrative disciplinary powers. Stated in another manner, the appellate court has allegedly deemed that the Office of the Ombudsman cannot make a determination of guilt for an administrative offense; it cannot assess a penalty; and it cannot cause its decisions to be implemented.

Petitioner stresses that the grant of administrative disciplinary authority to the Office of the Ombudsman is not prohibited by, or inconsistent with, the Constitution. It invokes the legislative history of Republic Act No. 6770 to buttress its claim that it was the intention of the lawmakers to provide for an independent constitutional body that

would serve as "the protector of the people" with "real powers."[17]

Petitioner opines that the statutory grant of disciplinary powers to the Office of the Ombudsman - complete in all its components including the determination of guilt, assessment of commensurate penalty and compulsion on the head of agency concerned to implement the same under pain of administrative sanctions - was encouraged and ushered in by the Constitution.[18] Further, its framers intended the Office of the Ombudsman to exercise disciplinary authority as an indispensable and major rampart in its operational effectiveness.

In this connection, petitioner reiterates that this disciplinary authority necessarily includes the authority to determine the penalty in an administrative proceeding and cause its implementation. Specifically, Section 13[19] of Republic Act No. 6770 states that the Ombudsman has the authority to enforce administrative liability where the evidence warrants. Section 15[20] provides, in the alternative, that the Ombudsman may proceed administratively against an erring public officer and threatens with administrative sanction the refusal of any officer, without just cause, to implement the order of the Ombudsman imposing administrative penalties. Section 25[21] prescribes the range of penalties that the Ombudsman may enforce against public officers it finds administratively guilty. Finally, Section 27[22] pronounces as not susceptible to review on appeal administrative penalties not higher than suspension for thirty (30) days or fine not exceeding the salary for the same period.

Section 13(3), Article XI of the Constitution is also cited by petitioner. The said provision reads that the Ombudsman has the authority "to 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." According to petitioner, the clause "ensure compliance therewith" taken together with the term "recommend" connotes an element of compulsion such that the latter does not merely signify "to advise" or "to prescribe." Rather, the clause "ensure compliance therewith" prescribes that the Ombudsman procedurally pass on to the head of office concerned the imposition of the penalty on the public officer at fault, and then compels said head to enforce the same penalty. This element of compulsion, petitioner theorizes, was provided by the framers of the Constitution in order to keep the Ombudsman from becoming a "toothless tiger," a "eunuch" or a "scarecrow."[23]

It is petitioner's submission that a contrary ruling, i.e., to limit its power only to recommend the penalty in administrative disciplinary cases, would lead to legal and practical absurdities. Among them, it would allegedly run counter to the fact that the Office of the Ombudsman is an independent constitutional body. Likewise, heads of office, e.g., a municipal mayor, would have the authority to adopt or reject the Ombudsman's decision, as if in review, when no such recourse is provided by law. The problem of how the various administrative penalties that have already been enforced by the Office of the Ombudsman would be treated was also raised.

In fine, petitioner maintains that it meted a just and commensurate disciplinary penalty of one-month suspension on Armilla, et al. upon its finding that they were guilty of simple misconduct. Such finding was arrived at by petitioner in the exercise of its administrative disciplinary authority and only after proper adjudication proceedings. The appellate court, in reversing this judgment on the sole ground that petitioner has no authority to impose the penalty but merely to recommend it citing the obiter dictum in Tapiador, allegedly committed reversible error. Petitioner thus urges this Court to reverse and set aside the assailed appellate court's decision and to affirm the Office of the Ombudsman's authority to impose the penalty in OMB-VIS-ADM-99-1044.

The Respondents' Counter-Arguments

Armilla, et al. (the respondents) maintain that the Office of the Ombudsman has no authority to impose administrative sanctions on erring public officials. It is their position that subparagraph (8) of Section 13, Article XI of the Constitution which states that the Ombudsman shall "perform such other functions or duties as may be

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provided by law" is circumscribed by subparagraph (3) thereof which enjoins the Ombudsman to recommend the removal, suspension, demotion, fine, censure, or prosecution of public officials found to be at fault.

According to respondents, subparagraph (8) of Section 13, Article XI is a catch-all phrase intended to bestow on the Office of the Ombudsman such other powers necessary to discharge its function as the constitutional watchdog of the government. However, the said provision does not include powers inconsistent with those already enumerated. Hence, its recommendatory power to impose penalties in subparagraph (3) of the same section necessarily forecloses the grant of the power to actually impose the said penalties.

Refuting petitioner's assertion that the framers of the 1987 Constitution intended the Office of the Ombudsman to be more than a recommendatory institution, respondents aver that the clear intent was to deny the Ombudsman punitive powers. In support of this averment, respondents refer to the deliberations of the Constitutional Commission where some members thereof said that the Ombudsman was to have neither prosecutory nor punitive powers.

Respondents further submit that Republic Act No. 6770 withheld punitive powers from the Office of the Ombudsman and merely authorized it to recommend or suggest sanctions. They cite Section 15 thereof particularly subparagraph (3) thus:

> SEC. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:
>
> x x x x
>
> (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 ground for disciplinary action against said officer;

Again refuting petitioner's argument that the term "recommend" construed together with the clause "ensure compliance therewith" imports an element of compulsion and warrants direct imposition by the Office of the Ombudsman of the penalties, respondents contend that to recommend necessarily excludes the power to directly impose the penalty. Echoing the appellate court's ruling, respondents invoke Tapiador in arguing that the Office of the Ombudsman has no authority to directly impose on them the penalty of suspension for one month, but only to recommend the said penalty. Accordingly, they pray that the petition be denied for utter lack of merit.

The Court's Ruling

The petition is meritorious.

In declaring that the Office of the Ombudsman only has the power to recommend, but not to impose, the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, the appellate court mainly relied on the following statement made by the Court in Tapiador, thus:

> x x x Besides, assuming arguendo, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. 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.[24]

Reliance by the appellate court on the foregoing statement is misplaced. As correctly pointed out by petitioner, the foregoing statement is mere obiter dictum. In fact, in Ledesma v. Court of Appeals,[25] the Court categorically pronounced that the statement in Tapiador on the Ombudsman's power "is, at best, merely an obiter dictum" and, as such, "cannot be cited as a doctrinal declaration of the Supreme Court:"

> x x x [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.[26]

Likewise in Ledesma, the Court rejected the argument that the power of the Office of the Ombudsman is only advisory or recommendatory in nature. It cautioned against the literal interpretation of Section 13(3), Article XI of the Constitution which directs the Office of the Ombudsman to "recommend" to the officer concerned the removal, suspension demotion, fine, censure, or prosecution of any public official or employee at fault. Notwithstanding the term "recommend," according to the Court, the said provision, construed together with the pertinent provisions in Republic Act No. 6770, is not only advisory in nature but is actually mandatory within the bounds of law.

The Court further explained in Ledesma that the mandatory character of the Ombudsman's order imposing a sanction should not be interpreted as usurpation of the authority of the head of office or any officer concerned. This is because the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in Republic Act No. 6770 intended that the implementation of the order be coursed through the proper officer.

Consequently in Ledesma, the Court affirmed the appellate court's decision which had, in turn, affirmed an order of the Office of the Ombudsman imposing the penalty of suspension on the erring public official.

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.

The mandate of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution in this wise:

> Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13 thereof vests in the Office of the Ombudsman 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;
>
> (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 and 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; and
>
> (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

In Acop v. Office of the Ombudsman,[27] the Court recognized that the foregoing enumeration is not exclusive and that the framers of the Constitution had given Congress the leeway to prescribe, by subsequent legislation, additional powers to the Ombudsman. The observation of Commissioner Christian Monsod, quoted in Acop, is apropos:

> MR. MONSOD (reacting to statements of Commissioner Blas Ople):
>
> May we just state that perhaps the honorable 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 do 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.[28]

Congress thus enacted Republic Act No. 6770 to provide for the functional and structural organization of the Office of the Ombudsman. It substantially reiterates the constitutional provisions relating to the Office of the Ombudsman. Further, Section 13 thereof restates the mandate of the Office of the Ombudsman in this wise:

> 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.

Section 15 thereof substantially reiterates Section 13, Article XI of the Constitution. In particular, subparagraph (3) of Section 15 of Republic Act No. 6770 restates Section 13(3), Article XI of the Constitution, quoted anew below:

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> Sec. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:
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> x x x x
>
> (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.

The authority of the Ombudsman to conduct administrative investigations is beyond cavil. It is mandated by no less than Section 13(1), Article XI of the Constitution.[29] In conjunction therewith, Section 19 of Republic Act No. 6770 grants to the Ombudsman the authority to act on all administrative complaints:

> 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, though in accordance with law;
> (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
> (5) Are in the exercise of discretionary powers but for an improper purpose; or
> (6) Are otherwise irregular, immoral or devoid of justification.

Other provisions in Republic Act No. 6770, likewise, pertain to the exercise by the Office of the Ombudsman of its administrative disciplinary authority. For example, Section 19 states that Republic Act No. 6770 shall apply "to all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee x x x, during his tenure of office." Section 21 defines the jurisdiction of its disciplinary authority to include "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."

Section 22[30] thereof vests in the Office of the Ombudsman the power to investigate any serious misconduct in the office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted. Such power, likewise, includes the investigation of private persons who conspire with public officers and employees. Section 23[31] requires that the administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process. The Office of the Ombudsman is, however, given the option to refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees.

Still in connection with their administrative disciplinary authority, the Ombudsman and his deputies are expressly given the power to preventively suspend public officials and employees facing administrative charges in accordance with Section 24 of Republic Act No. 6770:

> Sec. 24. Preventive Suspension. - The Ombudsman and 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.

Section 25 thereof sets forth the penalties as follows:

> 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.

As referred to in the above provision, under Presidential Decree No. 807,[32] the penalties that may be imposed by the disciplining authority in administrative disciplinary cases are removal from the service, transfer, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand.[33]

Section 27 of Republic Act No. 6770 provides for the period of effectivity and finality of the decisions of the Office of the Ombudsman:

> Sec. 27. Effectivity and Finality of Decisions. - (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:
>
> (1) New evidence has been discovered which materially affects the order, directive or decision;
>
> (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.
>
> Findings of facts 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.
>
> [In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.][34]
>
> The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions 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 and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.

The explanation of Senator Edgardo Angara, one of the sponsors of Senate Bill No. 534 which, as consolidated with House Bill No. 13646, became RA 6770, is instructive:

> Senator Laurel. Because, Mr. President, in the light of another section of the bill, with respect to Section 13, disciplinary authority, first, the Ombudsman here is granted the power of disciplining public officers and employees, while other bodies may not be so authorized; second, the Constitution itself empowers the Office of the Ombudsman merely to investigate and review; but the bill here authorizes the Ombudsman, and grants the power of disciplining public officers and employees. It goes beyond the constitutional provision.
>
> Senator Angara. Well, if the Gentleman is through with his statementï¿½
>
> Senator Laurel. Well, yes.
>
> Senator Angara. I do not agree that this bill is going beyond what the Constitution has prescribed for the Ombudsman; because, as I understand it, the constitutional provision was construed in the proceedings of the Constitutional Commission and in fact, left it to the Legislature to determine the powers and functions to be allocated to the Ombudsman. It did not say or it did not prohibit the Legislature from granting disciplinary power that we are now granting to the Ombudsman. But over and beyond that interpretation, Mr. President, is the question that one must always ask, if he wants this institution of the Ombudsman to be effective, rather than simply be like the other watchdogs the past administrations created. Then we believe, the Committee believes, that we must give the Ombudsman the necessary teeth in order to implement its own decision. We believe that this is fully in accord with the Filipino custom and tradition, and based on our historical experience. Short of not giving the Ombudsman the disciplining authority, I think we might as well kiss the system goodbye, because it will be like the same watchdogs created in the past-toothless and inutile.[35]

Senator Angara, by way of reply to the queries of Senator Neptali Gonzales, further explained:

> Senator Gonzales. All right. There are certain admissions and, however reluctantly given, at least, let us go further because the Gentleman is invoking the whole of Section 13. I might really be wrong, and I want to be corrected this early.
>
> Now, under paragraph (2), it says:Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision thereof to perform and expedite ...

probably a ministerial act because it says:

> ... any act or duty required by law or to stop, prevent and correct any abuse or impropriety in the performance of duties.

There is neither a grant of disciplining authority, nor can we imply one from this specific provision; only from this specific provision.

Senator Angara. My answer, again, Mr. President, is that one cannot derive that broad, sweeping conclusion solely on the basis of this provision.

Senator Gonzales. There is none solely on this provision. Let us go to (3):

> Direct the officer concerned to take appropriate action against a public official or employee at fault - -

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> There is a determination, that is, at fault, and this is very important,
>
> -recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

Mr. President, the power here, even after a determination of fault, is merely to recommend to the appropriate office or agency the imposition of administrative sanctions, which, under this law, instead are to be imposed by the Ombudsman himself or directly. Could not the Gentleman see a conflict between these two provisions, Mr. President?

Senator Angara. I do not see any conflict, Mr. President. As I said, the grant of disciplinary power is something that the Constitution does not forbid.

Senator Gonzales. Well, we will take it differently.

Senator Angara. Again, the question is: Is it necessary to grant the Ombudsman such a power in order to make it effective? That is a means necessary to the end, to the objective.

Senator Gonzales. Is it, therefore, now another power?

Senator Angara. I submit that the means, that is, the disciplinary power, is necessary to achieving that objective of making an effective Ombudsman.[36]

The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not merely a passive one.[37] And this intent was given validation by the Court in Uy v. Sandiganbayan,[38] where it stated that:

> Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions. x x x

At this point, it is noted that the Office of the Ombudsman and the appellate court invariably found respondents guilty of simple misconduct. The Court affirms this finding following the salutary rule that factual findings of administrative bodies are accorded great respect by this Court.[39]

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated October 30, 2003 of the Court of Appeals in CA-G.R. SP No. 69313 is REVERSED AND SET ASIDE. The Decision dated October 24, 2001 of the Office of the Ombudsman in OMB-VIS-ADM-99-1044 is REINSTATED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[*] Also Neilson Obiso in some pleadings.

[1] Penned by Associate Justice Eloy R. Bello, Jr. (now retired), with Associate Justices Amelita G. Tolentino and Arturo D. Brion, concurring; rollo, pp. 79-86.

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[2] Records, p. 24.

[3] Id. at 27-29.

[4] Id. at 53-54.

[5] Id. at 20-21.

[6] Id. at 17.

[7] Id. at 227-231.

[8] Penned by GIO I Quijano, with GIO III Santiago recommending approval. The same was approved by Deputy Ombudsman Miro on October 31, 2001; id. at 258-261.

[9] Id. at 261.

[10] Id. at 262-263.

[11] Otherwise known as The Ombudsman Act of 1989.

[12] 429 Phil. 47, 58 (2002).

[13] Rollo, p. 86.

[14] Id. at 29-30.

[15] Among others, Sections 13, 15, 19, 20, 21, 22, 23, 24, and 25. Infra.[16] Rollo, p. 298.

[17] Id. at 308.

[18] Id. at 315-316.

[19] Infra.

[20] Infra.

[21] Infra.

[22] Infra.

[23] Rollo, pp. 322-323.

[24] Supra note 12, at 58.

[25] G.R. No. 161629, July 29, 2005, 465 SCRA 437, 449.

[26] Id. at 448-449.

[27] G.R. Nos. 120422 and 120428, September 27, 1995, 248 SCRA 566.

[28] II RECORD OF THE CONSTITUTIONAL COMMISSION 295. Also cited in Acop, id. at 579.

[29] Mayor Garcia v. Hon. Mojica, 372 Phil. 892, 903 (1999).

[30] The provision reads:

> 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.

[31] The provision reads:

> 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, which shall be terminated within the period prescribed in the Civil Service Law. 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 punishable by a fine of not exceeding five thousand pesos (P5,000.00).
>
> (3) In any investigation under this Act, the Ombudsman may (a) enter and inspect the premises of any office, agency, commission or tribunal; (b) examine and have access to any book, record, file, document or paper; and (c) hold private hearings with both the complaining individual and the official concerned.

[32] Entitled Providing for the Organization of the Civil Service Commission in accordance with Provisions of the Constitution, Prescribing its Powers and Functions and For Other Purposes.

[33] Id., Section 36(d).

[34] This specific paragraph, insofar as it prescribes direct appeal to the Supreme Court of decisions of the Office of the Ombudsman in administrative disciplinary cases, has been struck down as unconstitutional in Fabian v. Desierto, 356 Phil. 787 (1998).

[35] RECORD OF THE SENATE, Vol. II, No. 5, August 1, 1988, p. 141.

[36] RECORD OF THE SENATE, Vol. II, No. 6, August 2, 1988, pp. 178-179.

[37] Id. at 181.

[38] G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 666.

[39] Office of the Ombudsman v. Florentina Santos, G.R. No. 166116, March 31, 2006, p. 9. Pertinently, in this fairly recent case, the Court reversed the decision of the appellate court and reinstated with modification the decision of the Office of the Ombudsman in an administrative case finding the respondent guilty of dishonesty and grave misconduct. The Office of the Ombudsman imposed upon the respondent the penalty of dismissal from service with forfeiture of benefits equivalent to twelve months salary and temporary disqualification for re-employment in the government for one year from finality of the decision. The Court affirmed the decision of the Office of the Ombudsman with the modification that, in addition to the penalty imposed, respondent shall likewise pay a fine of five thousand pesos.

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