

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. CELSO SANTIAGO, RESPONDENT.

G.R. NO. 161098. September 13, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari[1] assailing the Decision[2] dated June 18, 2003 and Resolution dated December 8, 2003 of the Court of Appeals in CA-G.R. SP No. 66744.

The facts are:

On July 27, 2000, the City of Manila, through the City Budget Office, released a calamity fund for Barangay 183, Zone 16, same city, in the amount of P44,053.00. This was received by Barangay Chairman Celso Santiago, respondent herein.

On October 3, 2000, Rebecca B. Pangilinan, Mario B. Martin, Rolando H. Lopez and Alfredo M. Escaño, Sr., all barangay kagawad of Barangay 183, filed with the Office of the Ombudsman, petitioner, an administrative complaint for technical malversation, violation of the Anti-Graft and Corrupt Practices Act, dishonesty, grave misconduct and conduct unbecoming of a public officer against respondent, docketed as OMB-ADM-0-00-0828.

The complaint alleges that (a) respondent failed to utilize the calamity fund for the purpose for which it was allocated; (b) he leased a portion of the barangay sidewalk to Amity Food Corporation without the conformity of the barangay kagawad; (c) Amity Food Corporation issued checks payable to respondent, not in the name of the Barangay; (d) he did not open any bank account for and in the name of Barangay 183, Zone 16; and (e) he collected fees for the use of the barangay chapel without remitting any single centavo to the barangay treasurer.

Respondent filed a motion to dismiss the administrative complaint denying all the charges and contending that the complaint was filed to harass him.

In a Decision dated May 22, 2001, the Office of the Ombudsman declared respondent guilty of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and dismissed him from the service, thus:

WHEREFORE, the foregoing premises considered, respondent CELSO R. SANTIAGO, Barangay Chairman of Barangay 183, Zone 16 of the Second District of Manila is hereby found GUILTY of the administrative offenses of DISHONESTY, GRAVE MISCONDUCT and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE with the penalty of DISMISSAL FROM THE SERVICE pursuant to the pertinent provision of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989.

The City Mayor of Manila is hereby directed to immediately implement this DECISION in accordance with law and to inform this office of its initial action within fifteen (15) days upon receipt hereof.

SO ORDERED.

Respondent filed a motion for reconsideration and an urgent motion to hold in abeyance the implementation of the

Decision, but both motions were denied by the Office of the Ombudsman in an Order dated July 24, 2001.

Thus, respondent filed with the Court of Appeals a "Petition for Certiorari, Prohibition and Mandatory Injunction with Prayer for the Issuance of a Temporary Restraining Order." Apparently, the Court of Appeals considered this action a petition for review.

In its Decision[3] dated June 18, 2003, the Court of Appeals partially granted the petition, thus:

However, assuming arguendo, that petitioner is administratively liable, public respondent has no authority to directly dismiss the petitioner from the government service, more particularly from his elective position of Barangay Captain. (Renato A. Tapiador vs. Office of the Ombudsman, G.R. No. 129124, March 15, 2002)

x x x

Clearly, public respondent has the duty to investigate and prosecute only for and in its behalf, civil, criminal, and administrative offenses committed by government officers and employees embodied in Sections 15 and 11 of R.A. 6770 (George Uy vs. the Hon. Sandiganbayan, et al., 354 SCRA 651). It cannot directly impose any disciplinary measure upon any erring public officer.

WHEREFORE, in view of all the foregoing, the petition is hereby PARTIALLY GRANTED. The portions of the Decision dated May 22, 2001 rendered by the Office of the Ombudsman in Administrative Case No. OMB-0-00-0828 for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, ordering the dismissal of petitioner and directing the City Mayor of Manila to implement said Decision are hereby DELETED.

SO ORDERED.

The Office of the Ombudsman filed a motion for reconsideration, but it was denied by the Court of Appeals in its Resolution[4] of December 8, 2003.

Hence, the present petition.

Petitioner contends, inter alia, that the obiter dictum in the case of Tapiador v. Office of the Ombudsman[5] to the effect that the Ombudsman has no authority to directly dismiss an erring public official or employee from the government service[6] is not a controlling doctrine.

For his part, respondent maintains that the petition should be denied for lack of merit.

The issue for our resolution is whether the Ombudsman has the power to dismiss erring government officials or employees.

Section 13(3), Article XI of the 1987 Constitution provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and 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.

Invoking Tapiador, respondent contends that the word "recommend" be given its literal meaning, that is, that the Ombudsman's action, pursuant to the above provision, is only commendatory.

In *Ledesma v. Court of Appeals*,[7] we held:

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.

In interpreting a statute, care should be given that every part thereof be given effect.[8] Hence, the use of the word "recommend" must be read in conjunction with the words "ensure compliance therewith" in order not to run counter to the intention of the framers of the Constitution to give the Ombudsman full and complete disciplinary authority, with powers that are not merely persuasive in character. In fact, Section 13(3), Article XI is complemented by Section 15 of Republic Act No. 6770[9] which reads:

SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and 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; x x x

Considering 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, it follows that the Ombudsman's "recommendation" is not merely advisory but is actually mandatory within the bounds of law.[10]

At any rate, the power of the Ombudsman to directly remove an erring public official has been jurisprudentially settled. In *Estarija v. Ranada*,[11] we ruled:

The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary. (Emphasis supplied).

WHEREFORE, we GRANT the petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 66744 are REVERSED. The Decision dated May 22, 2001 of the Office of the Ombudsman is AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Filed under Rule 45, 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Rodrigo V. Cosico and Associate Justice Hakim S. Abdulwahid (all retired).

[3] Annex "A" of the petition, rollo, pp. 72-80.

[4] Annex "B" of the petition, id., pp. 82-84.

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

[6] The full obiter reads: Besides, assuming arguendo, that petitioner was 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.

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

[8] JMM Promotions & Management, Inc v. NLRC, G.R. No. 109835, November 22, 1993, 228 SCRA 129.

[9] The Ombudsman Act of 1989.

[10] Supra, footnote 7.

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

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