

EUSTAQUIO B. CESA PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND COMMISSION ON AUDIT-REGION VII, RESPONDENTS.

G.R. No. 166658. April 30, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the December 20, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 77359 affirming with modification the Decision[2] dated August 16, 2001 and Order[3] dated October 21, 2002 of the Office of the Ombudsman-Visayas in OMB-VIS-ADM-98-0150. The Office of the Ombudsman suspended Cebu City Treasurer Eustaquio B. Cesa for six months without pay for tolerating illegal practices relative to the granting of cash advances to paymasters.

Here are the facts, culled from the records:

On March 5, 1998, government auditors conducted a surprise audit at the Cash Division of Cebu City Hall. Getting wind of the surprise audit, paymaster Rosalina G. Badana hurriedly left her office and, since then, never returned. From September 20, 1995 to March 5, 1998, Badana had cash advances of more than P216 million fraudulently incurred by presenting cash items such as payrolls and vouchers already previously credited to her account to cover the balance or shortage during cash counts. Her unliquidated cash advances were more than P18 million. The government auditors discovered that Badana had an average monthly cash advance of P7.6 million in excess of her monthly payroll of P5.7 million, and was granted more advances without liquidating previous advances.

On March 13, 1998, then City Mayor Alvin B. Garcia administratively charged Badana before the Office of the Ombudsman-Visayas (Ombudsman).[4]

On April 3, 1998, the Ombudsman impleaded Cesa and other city officials.[5] Affirming the audit team's report, graft investigators concluded that the city officials' failure to observe relevant laws[6] and rules[7] governing the grant, utilization and liquidation of cash advances facilitated, promoted, and encouraged the defalcation of public funds. The irregularities could not have happened without the officials' acts and omissions, as they failed to exercise the diligence of a good father of a family to prevent losses of funds and efficiently supervise the paymasters.[8]

Cesa argued before the Ombudsman that he could not grant cash advances as the authority belongs to a higher officer and that he signed the cash advance vouchers not as approving officer but because his signature was required therein. He further argued that Badana's cash advances were legal and necessary for city workers' salaries and that the matter could be resolved by the city accountant. He also emphasized that since he had under him five department heads, he was not expected to review the work of some 370 workers under them, by virtue of division of labor and delegation of functions.[9]

On August 16, 2001, the Ombudsman found Cesa and the other city officials guilty of neglect of duty and meted

to them the penalty of six months suspension without pay.[10] Cesa filed a motion for reconsideration but it was denied.

Before the Court of Appeals, Cesa argued that there was lack of due process because the complaint filed against him was not verified. He also argued in his petition for review[11] that the Ombudsman had no power to directly suspend him and that there was no legal and factual basis to suspend him.

On December 20, 2004, the Court of Appeals upheld the findings and conclusions of the Ombudsman, but declared that the impossible penalties therein were merely recommendatory and should be directed to the proper officer or authority concerned for enforcement. The dispositive portion of the decision states:

WHEREFORE, the instant Petition is partly GRANTED in that the assailed Decision and Order of the Ombudsman (Visayas), in administrative case OMB-VIS-ADM-98-0150, which are hereby AFFIRMED, but MODIFIED in so far as the penalties impossible therein are hereby DECLARED only recommendatory and should be directed to the proper officer or authority concerned, in the City of Cebu, for their enforcement and implementation. No pronouncement as to costs.

SO ORDERED.[12]

The Court of Appeals dismissed Cesa's gripe that there was lack of due process as the Ombudsman can undertake criminal or administrative investigations sans any complaint. It ruled that procedural infirmities, if any, were cured when petitioner was present during the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration. It found Cesa negligent for tolerating the illegal practices on cash advances because he approved the paymasters' requests for cash advances based on pieces of paper without any particulars and without diligent supervision over them. The Court of Appeals ruled that the Arias ruling[13] where this Court held that heads of offices have to rely to a reasonable extent on their subordinates, is inapplicable to this case for it had not been alleged that Cesa conspired with Badana. What was proven was that his negligence in carrying out his duties as city treasurer contributed to giving Badana the opportunity to malverse more than P18 million in public funds.

Hence, this petition.

On January 21, 2005, the Ombudsman filed a Motion for Partial Reconsideration[14] of the Court of Appeals' ruling that it is precluded from enforcing administrative sanctions. The court deferred its ruling on the motion because of this petition.

Before us, Cesa submits the following issues for our resolution:

I.

WHETHER, AS The court of appeals ruled IN ITS ASSAILED DECISION DATED DECemBER 20, 2004, the power of the ombudsman to motu proprio conduct investigations as provided in section 13, article xi of the 1987 constitution and IN section 15 [1] of the ombudsman act (RA 6770) effectively dispenses with PETITIONER'S fundamental right of due process and to be sufficiently informed of the cause and nature of the accusation against him.

II.

WHETHER, IN THE LIGHT OF HIS POWER TO MOTU PROPRIO CONDUCT INVESTIGATIONS AS PROVIDED IN SECTION 13, ARTICLE XI OF THE 1987 CONSTITUTION AND IN SECTION 15[1] OF THE OMBUDSMAN ACT (RA 6770), The OMBUDSMAN CAN VALIDLY REQUIRE A RESPONDENT IN AN ADMINISTRATIVE CASE TO SUBMIT COUNTER-AFFIDAVITS OR COUNTERVAILING

EVIDENCE WITHOUT FURNISHING HIM A COPY OF THE COMPLAINT AND THE AFFIDAVITS OR EVIDENCE THAT NEEDED TO BE COUNTERED.

III.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE RIGHT TO DUE PROCESS IN AN ADMINISTRATIVE CASE IS LIMITED to the opportunity to air one's side AND to seek reconsideration or includes the right to be sufficiently informed of the nature and cause of accusation against him and the right to be penalized only on the basis of the original act complained of.

IV.

whether, as the court of appeals ruled in its assailed decision dated december 20, 2004, the ombudsman accorded petitioner due process when the ombudsman penalized him for negligence when the complaint against badana did not include an accusation for negligence.

V.

whether, as the court of appeals ruled in its assailed decision dated december 20, 2004, the doctrine that a head of office has the right to rely on his subordinates and to presume regularity in the subordinate's performance of official functions applies only in criminal cases involving conspiracy and not in cases of alleged negligence.[15]

In gist, the issues to be resolved are (1) Was Cesa's right to due process violated when he was suspended for six months as city treasurer? and (2) Did the Court of Appeals err in ruling that the Arias ruling is inapplicable to this case?

Cesa stresses that the original administrative complaint, backed by his own affidavit,[16] was filed only against Badana. He was impleaded based only on an order which did not specify any charges, required to submit his counter-affidavit when there was no affidavit, formal charge or complaint against him, and the evidence against him was not divulged to him. These circumstances allegedly violate the Ombudsman Rules of Procedure in administrative cases. He argues that since his employment is his livelihood, which partakes of a constitutionally protected property right, he can only be penalized based on specific acts charged, and the Ombudsman is duty-bound to inform him of the cause or nature of the specific accusation against him.

Cesa also argues that since the accusations and evidence kept on evolving and mutating, he was not properly accorded his right to be informed. He points out that even after a formal offer of exhibits by the original complainant and after the Ombudsman resolved the criminal aspect of the case, the Ombudsman continued to receive new accusations and even required him to submit countervailing evidence, violating his constitutional right to be informed of the nature and cause of the accusation against him and to be informed of the specific acts or omissions upon which he was sought to be penalized.

Invoking Arias, Cesa insists he could rely on his subordinate, the head of the cash division, who performed her functions well, and that no inference of negligence can be drawn from the act of relying on subordinates as government operates by division of labor and delegation of functions.

The Ombudsman and the Commission on Audit counter that Cesa was accorded due process as he was amply heard in the proceedings; administrative due process simply means reasonable opportunity to present a case, not a trial-type proceeding; the evidence overwhelmingly established Cesa's guilt for neglect; and findings of fact of the Ombudsman deserve great weight and must be accorded full respect and credit.[17]

After carefully considering the parties' submissions, we find no cogent reason to reverse the appellate court's ruling.

On the first issue, *Ang Tibay v. The Court of Industrial Relations*[18] outlines the basic due process requirements in administrative cases. Foremost are the rights to a hearing and submit evidence in support of one's case.[19] Its essence: opportunity to explain one's side or seek a reconsideration of the ruling.[20]

The standard of due process of administrative tribunals allows certain latitude as long as the element of fairness is practiced. There is no denial of due process if records show that hearings were held with prior notice to adverse parties. Even without notice, there is no denial of procedural due process if the parties were given the opportunity to be heard.[21] Due process in administrative proceedings simply means an opportunity to seek a reconsideration of the order complained of and it cannot be fully equated with that in strict jurisprudential sense. A respondent is not entitled to be informed of the preliminary findings and recommendations of the investigating agency; he is entitled only to a fair opportunity to be heard and to a decision based on substantial evidence. No more, no less.[22] In fine, Cesa had no right to be notified of the auditing team's preliminary report while graft investigators were reviewing it. His contention that he was required to file a counter-affidavit sans a formal charge against him belies any claim of denial of due process.

The appellate court correctly ruled that procedural lapses, if any, were cured when Cesa participated in the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration before the Office of the Ombudsman. Cesa was given every opportunity to explain his side and to present evidence in his defense during the administrative investigation. True, the case mutated when the graft investigators discovered evidence against and impleaded the city officials, but Cesa filed a supplemental affidavit to controvert the charges and later participated in the hearings. In fact, he even filed a motion for reconsideration of the Ombudsman's decision.

On the second issue, in *Alfonso v. Office of the President*,[23] where this Court held that *Arias* was not applicable, we ruled that a public official's foreknowledge of facts and circumstances that suggested an irregularity constitutes an added reason to exercise a greater degree of circumspection before signing and issuing public documents.[24] By failing to prevent the irregularity that Cesa had reason to suspect all along or to take immediate steps to rectify, Cesa had tolerated the same and allowed it to wreak havoc on the coffers of the city.

Finally, we rectify the incorrect appreciation by the appellate court of the power of the Ombudsman to impose administrative sanctions on government officials and employees. The Court of Appeals' modification of the Ombudsman ruling invoked a constitutional provision[25] which uses the word "recommend."

The 1987 Constitution states that the Ombudsman has the power to recommend the suspension of erring government officials and ensure compliance therewith,[26] which means that the recommendation is not merely advisory but mandatory.[27] Under Republic Act No. 6770[28] and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary.[29] 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.[30] The lawmakers envisioned the Ombudsman to be an "activist watchman," not merely a passive one.[31]

In *Office of the Ombudsman v. Court of Appeals*,[32] where the treasury operations assistant of the Bacolod City treasurer's office was suspended for six months without pay for cash shortages due to the machinations and dishonest acts of a paymaster, we ruled that while Section 15(3)[33] of Rep. Act No. 6770 states that the Ombudsman has the power to recommend the suspension of government officials and employees, the same Section 15(3) also states that the Ombudsman in the alternative may "enforce its disciplinary authority as provided in Section 21"[34] of Rep. Act No. 6770. The word "or" in Section 15(3) before the phrase "enforce its

disciplinary authority as provided in Section 21" grants the Ombudsman this alternative power.[35] Ergo, the Court of Appeals erred in ruling that the Ombudsman has no power to directly impose administrative sanctions on public officials.

WHEREFORE, the petition is DENIED. The assailed Decision dated December 20, 2004 of the Court of Appeals in CA-G.R. SP No. 77359 is affirmed with modification. The Court of Appeals' modification of the Ombudsman Decision dated August 16, 2001 in OMB-VIS-ADM-98-0150 is deleted.

SO ORDERED.

Puno, CJ., Ynares-Santiago, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

Carpio, J., on leave.

Corona, J., I certify that J. Corona, concurred with the ponencia.

* On leave.

[1] CA rollo, pp. 493-503. Penned by Associate Justice Vicente L. Yap, with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos concurring.

[2] Id. at 33-52.

[3] Id. at 53-54.

[4] CA rollo, pp. 74-75.

[5] Id. at 33, 76. (Badana and Cesa's co-respondents are City Administrator Alan C. Gaviola, City Accountant Edna J. Jaca, Assistant City Treasurer Hilario C. Abella, Secretary to the Mayor Melchor Tormis, Assistant City Accountant Stella Paculaba, Administrative Officer III Aurora Magalang (died on May 18, 1999 due to cardiopulmonary arrest), Accountant IVs Josefina Gonzales and Marietta Gumia, ICO Head Remedios B. Belderol, Assistant City Administrator-Operations Edgardo B. Masongsong and Cash Division Chief Benilda N. Bacasmas.)

[6] Presidential Decree No. 1445 (1978), Ordaining and Instituting A Government Auditing Code of the Philippines; Republic Act No. 7160 (1992), An Act Providing For A Local Government Code of the 1991.

[7] Commission on Audit Circular No. 90-331 (1990), Circular No. 92-382 (1992), Circular No. 97-002 (1997).

[8] CA rollo, p. 35. Other practices that facilitated the incurrence of the shortage were: the accounting division's late submission of financial reports and supporting schedules and vouchers; delay in the verification and reconciliation of paymasters' accountability; failure to indicate on the face of the disbursement voucher the legal purpose for the cash advances, the office or department and number of payees and payroll period covered by it; the amount of cash advance for salary payments were not equal to the net amount of the payroll for a pay period; all the disbursement vouchers covering the cash advances were not supported by payrolls or list of payees.

[9] Id. at 38-39.

[10] Id. at 52.

[11] Id. at 2-32.

[12] Id. at 502.

[13] *Arias v. Sandiganbayan*, G.R. Nos. 81563 and 82512, December 19, 1989, 180 SCRA 309.

[14] CA rollo, pp. 520-526.

[15] Rollo, pp. 238-239.

[16] CA rollo, p. 73.

[17] Rollo, pp. 306-334.

[18] 69 Phil. 635 (1940).

[19] *Id.* at 642.

[20] *National Police Commission v. Bernabe*, G.R. No. 129914, May 12, 2000, 332 SCRA 74, 81.

[21] *Adamson & Adamson, Inc. v. Amores*, No. L-58292, July 23, 1987, 152 SCRA 237, 250.

[22] *Viva Footwear Manufacturing Corporation v. Securities and Exchange Commission*, G.R. No. 163235, April 27, 2007, 522 SCRA 609, 615-616.

[23] G.R. No. 150091, April 2, 2007, 520 SCRA 64.

[24] *Id.* at 81.

[25] Constitution, Art. XI, Sec 13, par. (3).

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

x x x x

(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.

x x x x

[26] *Id.*

[27] *Office of the Ombudsman v. Santiago*, G.R. No. 161098, September 13, 2007, 533 SCRA 305, 312.

[28] An Act Providing for the Functional And Structural Organization of the Office of the Ombudsman, and for Other Purposes, approved on November 17, 1989.

[29] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 674; *Commission on Audit v. Hinampas*, G.R. Nos. 158672, 160410, 160605, 160627 and 161099, August 7, 2007, 529 SCRA 245, 258.

[30] *Ledesma v. Court of Appeals*, G.R. No. 161629, July 29, 2005, 465 SCRA 437, 452.

[31] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 160675, June 16, 2006, 491 SCRA 92, 119.

[32] G.R. No. 168079, July 17, 2007, 527 SCRA 798.

[33] SEC. 15. Powers, Functions and Duties.â”€ The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension,

demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

x x x x

[34] SEC. 21. Officials Subject To Disciplinary Authority; Exceptions.â”€ The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

[35] Supra note 32, at 807-808.

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