

RACHEL BEATRIZ RUIVIVAR, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND DR. CONNIE BERNARDO, RESPONDENTS.

G.R. No. 165012. September 16, 2008

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for review on certiorari under Rule 45 of the Rules of Court commenced by Rachel Beatriz Ruivivar (petitioner). It seeks to set aside:

(a)

the Decision of the Court of Appeals (CA)[1] dated May 26, 2004[2] dismissing the petition for certiorari filed by the petitioner and affirming the Decision dated November 4, 2002[3] (November 4, 2002 Decision) and the Order dated February 12, 2003[4] (February 12, 2003 Order) of the Office of the Ombudsman (Ombudsman); the Ombudsman's Decision and Order found the petitioner administratively liable for discourtesy in the course of official duties as Chairperson of the Land Transportation Office (LTO) Accreditation Committee on Drug Testing, and imposed on her the penalty of reprimand; and

(b)

the CA Resolution dated August 20, 2004[5] which denied the petitioner's subsequent motion for reconsideration.

THE ANTECEDENTS

On May 24, 2002, the private respondent filed an Affidavit-Complaint charging the petitioner before the Ombudsman of serious misconduct, conduct unbecoming of a public official, abuse of authority, and violations of the Revised Penal Code and of the Graft and Corrupt Practices Act.[6] The private respondent stated in her complaint that she is the President of the Association of Drug Testing Centers (Association) that conducts drug testing and medical examination of applicants for driver's license. In this capacity, she went to the Land Transportation Office (LTO) on May 17, 2002 to meet with representatives from the Department of Transportation and Communication (DOTC) and to file a copy of the Association's request to lift the moratorium imposed by the LTO on the accreditation of drug testing clinics. Before proceeding to the office of the LTO Commissioner for these purposes, she passed by the office of the petitioner to conduct a follow up on the status of her company's application for accreditation. While there, the petitioner -- without provocation or any justifiable reason and in the presence of other LTO employees and visitors -- shouted at her in a very arrogant and insulting manner, hurled invectives upon her person, and prevented her from entering the office of the LTO Commissioner. The petitioner also accused the private respondent of causing intrigues against her at the DOTC. To prove her allegations, the private respondent presented the affidavits of three witnesses.[7]

The Ombudsman furnished the petitioner a copy of the Complaint-Affidavit and required her to file her counter-affidavit. In her Counter-Affidavit, the petitioner denied the private respondent's allegations and claimed that she merely told the private respondent to bring her request to the LTO Assistant Secretary who has the

authority to act on the matter, not to the DOTC.[8] The petitioner also claimed that the private respondent also asked her to lift the moratorium and pressured her to favorably act on the private respondent's application for accreditation. To prove these claims, petitioner presented the affidavits of her two witnesses.[9]

The Ombudsman called for a preliminary conference that the parties attended. The petitioner manifested her intent to submit the case for resolution. The Ombudsman then directed the parties to submit their respective memoranda. Only the petitioner filed a Memorandum where she stressed that the complaint is not properly substantiated for lack of supporting affidavits and other evidence.[10]

The Office of the Ombudsman

The Ombudsman rendered the November 4, 2002 Decision based on the pleadings and the submitted affidavits. It found the petitioner administratively liable for discourtesy in the course of her official functions and imposed on her the penalty of reprimand.

The Ombudsman ruled that the petitioner's verbal assault on the private respondent was sufficiently established by the affidavits of the private respondent's witnesses who had not been shown by evidence to have any motive to falsely testify against petitioner. In contrast, the petitioner's witnesses, as her officemates, were likely to testify in her favor. Given that the incident happened at the LTO and that the petitioner had authority to act on the private respondent's application for accreditation, the Ombudsman also found that the petitioner's ascendancy over the private respondent made the petitioner's verbal assault more likely. The Ombudsman concluded that such verbal assault might have been caused by the private respondent's decision to air the LTO moratorium issue (on accreditation for drug testing centers) before the DOTC; this decision also negated the petitioner's defense that the case was filed to exert pressure on her to act favorably on private respondent's application for accreditation.

The petitioner filed a Motion for Reconsideration arguing that she was deprived of due process because she was not furnished copies of the affidavits of the private respondent's witnesses.[11] In the same motion, petitioner questioned the Ombudsman's disregard of the evidence she had presented, and disagreed with the Ombudsman's statement that she has ascendancy over the private respondent.

The Ombudsman responded to the petitioner's motion for reconsideration by ordering that the petitioner be furnished with copies of the affidavits of the private respondent's witnesses. [12] The Ombudsman's order also contained the "directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances."

Records show that the petitioner received copies of the private respondent's witnesses' affidavits but she did not choose to controvert these affidavits or to file a supplement to her motion for reconsideration. She simply maintained in her Manifestation that her receipt of the affidavits did not alter the fact she was deprived of due process nor cure the irregularity in the November 4, 2002 Decision.

Under these developments, the Ombudsman ruled that the petitioner was not denied due process. It also maintained the findings and conclusions in its November 4, 2002 Decision, declaring them supported by substantial evidence.[13]

The Court of Appeals

The petitioner's chosen remedy, in light of the Ombudsman ruling, was to file a petition for certiorari (docketed as CA-GR SP No. 77029) with the CA. In its Decision dated May 26, 2004, the CA dismissed the petition on the ground that the petitioner used the wrong legal remedy and failed to exhaust administrative remedies before the Ombudsman.[14] The CA said:

"... as held in *Fabian v. Desierto*, a party aggrieved by the decision of the Office of the Ombudsman may appeal to this Court by way of a petition for review under Rule 43. As succinctly held by the Supreme Court: 'As a consequence of our ratification that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decision of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.'

Even assuming, argumentatis, that public respondent committed grave abuse of discretion, such fact is not sufficient to warrant the issuance of the extraordinary writ of certiorari, as was held in *Union of Nestle Workers Cagayan de Oro Factory vs. Nestle Philippines, Inc.*:

'x x x .For certiorari to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, as alleged by petitioners. The requirement that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied. x x x'

Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent, in its Order dated January 17, 2003. Petitioner, therefore, had a speedy and adequate remedy, but she failed to avail thereof for reasons only known to her.

x x x

Moreover, instead of filing a petition for review under Rule 43, she filed the present petition for certiorari under Rule 65. In view of our above disquisition, We find no further reason to discuss the merits of the case. Petitioner having resorted to the wrong remedy, the dismissal of the present petition is in order.[15]

After the CA's negative ruling on the motion for reconsideration, the petitioner filed the present petition for review on certiorari with this Court, raising the following issues:

THE ISSUES

- WHETHER OR NOT A PETITION FOR CERTIORARI UNDER RULE 65 IS THE PROPER AND ONLY AVAILABLE REMEDY WHEN THE PENALTY IMPOSED IN AN ADMINISTRATIVE COMPLAINT WITH THE OFFICE OF THE OMBUDSMAN IS CONSIDERED FINAL AND UNAPPEALABLE.
- WHETHER OR NOT PETITIONER WAS DENIED OF (sic) THE CONSTITUTIONAL GUARANTEE TO DUE PROCESS WHEN SHE WAS DEPRIVED OF HER RIGHT TO CONFRONT THE EVIDENCE SUBMITTED AGAINST HER BEFORE THE DECISION OF THE OFFICE OF THE OMBUDSMAN WAS RENDERED.

On the first issue, the petitioner argued that the ruling in *Fabian v. Desierto*[16] can only be applied when the decision of the Ombudsman is appealable. The ruling in *Fabian* is not applicable to the Ombudsman rulings under the express provisions of Section 27 of Republic Act (R.A.) No. 6770[17] and Section 7, Rule III of Administrative Order (A.O.) No. 7[18] since the penalty of reprimand imposed is final and unappealable. The appropriate remedy, under the circumstances, is not the appellate remedy provided by Rule 43 of the Rules of Court but a petition for certiorari under Rule 65 of these Rules.

On the second issue, the petitioner maintained that she was denied due process because no competent evidence was presented to prove the charge against her. While she was belatedly furnished copies of the affidavits of the private respondent's witnesses, this was done after the Ombudsman had rendered a decision. She posited that her belated receipt of the affidavits and the subsequent proceedings before the Ombudsman did not cure the irregularity of the November 4, 2002 Decision as she was not given the opportunity to refute the private respondent's evidence before the Ombudsman's decision was rendered. The petitioner advanced the view that on

this ground alone, she should be allowed to question the arbitrary exercise of the Ombudsman's discretion.

The Ombudsman's Comment,[19] filed through the Office of the Solicitor General, maintained that the proper remedy to assail the November 4, 2002 Decision and February 12, 2003 Order was to file a petition for review under Rule 43 as laid down in Fabian,[20] and not the petition for certiorari that the petitioner filed. The Ombudsman argues further that since no petition for review was filed within the prescribed period (as provided under Section 4, Rule 43),[21] the November 4, 2002 Decision and February 12, 2003 Order had become final and executory. The Ombudsman maintained, too, that its decision holding the petitioner administratively liable is supported by substantial evidence; the petitioner's denial of the verbal assault cannot prevail over the submitted positive testimony. The Ombudsman also asserted that the petitioner was not denied due process as she was given the opportunity to be heard on the affidavits that were belatedly furnished her when she was directed to "file any pleading as she may consider fit."

The private respondent shared the positions of the Ombudsman in her Comment.[22] Both the Office of the Solicitor General and the private respondent also asserted the doctrine that factual findings of administrative agencies should be given great respect when supported by substantial evidence.

We initially denied the petition in our Resolution dated December 12, 2005 for the petitioner's failure to comply with our Resolutions dated March 30, 2005 and April 25, 2005. However, we reconsidered the denial in a subsequent Resolution (dated February 27, 2006)[23] and reinstated the petition on the petitioner's motion for reconsideration after she complied with our directives. We required the parties to submit their respective memoranda where they reiterated the positions presented in their previous submissions.

THE COURT'S RULING

We deny the Petition.

While we find that the Court of Appeals erred in its ruling on the appropriate mode of review the petitioner should take, we also find that the appellate court effectively ruled on the due process issue raised - the failure to provide the petitioner the affidavits of witnesses - although its ruling was not directly expressed in due process terms. The CA's finding that the petitioner failed to exhaust administrative remedies (when she failed to act on the affidavits that were belatedly furnished her) effectively embodied a ruling on the due process issue at the same time that it determined the propriety of the petition for certiorari that the CA assumed *arguendo* to be the correct remedy.

Under this situation, the error in the appellate court's ruling relates to a technical matter - the mode of review that the petitioner correctly took but which the CA thought was erroneous. Despite this erroneous conclusion, the CA nevertheless fully reviewed the petition and, assuming it *arguendo* to be the correct mode of review, also ruled on its merits. Thus, while it erred on the mode of review aspect, it correctly ruled on the exhaustion of administrative remedy issue and on the due process issue that the exhaustion issue implicitly carried. In these lights, the present petition essentially has no merit so that its denial is in order.

The Mode of Review Issue

The case of Fabian v. Desierto[24] arose from the doubt created in the application of Section 27 of R.A. No. 6770 (The Ombudsman's Act) and Section 7, Rule III of A.O. No. 7 (Rules of Procedure of the Office of the Ombudsman) on the availability of appeal before the Supreme Court to assail a decision or order of the Ombudsman in administrative cases. In Fabian, we invalidated Section 27 of R.A. No. 6770 (and Section 7, Rule III of A.O. No. 7 and the other rules implementing the Act) insofar as it provided for appeal by certiorari under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. We held that Section 27 of R.A.

No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution; it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on certiorari shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other courts authorized by law." [25] We pointedly said:

As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43. [26]

We restated this doctrine in several cases [27] and further elaborated on the recourses from Ombudsman actions in other cases we have decided since then. In *Lapid v. CA*, we explained that an appeal under Rule 43 to the CA only applies to administrative cases where the right to appeal is granted under Section 27 of R.A. No. 6770. [28] In *Lopez v. CA* [29] and *Herrera v. Bohol*, [30] we recognized that no appeal is allowed in administrative cases where the penalty of public censure, reprimand, suspension of not more than one month, or a fine equivalent to one month salary, is imposed. We pointed out that decisions of administrative agencies that are declared by law to be final and unappealable are still subject to judicial review if they fail the test of arbitrariness or upon proof of gross abuse of discretion; [31] the complainant's legal recourse is to file a petition for certiorari under Rule 65 of the Rules of Court, applied as rules suppletory to the Rules of Procedure of the Office of the Ombudsman. [32] The use of this recourse should take into account the last paragraph of Section 4, Rule 65 of the Rules of Court - i.e., the petition shall be filed in and be cognizable only by the CA if it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or by the Rules. [33]

In the present case, the Ombudsman's decision and order imposing the penalty of reprimand on the petitioner are final and unappealable. Thus, the petitioner availed of the correct remedy when she filed a petition for certiorari before the CA to question the Ombudsman's decision to reprimand her.

The Due Process Issue

The CA Decision dismissed the petition for certiorari on the ground that the petitioner failed to exhaust all the administrative remedies available to her before the Ombudsman. This ruling is legally correct as exhaustion of administrative remedies is a requisite for the filing of a petition for certiorari. [34] Other than this legal significance, however, the ruling necessarily carries the direct and immediate implication that the petitioner has been granted the opportunity to be heard and has refused to avail of this opportunity; hence, she cannot claim denial of due process. In the words of the CA ruling itself: "Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent. . . and had a speedy and adequate administrative remedy but she failed to avail thereof for reasons only known to her."

For a fuller appreciation of our above conclusion, we clarify that although they are separate and distinct concepts, exhaustion of administrative remedies and due process embody linked and related principles. The "exhaustion" principle applies when the ruling court or tribunal is not given the opportunity to re-examine its findings and conclusions because of an available opportunity that a party seeking recourse against the court or the tribunal's ruling omitted to take. [35] Under the concept of "due process," on the other hand, a violation occurs when a court or tribunal rules against a party without giving him or her the opportunity to be heard. [36] Thus, the exhaustion principle is based on the perspective of the ruling court or tribunal, while due process is considered from the point of view of the litigating party against whom a ruling was made. The commonality they share is in the same "opportunity" that underlies both. In the context of the present case, the available opportunity to consider and appreciate the petitioner's counter-statement of facts was denied the Ombudsman; hence, the petitioner is barred

from seeking recourse at the CA because the ground she would invoke was not considered at all at the Ombudsman level. At the same time, the petitioner - who had the same opportunity to rebut the belatedly-furnished affidavits of the private respondent's witnesses - was not denied and cannot now claim denial of due process because she did not take advantage of the opportunity opened to her at the Ombudsman level.

The records show that the petitioner duly filed a motion for reconsideration on due process grounds (i.e., for the private respondent's failure to furnish her copies of the affidavits of witnesses) and on questions relating to the appreciation of the evidence on record.[37] The Ombudsman acted on this motion by issuing its Order of January 17, 2003 belatedly furnishing her with copies of the private respondent's witnesses, together with the "directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances." [38]

Given this opportunity to act on the belatedly-furnished affidavits, the petitioner simply chose to file a "Manifestation" where she took the position that "The order of the Ombudsman dated 17 January 2003 supplying her with the affidavits of the complainant does not cure the 04 November 2002 order," and on this basis prayed that the Ombudsman's decision "be reconsidered and the complaint dismissed for lack of merit." [39]

For her part, the private respondent filed a Comment/Opposition to Motion for Reconsideration dated 27 January 2003 and prayed for the denial of the petitioner's motion.

In the February 12, 2003 Order, the Ombudsman denied the petitioner's motion for reconsideration after finding no basis to alter or modify its ruling.[40] Significantly, the Ombudsman fully discussed in this Order the due process significance of the petitioner's failure to adequately respond to the belatedly-furnished affidavits. The Ombudsman said:

"Undoubtedly, the respondent herein has been furnished by this Office with copies of the affidavits, which she claims she has not received. Furthermore, the respondent has been given the opportunity to present her side relative thereto, however, she chose not to submit countervailing evidence or argument. The respondent, therefore (sic), cannot claim denial of due process for purposes of assailing the Decision issued in the present case. On this score, the Supreme Court held in the case of *People v. Acot*, 232 SCRA 406, that "a party cannot feign denial of due process where he had the opportunity to present his side". This becomes all the more important since, as correctly pointed out by the complainant, the decision issued in the present case is deemed final and unappealable pursuant to Section 27 of Republic Act 6770, and Section 7, Rule III of Administrative Order No. 07. Despite the clear provisions of the law and the rules, the respondent herein was given the opportunity not normally accorded, to present her side, but she opted not to do so which is evidently fatal to her cause." [emphasis supplied].

Under these circumstances, we cannot help but recognize that the petitioner's cause is a lost one, not only for her failure to exhaust her available administrative remedy, but also on due process grounds. The law can no longer help one who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance.

WHEREFORE, premises considered, we hereby DENY the petition. This denial has the effect of confirming the finality of the Decision of the Ombudsman dated November 4, 2002 and of its Order dated February 12, 2003.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Docketed as CA-G.R. SP No. 77029 and assigned to the Fourteenth Division. The assailed CA issuances were

penned by Associate Justice Magdangal de Leon and concurred in by Associate Justice Marina Buzon, as Chairman, and Associate Justice Mariano del Castillo, as Member.

[2]</sup

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