

ATTY. RONALDO P. LEDESMA PETITIONER, VS. HON. COURT OF APPEALS, HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, HON. ABELARDO L. APORTADERA, IN HIS CAPACITY AS ASSISTANT ...

G.R. No. 161629. July 29, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari seeks to reverse and set aside the decision[1] dated August 28, 2003 and the resolution[2] dated January 15, 2004 of the Court of Appeals[3] in CA-G.R. SP No. 58264 which affirmed with modification public respondents' (1) Joint Resolution dated January 22, 1999, which ordered, among other things, petitioner's suspension for one (1) year for conduct prejudicial to the service; and (2) Order dated February 8, 2000, as reiterated in a Memorandum dated March 17, 2000, which denied petitioner's motion for reconsideration but reduced his suspension to nine (9) months without pay. The Court of Appeals modified the above issuances by further reducing petitioner's suspension from nine (9) months to six (6) months and one (1) day without pay.[4]

Petitioner Atty. Ronaldo P. Ledesma is the Chairman of the First Division of the Board of Special Inquiry (BSI) of the Bureau of Immigration and Deportation (BID). In a letter-complaint filed by Augusto Somalio with the Fact Finding and Intelligence Bureau (FIIB) of the Office of the Ombudsman, an investigation was requested on alleged anomalies surrounding the extension of the Temporary Resident Visas (TRVs) of two (2) foreign nationals. The FIIB investigation revealed seven (7) other cases of TRV extensions tainted with similar irregularities.

As a result, the FIIB, as nominal complainant, filed before the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman a formal complaint against herein petitioner. Also charged administratively were Atty. Arthel Caronongan and Ma. Elena P. Ang, Board Member and Executive Assistant, respectively, in petitioner's division. With respect to petitioner, the complaint was treated as both a criminal and an administrative charge and docketed as OMB-0-98-0214 (criminal aspect), for nine (9) counts of violation of the Anti-Graft and Corrupt Practices Act and for falsification of public documents, and OMB-ADM-0-98-0038 (administrative aspect), for nine (9) counts of Dishonesty, Grave Misconduct, Falsification of Public Documents and Gross Neglect of Duty.

The complaint against petitioner, Caronongan and Ang alleged the following illegal acts: (a) irregularly granting TRVs beyond the prescribed period; and (b) using "recycled" or photocopied applications for a TRV extension without the applicants affixing their signatures anew to validate the correctness and truthfulness of the information previously stated therein. Specifically, petitioner and Caronongan allegedly signed the Memorandum of Transmittal to the Board of Commission (BOC) of the BID, forwarding the applications for TRV extension of several aliens whose papers were questionable.

In a Joint Resolution[5] dated January 22, 1999, Graft Investigation Officer Marlyn M. Reyes resolved the administrative cases filed against petitioner, Caronongan and Ang, as follows:

WHEREFORE, foregoing considered, it is respectfully recommended that:

- Respondent ATTY. RONALDO P. LEDESMA be SUSPENDED from the service for one (1) year for Conduct Prejudicial to the Interest of the Service;
- The instant case against ATTY. ARTHUR B. CARONONGAN be DISMISSED, the same having been rendered moot and academic; and
- The instant case against respondent MA. ELENA P. ANG be DISMISSED for lack of sufficient evidence.

SO RESOLVED.[6]

Respondent Assistant Ombudsman Abelardo L. Aportadera, Jr. reviewed the Joint Resolution which was approved by respondent Ombudsman Desierto on December 29, 1999.[7]

In the meantime, on July 9, 1999, respondent Ombudsman approved a Resolution[8] dated June 22, 1999 of Graft Investigation Officer Marilou B. Ancheta-Mejica, dismissing the criminal charges against petitioner for insufficiency of evidence.[9]

Petitioner filed a motion for reconsideration[10] in the administrative case alleging that the BOC which reviews all applications for TRVs extension, approved the TRVs in question, hence, petitioner argued that it effectively declared the applications for extension regular and in order and waived any infirmity thereon.

In an Order[11] dated February 8, 2000, Graft Officer Reyes recommended the denial of the motion for reconsideration which was approved by respondent Ombudsman on March 24, 2000 but reduced the period of suspension from one (1) year to nine (9) months without pay.

On April 13, 2000, petitioner filed a petition for review with the Court of Appeals, which included a prayer for the issuance of a writ of preliminary prohibitory mandatory injunction and/or temporary restraining order to enjoin public respondents from implementing the order of suspension. The Court of Appeals issued the TRO on April 19, 2000.

In its Decision dated August 28, 2003, the Court of Appeals affirmed petitioner's suspension but reduced the period from nine (9) months to six (6) months and one (1) day without pay.[12]

With the denial of his motion for reconsideration, petitioner filed the instant petition for review on the following grounds:

I.

IN PROMULGATING ITS ASSAILED DECISION, RESPONDENT COURT OF APPEALS MANIFESTLY OVERLOOKED THE FOLLOWING RELEVANT FACTS AND MATTERS WHICH, IF PROPERLY CONSIDERED, WOULD HAVE JUSTIFIED A DIFFERENT CONCLUSION IN FAVOR OF PETITIONER:

...

II.

THE PRONOUNCEMENT OF RESPONDENT COURT OF APPEALS THAT THE FINDING OF THE OMBUDSMAN IS NOT MERELY ADVISORY ON THE BUREAU OF IMMIGRATION (BI) IS CONTRARY TO THE PERTINENT PROVISION OF THE 1987 CONSTITUTION AND APPLICABLE DECISIONS OF THE HONORABLE COURT.

III.

RESPONDENT COURT OF APPEALS ALSO FAILED TO CONSIDER THAT THE OMBUDSMAN'S RESOLUTION FINDING PETITIONER ADMINISTRATIVELY LIABLE CONSTITUTES AN INDIRECT ENCROACHMENT INTO THE POWER OF THE BUREAU OF IMMIGRATION OVER IMMIGRATION MATTERS.[13]

The petition lacks merit.

Petitioner insists that it was the BOC which approved the questioned applications for the extension of the TRVs. He denies that he misled or deceived the BOC into approving these applications and argues that the BOC effectively ratified his actions and sanctioned his conduct when it approved the subject applications. Petitioner adds that he acted in good faith and the government did not suffer any damage as a result of his alleged administrative lapse.

We are not persuaded. In his attempt to escape liability, petitioner undermines his position in the BID and his role in the processing of the subject applications. But by his own admission,[14] it appears that the BSI not only transmits the applications for TRV extension and its supporting documents, but more importantly, it interviews the applicants and evaluates their papers before making a recommendation to the BOC. The BSI reviews the applications and when it finds them in order, it executes a Memorandum of Transmittal to the BOC certifying to the regularity and propriety of the applications.

In *Arias v. Sandiganbayan*,[15] we stated that all heads of offices have to rely to a reasonable extent on their subordinates. Practicality and efficiency in the conduct of government business dictate that the gritty details be sifted and reviewed by the time it reaches the final approving authority. In the case at bar, it is not unreasonable for the BOC to rely on the evaluation and recommendation of the BSI as it cannot be expected to review every detail of each application transmitted for its approval. Petitioner being the Chairman of the First Division of the BSI has direct supervision over its proceedings. Thus, he cannot feign ignorance or good faith when the irregularities in the TRV extension applications are so patently clear on its face. He is principally accountable for certifying the regularity and propriety of the applications which he knew were defective.

Petitioner could not validly claim that he was singled out for prosecution. It is of record that administrative cases were also filed against Caronongan and Ang, but extraneous circumstances rendered the case against Caronongan moot while the case against Ang was dismissed because it was proven that she merely implemented the approved decision of the BOC.

Equally untenable is the contention that the BOC's approval of the defective applications for TRV extension cured any infirmities therein and effectively absolved petitioner's administrative lapse. The instant administrative case pertains to the acts of petitioner as Chairman of the First Division of the BSI in processing nine (9) defective applications, independent of and without regard to the action taken by the BOC. It does not impugn the validity of the TRV extensions as to encroach upon the authority of the BID on immigration matters. The main thrust of the case is to determine whether petitioner committed any misconduct, nonfeasance, misfeasance or malfeasance in the performance of his duties.

Anent the second and third grounds, petitioner essentially puts in issue the import of the Ombudsman's findings. Petitioner questions the Court of Appeals' pronouncement that the findings of the Ombudsman "may not be said to be merely recommendatory" upon the Immigration Commissioner. He argues that to uphold the appellate court's ruling expands the authority granted by the Constitution to the Office of the Ombudsman and runs counter to prevailing jurisprudence on the matter, particularly *Tapiador v. Office of the Ombudsman*.^[16] Petitioner submits that the Ombudsman's findings that the TRV applications were illegal constitutes an indirect interference by the Ombudsman into the powers of the BOC over immigration matters.

We do not agree. The creation of the Office of the Ombudsman is a unique feature of the 1987 Constitution.[17] The Ombudsman and his deputies, as protectors of the people, are mandated to 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.[18] Foremost among its powers is the authority to investigate and prosecute cases involving public officers and employees, thus:

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

(1)

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

Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, was passed into law on November 17, 1989 and provided for the structural and functional organization of the Office of the Ombudsman. RA 6770 mandated the Ombudsman and his deputies not only to act promptly on complaints but also to enforce the administrative, civil and criminal liability of government officers and employees in every case where the evidence warrants to promote efficient service by the Government to the people.[19]

The authority of the Ombudsman to conduct administrative investigations as in the present case is settled.[20] Section 19 of RA 6770 provides:

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.

The point of contention is the binding power of any decision or order that emanates from the Office of the Ombudsman after it has conducted its investigation. Under Section 13(3) of Article XI of the 1987 Constitution, it is provided:

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. (Emphasis supplied)

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*,[21] thus:

... 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.[22]

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.

The provisions of RA 6770 support public respondents' theory. Section 15 is substantially the same as Section 13, Article XI of the Constitution which provides for the powers, functions and duties of the Ombudsman. We draw attention to subparagraph 3, to wit:

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; (Emphasis supplied)

We note that the proviso above qualifies the "order" "to remove, suspend, demote, fine, censure, or prosecute" an officer or employee — akin to the questioned issuances in the case at bar. That the refusal, without just cause, of any officer to comply with such 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. This should not be interpreted as usurpation by the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that 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.[23] 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 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.

It is likewise apparent that under RA 6770, the lawmakers intended to provide the Office of the Ombudsman with sufficient muscle to ensure that it can effectively carry out its mandate as protector of the people against inept and corrupt government officers and employees. The Office was granted the power to punish for contempt in accordance with the Rules of Court.[24] It was given disciplinary authority over all elective and appointive

officials of the government and its subdivisions, instrumentalities and agencies (with the exception only of impeachable officers, members of Congress and the Judiciary).[25] Also, it can preventively suspend any officer under its authority pending an investigation when the case so warrants.[26]

The foregoing interpretation is consistent with the wisdom and spirit behind the creation of the Office of the Ombudsman. The records of the deliberations of the Constitutional Commission[27] reveal the following:

MR. MONSOD:

Madam President, perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

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

MR. RODRIGO:

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

MR. MONSOD:

I agree with the Commissioner.

MR. RODRIGO:

Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?[28]

MR. MONSOD:

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

...

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 did not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, his is a reversible disability, unlike that of a eunuch; it is not an irreversible disability. (Emphasis supplied)[29]

It is thus clear that the framers of our Constitution intended to create a stronger and more effective Ombudsman, independent and beyond the reach of political influences and vested with powers that are not merely persuasive in character. The Constitutional Commission left to Congress to empower the Ombudsman with prosecutorial functions which it did when RA 6770 was enacted. In the case of *Uy v. Sandiganbayan*,[30] it was held:

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. ...[31]

In light of the foregoing, we hold that the Court of Appeals did not commit any error in finding the petitioner guilty of conduct prejudicial to the interest of the service and reducing petitioner's period of suspension to six (6) months and one (1) day without pay, taking into account the education and length of service of petitioner.

WHEREFORE, the instant petition is DENIED. The Decision dated August 28, 2003 and the Resolution dated January 15, 2004 of the Court of Appeals in CA-G.R. SP No. 58264 are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 38-53.

[2] Id. at 55.

[3] Penned by then Court of Appeals Presiding Justice (currently Supreme Court Associate Justice) Cancio C. Garcia as concurred in by Associate Justices Martin S. Villarama, Jr. and Mario L. Guariña III.

[4] Rollo, p. 52.

[5] Id. at 56-65.

[6] Id. at 64.

[7] Id. at 65.

[8] Id. at 76-82.

[9] Id. at 82.

[10] Id. at 66-74.

[11] Id. at 83-88.

[12] Id. at 52.

[13] Id. at 14-16

[14] Id. at 19.

[15] G.R. No. 81563, 19 December 1989, 180 SCRA 309, 316. See also *Nicolas v. Desierto*, G.R. No. 154668, 16 December 2004; *Kara-an v. Office of the Ombudsman*, G.R. No. 119990, 21 June 2004, 432 SCRA 457.

[16] 429 Phil. 47, 58 (2002).

[17] Article XI, Accountability of Public Officers.

[18] Article XI, Section 12.

[19] Section 13, RA 6770.

[20] See also *Mayor Garcia v. Hon. Mojica*, 372 Phil. 892, 903 (1999).

[21] *Supra*.

[22] *Id.* at 58.

[23] *Sanchez v. Demetriou*, G.R. Nos. 111771-77, 9 November 1993, 227 SCRA 627, 637.

[24] Section 15(9).

[25] Section 21.

[26] Section 24.

[27] As cited in *Camagan v. Guerrero*, 335 Phil. 945 (1997).

[28] The enumeration of the powers, functions and duties of the Office of the Ombudsman under the 1987 Constitution included this provision which was the basis for the issuance of RA 6770:

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

...

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[29] *Supra*, note 27 at 964-965.

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

[31] *Id.* at 666.

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