

OFFICE OF THE OMBUDSMAN. PETITIONER, MERCEDITAS DE SAHAGUN, MANUELA T. WAQUIZ AND RAIDIS J. BASSIG, RESPONDENTS.

G.R. No. 167982. August 13, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision^[1] dated April 28, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78008 which set aside the Orders dated March 10, 2003 and June 24, 2003 of the petitioner Office of the Ombudsman in OMB-ADM-0-00-0721.

The material antecedents are as follows:

On November 13, 1992, respondent Raidis J. Bassig, Chief of the Research and Publications Division of the Intramuros Administration, submitted a Memorandum to then Intramuros Administrator Edda V. Henson (Henson) recommending that Brand Asia, Ltd. be commissioned to produce a video documentary for a television program, as well implement a media plan and marketing support services for Intramuros.

On November 17, 1992, the Bids and Awards Committee (BAC) of the Intramuros Administration, composed of respondent Merceditas de Sahagun, as Chairman, with respondent Manuela T. Waquiz and Dominador C. Ferrer, Jr. (Ferrer), as members, submitted a recommendation to Henson for the approval of the award of said contract to Brand Asia, Ltd. On the same day, Henson approved the recommendation and issued a Notice of Award to Brand Asia, Ltd.

On November 23, 1992, a contract of service to produce a video documentary on Intramuros for TV program airing was executed between Henson and Brand Asia, Ltd. On December 1, 1992, a Notice to Proceed was issued to Brand Asia, Ltd.

On June 2, 1993, the BAC, with Augusto P. Rustia (Rustia) as additional member, recommended to Henson the approval of the award of contract for print collaterals to Brand Asia, Ltd. On the same day, Henson approved the recommendation and issued a Notice of Award/Notice to Proceed to Brand Asia, Ltd.

On June 22, 1993, a contract of services to produce print collaterals was entered between Henson and Brand Asia, Ltd.

On March 7, 1995, an anonymous complaint was filed with the Presidential Commission Against Graft and Corruption (PGAC) against Henson in relation to the contracts entered into with Brand Asia, Ltd.

On November 30, 1995, Henson was dismissed from the service by the Office of the President upon recommendation of the PGAC which found that the contracts were entered into without the required public bidding and in violation of Section 3 (a) and (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt

Practices Act.

On August 8, 1996, an anonymous complaint was filed with the Ombudsman against the BAC in relation to the latter's participation in the contracts with Brand Asia, Ltd. for which Henson was dismissed from service.

On September 5, 2000, Fact-Finding Intelligence Bureau (FFIB) filed criminal and administrative charges against respondents, along with Ferrer and Rustia, for violation of Section 3 (a) and (c) of R.A. No. 3019 in relation to Section 1 of Executive Order No. 302 and grave misconduct, conduct grossly prejudicial to the best interest of the service and gross violation of Rules and Regulations pursuant to the Administrative Code of 1987, docketed as OMB-0-00-1411 and OMB-ADM-0-00-0721, respectively.[2] OMB-0-00-1411 was dismissed on February 27, 2002 for lack of probable cause.[3]

In his proposed Decision[4] dated June 19, 2002, Graft Investigation Officer II Joselito P. Fangon recommended the dismissal of OMB-ADM-0-00-0721.

However, then Ombudsman Simeon V. Marcelo disapproved the recommendation. In an Order[5] dated March 10, 2003, he held that there was substantial evidence to hold respondents administratively liable since the contracts awarded to Brand Asia, Ltd. failed to go through the required procedure for public bidding under Executive Order No. 301 dated July 26, 1987. Respondents and Ferrer were found guilty of grave misconduct and dismissed from service. Rustia was found guilty of simple misconduct and suspended for six months without pay.

On March 17, 2003, respondents, along with Rustia, filed a Motion for Reconsideration.[6]

On June 24, 2003, Ombudsman Marcelo issued an Order[7] partially granting the motion for reconsideration. Respondents and Ferrer were found guilty of the lesser offense of simple misconduct and suspended for six months without pay. Rustia's suspension was reduced to three months.

Dissatisfied, respondents filed a Petition for Review[8] with the CA assailing the Orders dated March 10, 2003 and June 24, 2003 of the Ombudsman.

On April 28, 2005, the CA rendered a Decision[9] setting aside the Orders dated March 10, 2003 and June 24, 2003 of the Ombudsman. The CA held that respondents may no longer be prosecuted since the complaint was filed more than seven years after the imputed acts were committed which was beyond the one year period provided for by Section 20 (5) of Republic Act (R.A.) No. 6770, otherwise known as "The Ombudsman Act of 1989"; and that the nature of the function of the Ombudsman was purely recommendatory and it did not have the power to penalize erring government officials and employees. The CA relied on the following statement made by the Court in *Tapiador v. Office of the Ombudsman*,[10] to wit:

x x x Besides, assuming arguendo, that petitioner [Tapiador] was administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph 3, of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.[11] (Emphasis supplied)

Hence, the present petition raising the following issues (1) whether Section 20 (5) of R.A. No. 6770 prohibits administrative investigations in cases filed more than one year after commission, and (2) whether the Ombudsman only has recommendatory, not punitive, powers against erring government officials and employees.

The Court rules in favor of the petitioner.

The issues in the present case are settled by precedents.

On the first issue, well-entrenched is the rule that administrative offenses do not prescribe.[12] Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.[13]

Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:

SEC. 20. Exceptions. - The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x

(5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In *Melchor v. Gironella*, [14] the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion.[15] Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.[16]

In *Filipino v. Macabuhay*, [17] the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770]), respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.[18] (Emphasis supplied)

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

As the Court recently held in *Office of the Ombudsman v. Court of Appeals*, [19] Section 20 of R.A. No. 6770 has been clarified by Administrative Order No. 17, [20] which amended Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III [21] of the amended Rules of Procedure of the Office of the Ombudsman reads:

Section 4. Evaluation. - Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the

Deputy Ombudsman concerned;

b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;

c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings;

d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or

e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis supplied)

It is, therefore, discretionary upon the Ombudsman whether or not to conduct an investigation of a complaint even if it was filed after one year from the occurrence of the act or omission complained of.

Thus, while the complaint herein was filed only on September 5, 2000, or more than seven years after the commission of the acts imputed against respondents in November 1992 and June 1993, it was within the authority of the Ombudsman to conduct the investigation of the subject complaint.

On the second issue, the authority of the Ombudsman to determine the administrative liability of a public official or employee, and to direct and compel the head of the office or agency concerned to implement the penalty imposed is likewise settled.

In *Ledesma v. Court of Appeals*,^[22] the Court has ruled that the statement in *Tapiador* that made reference to the power of the Ombudsman to impose an administrative penalty was merely an obiter dictum and could not be cited as a doctrinal declaration of this Court, thus:

x x x [A] cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an obiter dictum and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.^[23] (Emphasis supplied)

In *Estarija v. Ranada*,^[24] the Court reiterated its pronouncements in *Ledesma* and categorically stated:

x x x [T]he Constitution does not restrict the powers of the Ombudsman in Section 13, Article XI of the 1987 Constitution, but allows the Legislature to enact a law that would spell out the powers of the Ombudsman. Through the enactment of Rep. Act No. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress, and the Judiciary. To conclude, we hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound. The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Thus, we hold that under Republic Act No. 6770 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.^[25] (Emphasis supplied)

The power of the Ombudsman to directly impose administrative sanctions has been repeatedly reiterated in the subsequent cases of *Barillo v. Gervasio*,^[26] *Office of the Ombudsman v. Madriaga*,^[27] *Office of the Ombudsman v. Court of Appeals*,^[28] *Balbastro v. Junio*,^[29] *Commission on Audit, Regional Office No. 13, Butuan City v. Hinampas*,^[30] *Office of the Ombudsman v. Santiago*,^[31] *Office of the Ombudsman v. Lisondra*,^[32] and most recently in *Deputy Ombudsman for the Visayas v. Abugan*^[33] and continues to be the

controlling doctrine.

In fine, it is already well-settled that the Ombudsman's power as regards the administrative penalty to be imposed on an erring public officer or employee is not merely recommendatory. The Ombudsman has the power to directly impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, other than a member of Congress and the Judiciary, found to be at fault, within the exercise of its administrative disciplinary authority as provided in the Constitution, R.A. No. 6770, as well as jurisprudence. This power gives the said constitutional office teeth to render it not merely functional, but also effective.[34]

Thus, the CA committed a reversible error in holding that the case had already prescribed and that the Ombudsman does not have the power to penalize erring government officials and employees.

WHEREFORE, the petition is GRANTED. The Decision dated April 28, 2005 of the Court of Appeals in CA-G.R. SP No. 78008 is REVERSED and SET ASIDE. The Order dated June 24, 2003 of the Office of the Ombudsman is REINSTATED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[*] The Court of Appeals is deleted from the title per Section 4, Rule 45 of the Rules of Court.

[1] Penned by Presiding Justice Romeo A. Brawner (now deceased) and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza, CA rollo, p. 124.

[2] Rollo, p. 133.

[3] CA rollo, p. 46.

[4] Id. at 24.

[5] Id. at 17.

[6] Rollo, p. 141.

[7] CA rollo, p. 21.

[8] Id. at 2.

[9] Supra note 1.

[10] 429 Phil. 47 (2002).

[11] Tapiador v. Office of the Ombudsman, supra note 10, at 58.

[12] Concerned Taxpayer v. Doblada, Jr., A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218; Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476; Heck v. Judge Santos, 467 Phil. 798, 824 (2004); Floria v. Sunga, 420 Phil. 637, 648-649 (2001).

[13] Melchor v. Gironella, supra note 12 at 481; Remolona v. Civil Service Commission, 414 Phil. 590, 601 (2001).

[14] Supra note 12.

[15] Id. at 481; Jaramilla v. Comelec, 460 Phil. 507, 514 (2003).

- [16] Melchor v. Gironella, *supra* note 12, at 481; National Federation of Labor v. National Labor Relations Commission, 383 Phil. 910, 918 (2000).
- [17] G.R. No. 158960, November 24, 2006, 508 SCRA 50.
- [18] *Id.* at 57-58.
- [19] G.R. No. 159395, May 7, 2008.
- [20] Entitled "Amendment of Rule III, Administrative Order No. 07," signed by Ombudsman Simeon V. Marcelo on September 15, 2003.
- [21] Procedure in Administrative Cases.
- [22] G.R. No. 161629, July 29, 2005, 465 SCRA 437.
- [23] *Id.* at 448-449.
- [24] G.R. No. 159314, June 26, 2006, 492 SCRA 652.
- [25] *Id.* at 673-674.
- [26] G.R. No. 155088, August 31, 2006, 500 SCRA 561.
- [27] G.R. No. 164316, September 27, 2006, 503 SCRA 631.
- [28] G.R. No. 168079, July 17, 2007, 527 SCRA 798.
- [29] G.R. No. 154678, July 17, 2007, 527 SCRA 680.
- [30] G.R. No. 158672, August 7, 2007, 529 SCRA 245.
- [31] G.R. No. 161098, September 13, 2007, 533 SCRA 305.
- [32] G.R. No. 174045, March 7, 2008.
- [33] G.R. No. 168892, March 24, 2008.
- [34] Office of the Ombudsman v. Lisondra, *supra* note 32, at 18.

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