

## REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JESUS FRANCISCO, JERRY MAKALATAN AND EMILY DE CASTRO, RESPONDENTS.

*G.R. NO. 163089. December 06, 2006*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in G.R. SP No. 68011 reversing the decision of the Ombudsman in OMB-ADM-0-00-0112.

The Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman received an anonymous letter-complaint regarding an alleged anomalous garbage collection contract between the Municipality of Bacoor, Cavite, with Hinterland Freightliners, Inc., and other illegal transactions. In a newspaper report, reference was made to "Colorum Dumpsites" against concerned Directors and the following illegal acts of the Municipal Mayor of Bacoor and his wife:

- Negotiated purchase in 1999 of overpriced and expired medicines for the poor amounting to P2.7 million;
- Purchase of 1999 of assorted furnitures and fixtures amounting to P4 million without the benefit of public bidding;
- Purchase of monobloc chairs, tables and tents without the benefit of public bidding and the renting out of the same by the wife of the Municipal Mayor;
- Unlawful removal or transfer of civil service eligibles in the municipal government who are perceived to have opposed the alleged illegal acts of the Municipal Mayor.[2]

The FFIB of the Office of the Ombudsman resolved to investigate the complaint and newspaper report, docketed as CPL 99-2703.

On August 10, 1999, Bacoor Municipal Mayor Jessie B. Castillo issued a Memorandum[3] to all Department Heads of the municipality, directing them "not to release any important document and/or records in [their] respective departments" without his prior approval; failure to comply would mean disciplinary action.

The Officer-in-Charge of the FFIB issued Mission Order No. 99-177 directing FFIB Investigators Benhur J. Villamora, Rodolfo M. Dayrit, Pedro R. Abuzman, Jr., Roy Roque D. A. Dator and Eduardo F. Olaveria, Jr. to proceed to the Municipal Hall of Bacoor, Cavite, on August 25, 1999, to investigate and gather documents and information relative to the news report and to thereafter submit a report.

Thereafter, Assistant Graft Investigation Officers Pedro R. Abuzman, Jr. and Rodolfo M. Dayrit issued a subpoena duces tecum dated August 24, 1999 ordering the municipal officers to immediately submit to the FFIB certified true copies of the following documents:

- (1) Mr. JESUS FRANCISCO  
Municipal Planning and Development Officer

- Bidding Documents (In re: Garbage Collection, Medicines and Furnitures)
- Contract to bid
- Notice of Award
- Publication
- Abstract
- List of PBAC members
- Other relevant documents

(2) Mr. JERRY MAKALATAN  
Municipal Accountant

- Financial Statement for the year 1998 to present;
- Journals (Cash Disbursement Journal, Check Disbursement Journal and Cash Receipt Journal); and
- Disbursement Vouchers.

(3) THE PERSONNEL OFFICER  
Municipal Hall

- Personal Data Sheets. Service Records and SALN of the following:
- Mayor Jessie B. Castillo
- Salome Esagunde
- Elvira Guerrero
- Councilor Bañas
- Councilor Cortez
- Councilor Ocampo
- Councilor Del Rosario
- Mr. Jerry Makalatan
- Mr. Jesus Francisco[4]

A separate subpoena was issued to the provincial auditor directing him to submit certified copies of the decision. The latter informed the agents, however, that he did not have the requested documents. The agents accepted the explanation of the provincial auditor.

The municipal officers named in the subpoena failed to comply, stating that the documents were voluminous.[5] They also told the agents that they had been prohibited by the municipal Mayor from releasing any important document and record without his prior approval. They requested the agents to ask the Mayor to allow them to release the documents, but the agents refused. The officers were given up to August 27, 1999 within which to comply with the order.

On August 30, 1999, Mayor Castillo issued another Memorandum,[6] reiterating his directive to Department Heads not to release any document without his approval "or in his absence, that of Municipal Administrator Roel

M. Zoleta." This included "photocopies of documents since there exists no appropriation in the municipal budget where xerox copiers can be made into use for any other purpose except internally." The Mayor warned that in the government service, "even a single centavo unaccounted for is still a graft case."

When the FFIB agents returned to the Municipal Hall to secure the documents, the municipal officers again refused to comply with the subpoena. They also informed the FFIB agents that they had no other recourse but to comply with the Mayor's Memoranda and asked them to talk to the Mayor about it. The agents refused to do so, stating that the municipal officers were mandated to comply with the subpoena in spite of the Memoranda issued by the Mayor.

The investigators returned to the Bacoor Municipal Hall to enforce the subpoena against the concerned municipal officers, but they still refused to comply. Thus, on August 31, 1999, the FFIB issued an Order[7] directing the municipal officers "to comply with the subpoena and explain within three (3) days why they should not be cited for contempt."

For his part, the Mayor filed an administrative complaint for harassment, oppression and grave abuse of authority with the Office of the Ombudsman against the FFIB agents. He alleged that there was only one investigation (CPL No. 99-2703) related to the complaint for "colorum dumpsites", but the FFIB agents had ordered the municipal officers who belonged to the political party to which he was affiliated to produce "unrelated" documents. The Mayor requested that the fact-finding investigators be suspended pending final resolution of his complaint.

Thereafter, the Chief Legal Counsel of the Office of the Ombudsman declared in a legal opinion that the FFIB investigation was not limited to the complaint on "colorum dumpsites" but included other matters like collection, medicine, furniture, among others.[8]

The municipal officers submitted their written explanation[9] as required by the FFIB. They declared that they were proscribed from complying with the FFIB's subpoena without prior notice and approval of the Mayor, who is their superior.

On February 29, 2000, the Graft Investigator issued an Order[10] preventively suspending respondents.

Meantime, on July 21, 2000, FFIB Director Gerardo B. Lantoria, Jr. issued subpoena duces tecum ad testificandum to the Acting Municipal Accountant to appear before the FFIB, Office of the Ombudsman at 10:00 a.m. on April 5, 2000, and submit certified true copies of disbursement vouchers together with all the supporting documents relative to the following transactions of the Municipal Government of Bacoor, Cavite:

- Purchase in 1999 of medicines for the poor;
- Purchase in 1999 of assorted furniture and fixtures; and,
- Purchase in 1999 of monobloc chairs, tables and tents.[11]

The municipal accountant was reminded that the investigation was confidential and that the documents must be handled pursuant to Section 3, Rule IV of the Implementing Rules of R.A. No. 6713.

A separate subpoena[12] was issued to the Personnel Officer requesting him to appear before the FFIB, Office of the Ombudsman at 10:00 a.m. on April 5, 2000, and submit the following:

- Records showing the transfers or movements of personnel within the Municipal Government of Bacoor, Cavite in 1998 and 1999; and
- Records of official travel abroad of the officials and employees of the Municipal Government of Bacoor,

Cavite in 1998 and 1999.

The officer was similarly reminded of the confidential nature of the investigation.

On March 28, 2000, the Mayor issued a Memorandum<sup>[13]</sup> dated March 21, 2000 to Municipal Accountant Makalatan and Personnel Officer De Castro to comply with the subpoena duces tecum of the FFIB in the interest of the service.

The municipal officers filed a motion for reconsideration of the Graft Investigator's February 29, 2000 Order. They declared that they were ready to comply with the subpoena of the FFIB Investigators.

On April 3 and 5, 2000, respondents De Castro and Makalatan partially complied with the subpoena of the FFIB Director and submitted the following documents:

- Purchase in 1999 of medicines for the poor;
- Purchase in 1999 of assorted furniture and fixtures; and
- Purchase in 1999 of monobloc chairs, tables and tents.

(1) Records showing the transfers or movements of personnel within the Municipal Government of Bacoor, Cavite in 1998 and 1999;

(2) Records of official travel abroad of the officials and employees of the Municipal Government of Bacoor, Cavite in 1998 and 1999.<sup>[14]</sup>

On March 28, 2000, the municipal officers' motion to lift their preventive suspension was denied for lack of merit.<sup>[15]</sup>

The FFIB agents thereafter submitted their joint affidavit on the complaint of the Mayor which, in part, reads:

- That the undersigned investigators categorically deny that this investigation is politically motivated. To repeat, the case emanated from our Intelligence and Special Operations Group (ISOG), and we have accordingly acted on their recommendation. The undersigned investigators have no knowledge that the Mayor and some of the concerned officials belong to the same political party. Their records were subpoenaed based on information that these officers traveled abroad without travel authority. Be that as it may, complaints of this nature should be proceeded accordingly based on the merits, and not on the pretext that it is politically motivated;
- That we believe that the act of the Mayor in filing the complaint against the undersigned investigators is to delay the conduct of the investigation, to muddle the issues and to make him appear as a martyr in the eyes of his constituents. The Honorable Mayor appears to a firm believer in the adage, that the "best defense is offense"; x x x<sup>[16]</sup>

For refusing to comply with the subpoena issued by the FFIB, the agents filed an administrative complaint for grave misconduct against Municipal Mayor Jessie B. Castillo, Municipal Treasurer Salome Esagunde, Municipal Accountant Jerry Makalatan, Municipal Personnel Head Emily de Castro and Municipal Planning Development Officer Jesus Francisco. The case was docketed as OMB-ADM-0-00-0112 (OMB-0-00-0261) and was investigated by the Administrative Adjudication Bureau of the Office of the Ombudsman.

In their joint counter-affidavit,<sup>[17]</sup> Makalatan, Francisco and De Castro alleged that when the investigators arrived in their office on August 25, 1999, they were informed to keep silent about their (agents') presence. Being naïve of such kind of legal procedure and considering the volume of the vital municipal documents the agents were requesting, they informed the Mayor. After reading the subpoena, they noticed that the documents

were not related to the subject matter of the investigation as shown by the caption of the subpoena. They insisted that this violated the mandate of Section 3, Rule 21 of the Revised Rules of Civil Procedure and the well settled rule on subpoena duces tecum.[18] They averred that the documents demanded by the agents may be secured from the COA through the provincial auditor.

In the preliminary conference conducted in the administrative case, the parties agreed on the following issues:

- Whether or not the non-compliance by the respondents of the Subpoena Duces Tecum dated August 24, 1999 constitute Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service? and,
- Whether or not the issuance by respondent Castillo of the Memorandum dated August 10, 1999 to all the Department Heads of Bacoor, Cavite constitute Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service?[19]

During the investigation, Atty. Eduardo F. Olaveria, Jr. declared that although respondents were subordinates of the Mayor, they were still obliged to comply with the subpoena.

In the meantime, Mayor Castillo was reelected during the May 14, 2001 elections.

On September 7, 2001, the Ombudsman approved a decision submitted by the Administrative Adjudication Board, through Graft Investigation Officer II Maria Isabel A. Alcantara, finding respondents, (except Salome Esagunde and Mayor Castillo) guilty of simple misconduct. The dispositive portion reads:

WHEREFORE, premises considered, respondents JERRY MAKALATAN, JESUS FRANCISCO and EMILY DE CASTRO are hereby found guilty of SIMPLE MISCONDUCT. Accordingly, they are meted the penalty of ONE (1) MONTH SUSPENSION WITHOUT PAY, pursuant to Section 25(2) of Republic Act No. 6770 (The Ombudsman Act of 1989). The instant administrative complaint against respondents JESSIE B. CASTILLO and SALOME ESAGUNDE is hereby DISMISSED.

The Mayor, Municipality of Bacoor, Cavite, is hereby directed to implement this Decision in accordance with law and to promptly inform this Office of compliance therewith.

SO ORDERED.[20]

The Ombudsman rejected the municipal officers' defense that they merely obeyed the Mayor's Memoranda. It declared that under Section 15(8) of R.A. No. 6770, they were authorized to serve copies of the public documents listed and described in the subpoena. Respondents were mandated to comply with the subpoena issued by the Office of the Ombudsman through its deputies.

The Ombudsman further declared that respondent Makalatan had custody of the accounting records as early as 1994 or 1995, hence, was obliged to furnish the FFIB with copies. As stated in the letter-opinion dated September 2, 1999 of the Ombudsman's Chief Legal Counsel, the investigation of the FFIB was not "limited to the colorum dumpsites" and included other matters like collectors, medicines, furniture, among others. If, at all, the subsequent compliance of Makalatan and De Castro merely mitigated their administrative liability.

Respondent Municipal Treasurer was absolved of the charge because the accounting records had already been transferred to respondent Makalatan in 1994 or 1995. The complaint against the Mayor was dismissed because he was reelected; this served as a condonation of the charges of misconduct lodged against him.

Respondents Makalatan, Francisco and De Castro filed a motion for reconsideration of the decision, which the Ombudsman resolved to deny.[21]

Respondents Francisco, Makalatan and De Castro filed a petition for review under Rule 43 of the Rules of Court

with the CA, assailing the decision and resolution of the Ombudsman on the following grounds:

- RESPONDENTS COMMITTED SERIOUS ERROR IN RENDERING THE DECISION DATED SEPTEMBER 7, 2001 AND ORDER DATED OCTOBER 25, 2001 DEFYING BOTH LAW AND JURISPRUDENCE THEREON DESPITE EVIDENCE THAT PETITIONERS NEVER COMMITTED MISCONDUCT UNDER THE PREMISES;
- THE RESPONDENTS HAVE NO JURISDICTION OVER THE CASE.[22]

Respondents averred that the Ombudsman erred in finding them guilty of simple misconduct and insisted that they acted in good faith. They merely complied with the Memoranda of the Municipal Mayor which prohibited them from furnishing the FFIB agents with copies of the public documents in their custody. To show their good faith, they pleaded to the FFIB agents to talk to the Mayor, but the latter refused. They should not be dealt with administratively and sanctioned for their failure to comply with the subpoena of the FFIB. They maintained that they were in a "damned if you do and damned if you don't" situation.

They likewise averred that, under the Local Government Code, the Municipal Mayor has administrative supervision over all executive officials and employees of the municipality to ensure that they faithfully discharge their duties and functions under existing laws. Thus, they had no other choice but to follow Mayor Castillo's order.[23] Being mere subordinates of the Mayor, they had no other alternative but to comply with the Memorandum.[24]

Respondents maintained that, under the law, good faith is presumed. They are not liable since failure to comply with the subpoena cannot be considered as "misconduct" under the law. The interest of public service was not prejudiced by the failure to obtain the required documents. The documents are public in character, thus can be obtained from other sources, such as from the Provincial Auditor of Cavite in Trece Martirez City.

On the second issue, respondents claimed that the offense for which they were charged falls under the jurisdiction of the Civil Service Commission as provided in Book V, Title I, Chapter 3, Section 12(11), in relation to Book V, Title 1, Chapter 6, Section 47. Thus, the Administrative Adjudication Bureau had no jurisdiction.

On March 3, 2004, the CA granted the petition and reversed the decision of the Ombudsman.[25] The appellate court dismissed the complaint, holding that the Ombudsman had jurisdiction over the complaint. The CA also ruled that in the light of the ruling in *Evangelista v. Jarencio*,[26] the subpoena issued by the FFIB was in order. However, the appellate court ruled, petitioners could not be held guilty of simple misconduct since they were merely following the Memoranda issued by their superior, the Mayor. Had the FFIB secured the necessary approval from the Mayor, the municipal officers would have readily complied with the subpoena. The appellate court likewise found that the Mayor's Orders were not unlawful or illegal, and that petitioners discharged their duties without any wrongful intention.

The Ombudsman, through the Republic of the Philippines, filed the instant petition for review on certiorari, insisting that:

I

THE ONE (1) MONTH SUSPENSION IMPOSED ON RESPONDENTS IS FINAL AND UNAPPEALABLE.

II

PETITIONER CORRECTLY ADJUDGED RESPONDENTS GUILTY OF SIMPLE MISCONDUCT.[27]

On the first ground, petitioner avers that, under Section 27 of R.A. No. 6770 and under the Rules of Procedure of

the Office of the Ombudsman, the Order imposing suspension without pay is final and executory, which cannot be assailed by way of petition for review under Rule 43 of the Rules of Court; hence, it behooved the CA to dismiss respondents' petition.

On the second ground, petitioner asserts that there is ample evidence to show that respondents are guilty of simple misconduct. Under R.A. No. 6770, the Ombudsman, through his representative, has ample authority to enter and inspect the premises of any office or agency and examine any book, record, file, document or paper in relation to any investigation. Under Section 26(4) of R.A. No. 6770, any officer or employee who delays or refuses to comply with the referral or directive of the Ombudsman or any of his deputies shall be a ground for disciplinary action against such officer or employee. The law does not require that such refusal or delay be deliberate or intentional. It is enough that the delay or refusal was committed by the requested government officer or employee. It insists that respondents' refusal to comply with the subpoena constituted nonfeasance, if not malfeasance; hence, the CA erred in reversing the decision of the Ombudsman finding them guilty of simple misconduct.

In their Comment on the petition, respondents aver that petitioner never raised in the CA the issue of whether the Ombudsman's decision finding them guilty of simple misconduct is not appealable. Petitioner is then estopped from raising the issue in this Court. Moreover, the subpoena issued by the FFIB does not conform to the requirements of Section 2, Rule 21 of the Rules of Court. The documents demanded by the FFIB are not prima facie evidence to prove the allegations about the "colorum dumpsites," and the subpoena issued by the FFIB were in the nature of a general warrant.

Respondents further assert that the decision of the CA absolving them of simple misconduct is correct. They acted in good faith when they opted not to comply with the subpoena; they had no other option but to seek the approval of the Mayor; otherwise, they could be administratively charged and sanctioned.

We agree with petitioner's contention that the decision of the Ombudsman finding respondents guilty of simple misconduct and ordering their suspension for one (1) month without pay is final and unappealable as provided in Section 27 of R.A. No. 6770 and Administrative Order No. 07, Section 7, Rule III of the Office of the Ombudsman implementing Section 27 of R.A. No. 6770. The rule reads:

SEC. 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Underscoring supplied)

From the foregoing provisions, it was held in *Lapid v. Court of Appeals*[28] that orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary shall be final and

unappealable. In all other cases, the aggrieved party is given the right to appeal within ten (10) days from receipt of the written notice of the order, directive or decision; thus, the judgment will become final after the lapse of the reglementary period of appeal, if no appeal is perfected or, an appeal therefrom having been taken.[29] In the instant case, since the penalty imposed upon respondents was "one month suspension without pay" only, as a matter of law, the decision of the Ombudsman is final and unappealable. As held in *Herrera v. Bohol*,[30] where petitioner therein was likewise found guilty of simple misconduct and suspended for one (1) month without pay, the decision of the Ombudsman can no longer be rectified, much less, reversed.

Since the decision of the Ombudsman suspending respondents for one (1) month is final and unappealable, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same.[31] The Ombudsman was not estopped from asserting in this Court that the CA had no appellate jurisdiction to review and reverse the decision of the Ombudsman via petition for review under Rule 43 of the Rules of Court. This is not to say that decisions of the Ombudsman cannot be questioned. Decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings.[32] Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.[33]

Even if the Court considers the petition filed with the CA as one for certiorari under Rule 65 of the Rules of Court, respondents, nevertheless, failed to prove that the Office of the Ombudsman committed grave abuse of its discretion amounting to excess or lack of jurisdiction in its decision.

There is grave abuse of discretion on the part of the Office of the Ombudsman when it acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment amounting to lack of jurisdiction. Mere abuse of discretion is not enough.[34] The only question involved is jurisdiction, either the lack or excess thereof, and abuse of discretion warrants the issuance of the extraordinary remedy of certiorari only when the same is grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility. A writ of certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[35] An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal.[36]

Section 27(2) of R.A. No. 6770 provides that findings of facts by the Office of the Ombudsman are conclusive when supported by substantial evidence. Thus, as long as there is substantial evidence to support the Ombudsman's decision, it will not be reversed. The rationale of the rule was enunciated in *Young v. Office of the Ombudsman*: [37]

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[38]

Under Section 18 of R.A. No. 6770, the Office of the Ombudsman is empowered to:

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, 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;

x x x x

(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.

It must be stressed that the Office of the Ombudsman is endowed with a wide latitude of investigating power, virtually free from legislative, executive and judicial instruction.[39] The Ombudsman and his deputies are designated by the Constitution as protectors of the people, who are thus required to act promptly on complaints against public officers of the government or any subdivision, agency or instrumentality thereof.[40] The general investigation on the Office of the Ombudsman is precisely for the purpose of protecting those against whom a complaint is filed against hasty, malicious and oppressive prosecution as much as securing the State from useless and expensive trials.[41] Moreover, the reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority is to insulate said office from the long tentacles of officialdom that are able to penetrate the judges' and other fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay or dismiss investigations into malfeasances and misfeasances committed by public officers.[42]

To achieve the objectives of the Constitution, the Office of the Ombudsman is empowered to administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records which may be delegated to the deputy or its investigator to ensure the effective exercise or performance of the power, functions, and duties therein as provided in the law.[43] In any investigation under the law, the Ombudsman may examine and access any record, file, document or paper in any office, agency or commission or tribunal.[44] Delay or refusal to comply with the referral or directive of the Ombudsman or any of his deputies constitutes a ground for administrative disciplinary action against the officers or employee concerned.[45] Indeed, non-performance of an act which ought to be performed, omission to perform a required duty at all, or total neglect of duty constitutes nonfeasance.[46]

The officer or employee concerned may be excused or justified for being unable to comply with the subpoena duces tecum. However, the inability which excuses must be real. Self-created inability will not suffice; nor will passivity when reasonable efforts might secure compliance. Any excuse or exception for non-compliance is distinctly exceptional being derogative of the mandate of the law and must be established by clear and convincing evidence.[47]

In the instant case, respondents were ordered by the Office of the Ombudsman, through the FFIB, to submit certified true copies of the documents in their custody in connection with the on-going investigation against the Mayor and his wife. The documents subject of the subpoena were public documents in the custody of respondents. They were mandated to comply with the subpoena of the FFIB despite the Mayor's August 10, 1999 Memoranda prohibiting them from releasing important documents/records in their respective departments without his prior approval. Such a Memorandum is contrary to R.A. No. 6770. The duty of respondents to comply with the subpoena of the FFIB cannot be made subject to or dependent on the whims or caprice or prior approval of a higher officer. Indeed, in this case, the Mayor was unable to cite any law vesting him with the power to prohibit the municipal officers from furnishing the Ombudsman with certified copies of public documents in their custody without his prior approval.

It must be stressed that the Mayor is mandated to ensure that all officials and employees of the municipality faithfully discharge their duties and functions as provided by law and the Local Government Code. It appears, in this case, that the Mayor issued his Memoranda in anticipation, perhaps to derail the investigation of the Office of the Ombudsman relative to the complaints against him and his wife. By prohibiting respondents from complying with the subpoena, he prevented the FFIB agents from performing their constitutionally-mandated duty.

Respondents' request for the FFIB agents to ask the Mayor to allow them to release certified copies of the documents cannot serve to support their claim of good faith. The FFIB agents were merely complying with the subpoena issued by the FFIB. Moreover, their Mission Order did not require them to speak to the Mayor and secure prior approval before releasing public documents. The Mayor cannot withhold the release of any public documents even if they may incriminate him and his wife. Neither were respondents justified in withholding such documents from the FFIB, being as they are documents for the benefit of the public and subject to public inspection.[48]

If respondents, indeed, were in good faith, it behooved them to file a motion with the FFIB to question its order and claim exemption from compliance with the subpoena because of the Mayor's Memoranda. In case of denial, respondents could then appeal to the Ombudsman; if this remedy failed, they could then have sought judicial relief. Respondents had no right to simply ignore the order and refuse to comply. Whether a witness has a reasonable excuse for failing to respond to a subpoena *duces tecum* is to be justified by the court or tribunal or government entity that issued it and not by the witness. While the witness may have a valid excuse for not showing the document sought by the subpoena, he is still bound to produce it.[49]

Respondents are not mere employees of the municipality. They were heads of departments. They should have known that although the Mayor may have supervision over them, he had no power to prohibit them from complying with the lawful order of the FFIB. Respondents are mandated to obey only the lawful orders of the Mayor, and are as guilty as the former if they obey illegal orders. They knew that the Mayor had subsequently issued a Memorandum finally allowing them to comply with the subpoena of the FFIB; however, respondents De Castro and Makalatan's compliance was only partial, while respondent Francisco failed to comply. Such "half-hearted compliance" demonstrates respondents' defiance of the FFIB's order, despite the *volte face* of the Mayor. This conduct cannot be tolerated.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals is SET ASIDE.

### **SO ORDERED.**

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

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Eugenio S. Labitoria and Mercedes Gozo-Dadole, concurring; rollo, pp. 161-176.

[2] CA rollo, pp. 88-89.

[3] *Id.* at 77.

[4] *Id.* at 74-76.

[5] Rollo, p. 38.

[6] *Id.* at 78.

- [7] Id. at 79.
- [8] Id. at 37.
- [9] CA rollo, pp. 82-83.
- [10] Id. at 92-95.
- [11] Id. at 107.
- [12] Id. at 108.
- [13] Id. at 109.
- [14] Rollo, p. 46.
- [15] CA rollo, pp. 114-117.
- [16] Id. at 86-87.
- [17] Rollo, pp. 101-106.
- [18] Id. at 43.
- [19] CA rollo, p. 50.
- [20] Id. at 65-66.
- [21] Id. at 68-72.
- [22] Id. at 24.
- [23] Id. at 32-33.
- [24] Id. at 28-31.
- [25] Rollo, pp. 26-32.
- [26] L-29274, November 27, 1975, 69 SCRA 99, 106.
- [27] Id. at 15.
- [28] 390 Phil. 236, 247 (2000).
- [29] Lopez v. Court of Appeals, 438 Phil. 351, 359-360 (2002).
- [30] G.R. No. 155320, February 5, 2004, 422 SCRA 282.
- [31] Herrera v. Bohol, *supra*, 286.
- [32] De Guzman v. Commission on Elections, G.R. No. 159713, March 31, 2004, 426 SCRA 698, 707-708.
- [33] Rubio v. Paras, G.R. No. 156047, April 12, 2005, 455 SCRA 697, 708-709.
- [34] People v. Court of Appeals, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 617.
- [35] Philippine Rabbit Bus Lines, Inc. v. Galauran & Pilaes Construction Co., G.R. No. L-35630, November 25, 1982, 118 SCRA 664, 667.
- [36] People v. Court of Appeals, *supra*.

- [37] G.R. No. 110736, December 27, 1993, 228 SCRA 718.
- [38] Id. at 722-723, citing Ocampo v. Ombudsman, G.R. No. 103446-47, August 30, 1993.
- [39] Perez v. Office of the Ombudsman, G.R. No. 131445, May 27, 2004, 429 SCRA 357, 363.
- [40] CONSTITUTION, Section 12, Article XI.
- [41] Almonte v. Vasquez, G.R. No. 95367, May 23, 1995, 244 SCRA 286, 303-304.
- [42] Deloso v. Domingo, G.R. No. 90591, November 21, 1990, 191 SCRA 545, 550-551.
- [43] R.A. No. 6770, Sec. 15 (8).
- [44] R.A. NO. 6770, Sec. 23(3).
- [45] R.A. No. 6770, Sec. 26(4).
- [46] Black's Law Dictionary, 1979 ed. 950, citing Desmarain v. Wachusett Regional District, 276 N.E.2d 696.
- [47] People v. Rezek, 103 N.E. 2d 127 (1952).
- [48] See Wilson v. U. S., 221 U.S. 361 (1911).
- [49] Vaughan v. Broadfoot, Inc., 149 S.E. 2d 37 (1966).

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