

**ALFREDO C. BUYAGAO, PETITIONER, VS. HADJI FAIZAL G. KARON,
NORMA PASANDALAN, TAYA CANDAO AND VIRGILIO TORRES,
RESPONDENTS.**

G.R. No. 162938. December 27, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This appeal seeks the reversal of the Resolutions dated January 13, 2004[1] and February 16, 2004[2] of the Sandiganbayan in Criminal Case No. 26906. The Sandiganbayan had granted the Manifestation and Motion to Withdraw Information filed by the Office of the Special Prosecutor (OSP) on behalf of the respondents in this case, and had denied the motion for reconsideration of petitioner.

The factual antecedents are as follows:

Petitioner Alfredo C. Buyagao held the position of Engineer IV in the Surveys Division of the Land Management Bureau (LMB), Department of Environment and Natural Resources – Autonomous Region of Muslim Mindanao (DENR-ARMM).

On January 25, 2000, Buyagao was notified of his dismissal from office for incurring absences of 115 days without approved leave. The next day, he was dropped from the roll of employees. Aggrieved, Buyagao filed a complaint before the Civil Service Commission in Mindanao (CSC-ARMM). On February 17, 2000, CSC-ARMM issued an Order declaring void the dropping of Buyagao from the rolls, decreeing as follows:

WHEREFORE, the act of DENR-ARMM in dropping Buyagao from the rolls is hereby considered null and void and is ineffective.

The DENR-ARMM is hereby ordered to release the salaries of Alfredo Buyagao for the month of January and to reinstate him in the payroll.

Parallel to this, a reprimand is hereby imposed against Alfredo Buyagao for inconsistent leave records and further ordered to report to work regularly and sign the logbook.

So Ordered.[3]

Respondent DENR-ARMM Regional Secretary Hadji Faizal G. Karon appealed the Order to the CSC National Office (CSC Proper). In the meantime, Buyagao was not reinstated in office, and his salaries and benefits remained unpaid.

On July 24, 2001, Buyagao charged respondents before the Office of the Deputy Ombudsman for Mindanao with violation of Section 3(e)[4] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act for alleged unlawful withholding of salaries and benefits. The Office of the Ombudsman for Mindanao found probable cause and recommended the filing of an Information against respondents. The Information dated September 24, 2001 and docketed as Criminal Case No. 26906 in the Sandiganbayan reads as follows:

That in January 2000 or sometime prior or subsequent thereto, in Cotabato, Philippines and within the jurisdiction of this Honorable Court, accused FAIZAL KARON, a high ranking public official being the Regional Secretary; NORMA PASANDALAN, OIC AFMS Director; TAYA CANDAO, Personnel Officer and VIRGILIO TORRES, Legal Officer, all of the Department of Environment and Natural Resources (DENR) in Autonomous Region of Muslim Mindanao, Cotabato City, while in the performance of their official duties, thus committing the act in relation to their office, wil[l] fully, feloniously and unlawfully, did then and there, with grave abuse of authority, and evident bad faith, drop a certain Alfredo C. Buyagao from the rolls and defy the orders of the Civil Service Commission for the immediate reinstatement of the same Alfredo C. Buyagao to his position as Engineer IV and to correspondingly pay his salaries as such thereby causing undue injury to the latter who was deprived of his salaries and wages.

CONTRARY TO LAW.[5]

The Sandiganbayan ordered the OSP to conduct a reinvestigation of the case in light of the pendency of the appeal filed by respondents before the CSC Proper. Meanwhile, Buyagao was reinstated in office and paid his salaries on January 8, 2002.[6]

On February 28, 2002, the CSC Proper issued Resolution No. 020312, which upheld the dropping of Buyagao from the roll of employees. It reads:

WHEREFORE, the appeal of ARMM Regional Secretary Hadji Faizal G. Karon is hereby GRANTED. Accordingly, the Orders dated February 17, 2000 and November 8, 2000 of the CSC-ARMM are reversed and set aside and the dropping of Alfredo C. Buyagao from the rolls is affirmed.[7]

In deference, Ombudsman Prosecutor Diosdado V. Calonge of the OSP issued a Resolution[8] dated August 13, 2002. He recommended the dismissal of the graft case against respondents for lack of probable cause. Then, Calonge filed a Manifestation and Motion to Withdraw Information on behalf of the respondents before the Sandiganbayan. On January 13, 2004, the Sandiganbayan issued the assailed Resolution, whose dispositive portion reads:

WHEREFORE, the prosecution's Motion to Withdraw Information is GRANTED. As prayed for, this case is hereby DISMISSED against all the accused for lack of probable cause.

SO ORDERED.[9]

Buyagao filed a motion for reconsideration, but it was denied in a Resolution dated February 16, 2004.

Thus, Buyagao appealed to us raising the following issues:

I.

RESPONDENTS COMMITTED EVIDENT BAD FAITH IN DROPPING THE PETITIONER FROM THE ROLL OF PERSONNEL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF THE AUTONOMOUS REGION OF MUSLIM MINDANAO.

II.

RESPONDENTS CAUSED UNDUE DAMAGE OR INJURY TO THE PETITIONER FOR FAILURE OF THE RESPONDENTS TO IMMEDIATELY REINSTATE THE PETITIONER AND PAY HIS SALARIES AND BACKWAGES DEFINED AND PUNISHED UNDER SECTION 3(e) OF REPUBLIC ACT [NO.] 3019.[10]

Stated simply, the issues are: (1) whether respondents acted with evident bad faith when they dropped Buyagao from the roll of employees; and (2) whether Buyagao suffered undue injury when respondents failed to

immediately execute the Order of CSC-ARMM.

Buyagao imputes bad faith on respondents for dropping him from the roll of employees. Further, he argues that respondents should have immediately executed the Order of CSC-ARMM. Buyagao asserts that his reinstatement and the payment of his salaries, two years after the Order was made, did not compensate for the undue damage he already suffered.

The Office of the Ombudsman, thru the OSP, filed its Comment[11] for the People. The OSP averred that while the Order of CSC-ARMM was on appeal, respondents had nothing to defy. It added that since the CSC Proper found respondents' act of dropping Buyagao from the rolls to be consistent with law, the latter could not claim damage or undue injury. The OSP espoused the view that Buyagao's claims were extinguished when he was restored to office, and paid his salaries.

The Office of the Solicitor General (OSG) likewise maintains that respondents acted in good faith when they relieved Buyagao from office. The OSG quoted Section 2,[12] Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, as amended, as the basis for respondents' action. According to the OSG, Buyagao's belated presentation of medical certificates did not justify his continuous absence without official leave. The certificates did not indicate that Buyagao's ailment had prevented him from reporting for work. The OSG contends that respondents could not have acted in bad faith, considering that the CSC confirmed that their action was in accordance with Civil Service Rules and Regulations. The OSG submits that respondents deferred execution of the Order of CSC-ARMM by reason of their pending appeal, and not because of any ill motive.

For their part, respondents allege that the Sandiganbayan did not abuse its discretion when it dismissed the charges against them. Respondents cited the case of *Espinosa v. Office of the Ombudsman*[13] that the duty of a government prosecutor to prosecute crimes does not preclude him from refusing to file an information when he believes there is no prima facie evidence to do so.[14] Thus, the power to withdraw an information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute. Respondents contend that Buyagao's charge of graft has no basis since the CSC upheld their act of dropping him from the rolls. This Order, the respondents stressed, was buttressed by the findings of lack of probable cause by the Ombudsman and the Sandiganbayan.

After a thorough consideration of the circumstances in this case, we are in agreement that the petition is bereft of merit.

Respondents were indicted for violation of Section 3(e) of Rep. Act No. 3019, which provides:

Section. 3. Corrupt Practices of Public Officer. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and hereby declared to be unlawful.

x x x x

(e)

Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

To hold a person liable under this section, the prosecution must establish beyond reasonable doubt that:

- (1) the accused is a public officer or a private person charged in conspiracy with the former;
- (2) the public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions;
- (3) he or she causes undue injury to any party, whether the government or a private party; and
- (4) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[15]

Undue means more than necessary; not proper; or illegal[16] while injury denotes any wrong or damage done to another, either in his person, rights, reputation, or property.[17] In the context of these definitions, jurisprudence[18] has interpreted “undue injury” to mean actual damage, similar to that in civil law. Bad faith on the other hand does not simply connote bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity.[19] Thus, mere bad faith or partiality is not enough for one to be held liable under the law since the element of bad faith or partiality must, in the first place, be evident. It is further required that undue injury impacts upon a specified party. [20]

Respondents dropped petitioner from the roll of employees in obedience to Section 2,[21] Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. For acting within the purview of law, no bad faith can be ascribed to them. Neither was bad faith evident when respondents failed to immediately carry out the Order of CSC-ARMM. While the Order was executory after 15 days from receipt by respondents,[22] and the appeal did not stay execution,[23] mere delay in its implementation did not constitute evident bad faith. Evident bad faith connotes a manifest deliberate intent to do wrong or cause damage,[24] which we did not find present in this case. Even assuming that the action taken by respondents was erroneous, it was certainly not criminal in nature.[25] At most, the liability of respondents may be civil if not administrative. Section 83 of the Uniform Rules on Administrative Cases in the Civil Service is pertinent:

Sec. 83. Non-Execution of Decision. – Any officer or employee who willfully refuses or fails to implement the final resolution, decision, order or ruling of the Commission to the prejudice of the public service and the affected party, may be cited in contempt of the Commission and administratively charged with conduct prejudicial to the best interest of the service or neglect of duty.

Note, however, that this rule applies to a final resolution, decision, order or ruling of the Commission, and not one on appeal.

As to petitioner’s allegation of undue injury, the ruling of the Court in *Llorente, Jr. v. Sandiganbayan*[26] is instructive:

After an employee, whose salary was withheld, fully received her monetary claims, there is no longer any basis for compensatory damages or undue injury, there being nothing more to compensate.[27]

Moreover, in the case of *Jacinto v. Sandiganbayan*,[28] we held that:

Nevertheless, no real or actual damage was suffered by her. She got her withheld salary released. Her name was restored in the plantilla. Thus, the complainant did not suffer undue injury as an element required by the law. Such an injury must be more than necessary, excessive, improper or illegal.[29]

Hence, before CSC Proper issued Resolution No. 020312, petitioner was reinstated in office and paid his salaries and benefits. Thus, no undue injury can be claimed in this case. Unlike in actions for torts, undue injury in Section

3(e) cannot be presumed even after a wrong or violation of a right has been established.[30] Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punishable under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.[31]

WHEREFORE, the instant petition is DENIED for lack of merit. The Resolutions dated January 13, 2004 and February 16, 2004 of the Sandiganbayan in Criminal Case No. 26906 are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 26-29. Penned by Associate Justice Teresita Leonardo-De Castro, with Associate Justices Diosdado M. Peralta and Roland B. Jurado concurring.

[2] Id. at 30.

[3] Id. at 38.

[4] Section 3. Corrupt Practices of Public Officer. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and hereby declared to be unlawful.

x x x x

(e)

Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

[5] Sandiganbayan rollo, pp. 1-2.

[6] Id. at 39-47.

[7] Rollo, p. 71.

[8] Id. at 50-54.

[9] Id. at 29.

[10] Id. at 19.

[11] Id. at 176-195.

[12] Sec. 2. Dropping from the Rolls. Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically and mentally unfit to perform their duties may

be dropped from the rolls subject to the following procedures:

2.1 Absence without approved leave

“a.

An officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed of his separation from the service not later than (5) days from its effectivity which shall be sent to the address appearing on his 201 files or to his last known address;

x x x x

[13] G.R. No. 135775, October 19, 2000, 343 SCRA 744.

[14] Id. at 751.

[15] Sistoza v. Desierto, G.R. No. 144784, September 3, 2002, 388 SCRA 307, 324.

[16] H.C. Black, BLACK’S LAW DICTIONARY 1528 (6th ed., 1990).

[17] Id. at 785.

[18] Pecho v. Sandiganbayan, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 133.

[19] Supra note 16, at 139.

[20] Sistoza v. Desierto, supra.

[21] Supra note 12.

[22] UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

Sec. 80. Execution of Decision. – The decision of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.

[23] RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS, Rule VII.

Sec. 13. Appeals in connection with personnel actions shall be governed by the following:

x x x x

(d)

An appeal even seasonably filed shall not stay the action, order, decision or ruling of the MSPB or CSC Regional/Provincial/Field Office, as the case may be, on appeal except [when] otherwise ordered by the CSC.

x x x x

[24] Marcelo v. Sandiganbayan, G.R. No. 69983, May 14, 1990, 185 SCRA 346, 349.

[25] Jacinto v. Sandiganbayan, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 260.

[26] G.R. No. 122166, March 11, 1998, 287 SCRA 382.

[27] Id. at 400.

[28] G.R. No. 84571, October 2, 1989, 178 SCRA 254.

[29] Id. at 260.

[30] Llorente, Jr. v. Sandiganbayan, *supra* at 399.

[31] Id.

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