

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. FERNANDO J. BELTRAN, RESPONDENT.

G.R. No. 168039. June 05, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari assailing the Decision[1] dated November 17, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 70421, reinstating private respondent into government service, and the Resolution[2] dated May 10, 2005 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On February 26, 2001, Nilo V. Germedia (Germedia), Clerk III of the Tricycle Regulatory Office (TRO), City of Parañaque, filed a letter-complaint[3] against Fernando J. Beltran (Beltran), Benjamin G. Barrameda (Barrameda), and Rolando Fererra (Fererra), all of the TRO, City of Parañaque, for alleged graft and corruption based on the following grounds:

- 1) Non-remittance of TRO Drivers ID collection to the Treasurer's Office of Parañaque City since October 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);
- 2) Non-remittance of Operator's Certification for LTO purposes to the Treasurer's Office of Parañaque City since December 1999 amounting to more or less Five Hundred Thousand Pesos (Php 500,000.00);
- 3) Non-remittance of penalty payments charged to apprehended tricycle drivers;
- 4) Using the TRO as extension of an insurance company;
- 5) Violation of Parañaque City Ordinance No. 135 by issuing Certification for LTO purposes instead of Franchise/MTOP (Motorized Tricycle Operator's Permit); and
- 6) Grave abuse of discretion/authority by threatening employees with termination.[4]

Acting on the letter-complaint, the Office of the Ombudsman issued an Order[5] dated March 23, 2001, dismissing, without prejudice, the criminal aspect of the case for lack of sufficient cause of action and evidence. However, the administrative aspect of the complaint for grave misconduct proceeded for adjudication as Ombudsman Administrative Case No. OMB-ADM-0-01-0116.

On April 24, 2001, Beltran, Barrameda, and Fererra, submitted their Joint Counter-Affidavit wherein they vehemently denied Germedia's charges against them.

On August 9, 2001, a preliminary conference was held wherein the parties, with their respective counsels, appeared. In open proceedings, the parties agreed to the submission of the case for resolution after the filing of their respective memoranda.[6]

After submitting their respective memoranda, petitioner rendered a Decision[7] dated January 3, 2002, wherein it

absolved Barrameda and Fererra of the charges against them, but found Beltran guilty of Grave Misconduct. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, this Office hereby renders judgment finding respondent FERNANDO J. BELTRAN, Guilty of Grave Misconduct, for which the penalty of Dismissal from the Service with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification for Re-employment in the Government Service is hereby imposed pursuant to Section 10, Rule III of Administrative Order No. 07, in relation to Section 25 of Republic Act 6770.

Respondents BENJAMIN BARRAMEDA and ROLANDO FERREIRA (sic) are hereby ABSOLVED of the charge of Grave Misconduct. The complaint as against respondents BENJAMIN BARRAMEDA and ROLANDO FERREIRA (sic) is hereby DISMISSED.

The Honorable, The Mayor, City of Parañaque, is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken thereon.

SO ORDERED.[8]

On February 21, 2002, Beltran filed a Motion for Reconsideration[9] wherein he alleged, among other things, that he discovered that Silverio Navarro (Navarro) never executed the affidavit on which the Ombudsman based its decision. Beltran also annexed an Affidavit of Denial[10] allegedly executed by Navarro, who practically denied that he ever executed the first affidavit. On February 26, 2002, the Ombudsman issued an Order[11] denying the motion.

Aggrieved, Beltran sought recourse before the CA arguing that:

- (1) There is denial of due process for lack of legal as well as factual basis of the Decision and Order of the Office of the Ombudsman finding Petitioner liable for Grave Misconduct.
- (2) The Office of the Ombudsman gravely erred in not considering Petitioner's newly discovered evidence.
- (3) The penalty imposed on Petitioner is unreasonable and excessive.
- (4) The Order of the Office of the Ombudsman dated February 26, 2002 is vague and misleading.[12]
- (5) The Office of the Ombudsman has no jurisdiction or authority to dismiss the petitioner from government service.[13]

On November 17, 2004, the CA rendered a Decision,[14] which reversed and set aside the decision of the Office of the Ombudsman. The decretal portion of the CA decision reads:

WHEREFORE, the instant petition is GRANTED. The assailed Order dated 26 February 2002 issued by the Office of the Ombudsman in Administrative Case OMB-ADM-0-01-0178, denying petitioner's Motion for Reconsideration of its Decision dated 03 January 2002 dismissing him from the government service, is REVERSED and SET ASIDE. The petitioner is hereby ordered REINSTATED immediately to his position in the government service more particularly in the Tricycle Regulatory Office of Parañaque City, without loss nor diminution in his salaries and benefits.

SO ORDERED.[15]

In granting the petition, the CA opined that the Ombudsman had no authority to directly dismiss Beltran from government service, as the Ombudsman could only "recommend" the removal of the public official or employee who was found to be at fault. It held that Tapiador v. Office of the Ombudsman[16] was on all fours with that of Beltran. It added that the evidence presented to prove Beltran's liability was insufficient to establish the allegations in the complaint. It found the Ombudsman's conclusions sweeping and bereft of satisfactory basis. The

CA stressed that it did not conform to the Ombudsman's reliance on the affidavit of Navarro, considering that the same was uncorroborated and unauthenticated. Moreover, the CA stated that the Ombudsman should have given credence to the second affidavit of Navarro categorically denying that he executed the first affidavit. The Ombudsman's Graft Investigation Officer should have summoned the affiant and inquired about the circumstances surrounding the first and second affidavits.[17]

Petitioner filed a Motion for Reconsideration,[18] but it was denied in the Resolution[19] dated May 10, 2005.

Hence, this petition.

In support of the petition, petitioner alleges as follows:

I

THE 3 JANUARY 2002 DECISION OF THE OMBUDSMAN IS SUPPORTED BY SUBSTANTIAL EVIDENCE. THE REVERSAL OF THE SAME BY THE HONORABLE COURT OF APPEALS CONTRADICTS ESTABLISHED PRINCIPLES UNDERLYING PROCEEDINGS BEFORE ADMINISTRATIVE AND QUASI-JUDICIAL BODIES, PARTICULARLY THE OFFICE OF THE OMBUDSMAN.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR OF LAW WHEN IT TREATED AN OBITER DICTUM AS A PRECEDENT AND, ON THE BASIS THEREOF, DECLARED THAT THE OMBUDSMAN HAS NO AUTHORITY TO DIRECTLY DISMISS RESPONDENT BELTRAN FROM THE GOVERNMENT SERVICE CONSIDERING THAT:

- THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;
- CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, and in the exercise of its plenary legislative powers, enacted rep. act no. 6770 providing THEREin the ombudsman's full and complete administrative disciplinary power and duty;
- There is nothing in said statutory grant of administrative disciplinary power which can be remotely considered inconsistent with the 1987 constitution;
- Vesting the ombudsman with full disciplinary authority is absolutely In consonance with the sovereign intent, as expressed by the letter of, and in the deliberations on, the 1987 constitution, i.e., the intent to create an effective, rather than effete, protector of the people insulated from political influence;
- The disciplinary authority granted to the Ombudsman includes the authority to determine the penalty and to cause the same to be implemented by the head of the agency concerned, considering that:
- republic act no. 6770 contains express provisions granting the Ombudsman the authority to determine and cause the implementation of administrative penalties;
- a disciplinary power bereft of the necessary component of determining the penalty and causing the implementation thereof is otiose;
- even assuming that the implementation of penalties assessed by the Ombudsman is subject to section 13 (3), art. XI of the constitution, and the independent first part of section 15 (3) of rep. act no. 6770, the latter provisions still empower the Ombudsman to "ensure compliance" with [its] "recommendation";
- a contrary rule can only result in further legal and practical absurdities.

- the obiter dictum in *Tapiador vs. Office of the Ombudsman*, supra, dispossessing the Ombudsman of the authority, is just a passing statement and must be interpreted to mean that the ombudsman cannot "directly" implement its administrative decisions. Such statement is and has remained an obiter dictum which does not have the status of a legal doctrine.[20]

Simply stated, the issues for resolution are whether Beltran was correctly exonerated from the administrative charges filed against him and whether the Ombudsman has the power to discipline government employees.

While We sustain the conclusion of the appellate court that no sufficient evidence was presented to warrant the dismissal of Beltran from the service, We find it proper to correct the court's discussion on the power of the Office of the Ombudsman.

In declaring that the Ombudsman had no authority to directly dismiss Beltran from government service, but only had the power to recommend the removal of the public official or employee found to be at fault, the appellate court relied on the following statement in *Tapiador*, to wit:

x x x Besides, assuming arguendo, that petitioner were 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.[21]

There was reversible error on the part of the appellate court in relying on the above-cited statement. As correctly pointed out by the petitioner, the statement is a mere obiter dictum. In *Ledesma v. Court of Appeals*,[22] this Court emphatically pronounced that the statement in *Tapiador* on the Ombudsman's power "is, at best, merely an obiter dictum" and, thus, "cannot be cited as a doctrinal declaration of the Supreme Court":

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 or is it safe from judicial examination.[23]

Also, in *Ledesma*, the Court discarded the contention that the power of the Office of the Ombudsman was only advisory or recommendatory in nature. The Court warned against the literal interpretation of Section 13(3), Article XI of the Constitution which directs the Office of the Ombudsman to "recommend" to the officer concerned the removal, suspension, demotion, fine, censure, or prosecution of any public official or employee at fault. According to the Court, despite the term "recommend," the said provision, construed together with the pertinent provisions in Republic Act (R.A.) No. 6770, is not only advisory in nature but is actually mandatory within the context of the law.

The Court further elucidated in *Ledesma* that by stating that the Ombudsman "recommends" the action to be taken against the public official found to be at fault, the provisions of the Constitution and in R.A. No. 6770 intended that the implementation of the order be coursed through the proper officer. This is due to the fact that the power of the Ombudsman to investigate and prosecute is not exclusive but concurrent in respect of the offense charged. As such, this could not be considered as usurpation of the authority of the head of office or any officer concerned.

The Office of the Ombudsman, in the exercise of its administrative disciplinary authority, is thus vested by the Constitution and R.A. No. 6770 with the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault.

The charge of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution in this wise:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13 thereof grants the Office of the Ombudsman the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties;
- (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;
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law 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;
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence;
- (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; and
- (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

In *Office of the Ombudsman v. Court of Appeals*,^[24] the Court, citing *Acop v. Office of the Ombudsman*,^[25] recognized the foregoing enumeration was not exclusive, and that the framers of the Constitution had given Congress the leeway to prescribe, by subsequent legislation, additional powers to the Ombudsman.

Congress thus enacted R.A. No. 6770 providing the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, the legislature has vested the Ombudsman with broad powers to enable him to implement his own actions.^[26] Section 13 thereof restates the mandate of the Office of the Ombudsman in this wise:

Sec. 13. Mandate. - The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Section 15 thereof substantially reiterates Section 13, Article XI of the Constitution. In particular, subparagraph

(3) of Section 15 of R.A. No. 6770 restates Section 13 (3), Article XI of the Constitution, quoted anew below:

Sec. 15. Powers, Functions and Duties. - 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.

Moreover, the provisions[27] in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[28]

Hence, the full administrative disciplinary authority of the Office of the Ombudsman, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, is thus beyond contestation.

Corollarilly, as correctly pointed out by petitioner, it is the real party- in-interest. The assailed CA Decision ruled against the administrative disciplinary power of the Office of the Ombudsman, endowed by no less than the Constitution and R.A. No. 6770; logically, there is a need for the petitioner to uphold the existence and the exercise of the said power. It is the Office of the Ombudsman that stands to suffer if the decision would attain finality. As the "protector of the people" against erring officers or employees of the Government, to deprive the Office of the Ombudsman of its administrative disciplinary authority would certainly derail the effective implementation of its mandated function and duties.

In a number of cases,[29] this Court has recognized the personality of the Office of the Ombudsman to submit for determination the validity and Constitutionality of its mandate, including the power to enforce the penalties it has imposed against those found to be at fault, which, time and time again, have been upheld.

Anent the issue of whether or not there was substantial proof to establish the accusations against Beltran, this Court agrees with the conclusion of the CA that there was none.

In finding Beltran guilty of grave misconduct, the Office of the Ombudsman opined that the documents submitted clearly establish that Beltran caused the collection of fees from tricycle drivers and operators, but failed to remit them to the City of Parañaque. The pertinent portion of the decision reads:

The records of the case will show that the Tricycle Regulatory Office of the City of Parañaque, under respondent BELTRAN's term, collected fees for Identification Cards issued to tricycle drivers of Parañaque City, as well as fees for Sticker Plate, Municipal Plates and penalties. This is evident from the Monthly Accomplishment Report dated October 30, 1999 (p. 0113, records) of the Tricycle Regulatory Office showing that the sum of Php25,550.00 and Php2,500.00 was the revenue of the said Office for Drivers I.D., sticker plates and municipal plates for motorized tricycles and non-motorized (pedicab) tricycles, respectively, for the

period October 1 to 30, 1999; and from the Accomplishment Reports for the months of January, 2000 to December, 2000; January 1 to 31, 2001, and February 1 to 28, 2001 (pp. 0116 to 0118, records). It is, therefore, clear that respondent BELTRAN, as Officer-in-Charge of the Tricycle Regulatory Office, caused the collection of fees from tricycle drivers and operators. However, the same documents (pp. 0113 and 0116 to 0118, records) will reveal that collections for Certifications (p. 0119, records) issued by the TRO were never remitted to the City of Parañaque. The fact that fees are being charged by respondent BELTRAN for Certifications issued by the TRO is evident from the sworn statement (p. 0142, records) of SILVERIO NAVARRO, President of the Samahang Barangay Don Bosco Tricycle Operators and Drivers, Inc., who averred that fees amounting to Php50.00 are being collected by the TRO for Certificates for LTO purposes issued by the said Office. This is contrary to the claim of the respondent in his counter-affidavit (p. 0105, records) that "TRO Operator's Certificate for Land Transportation Office purposes is issued by the TRO for free." Substantial evidence, therefore, has established that collections are being made by respondent BELTRAN, but the same are not remitted to the City Government of Parañaque, which evidently constitutes Grave Misconduct.[30]

From the foregoing, it is apparent that the Ombudsman's conclusion of guilt hinges on the Monthly Accomplishment Reports for October 1 to 30, 1999;[31] January 2000 to December 2000;[32] January 1 to 31, 2001;[33] and February 1 to 28, 2001.[34] However, a perusal of these documents would reveal that they merely outline the revenue of the TRO for the particular month, for which purpose they were accomplished. Although nothing in the said documents would prove that the revenue for the specified month was remitted by Beltran to the City Government of Parañaque, the documents cannot also be considered as proof that they were not. The documents were simply, as their heading would imply, monthly accomplishment reports.

Moreover, while this Court looks with disfavor on affidavits of desistance, nonetheless, their effect on the instant case cannot be ignored. The second affidavit[35] of Navarro categorically denies the execution of the first affidavit,[36] on which the Office of the Ombudsman anchors its conclusion of guilt. In the second affidavit, Navarro denies having executed the first affidavit and claims that his signature was forged. Beltran clearly pointed out this fact in his motion for reconsideration. Considering the relative weight given by the Graft Investigation Officer on the first affidavit in concluding that Beltran was guilty of grave misconduct, he should have ascertained the truthfulness and the circumstances surrounding the two affidavits. In fact, the Deputy Special Prosecutor noted in the Order denying the motion for reconsideration that "considering the penalty, it becomes imperative that affiant Navarro be summoned and asked about his second affidavit in the interest of justice." [37] Summoning affiant Navarro would have been the prudent thing to do, given the relative weight accorded to his first affidavit in establishing the guilt of Beltran.

In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of misconduct, even if the evidence might not be overwhelming.[38] In the present case, after evaluating the totality of the evidence on record, this Court reaches the inescapable conclusion that complainant Germedia failed to present substantial evidence to establish that Beltran was administratively liable for grave misconduct.

WHEREFORE, the petition is DENIED. Subject to our disquisition on the power of the Office of the Ombudsman to discipline government employees, the Decision dated November 17, 2004 and Resolution dated May 10, 2005 of the Court of Appeals in CA-G.R. SP. No. 70421 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Corona,**] and Nachura, JJ., concur.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

[1] Penned by Associate Justice Monina Arevalo-Zeñarosa, with Associate Justices Remedios A. Salazar-Fernando and Danilo B. Pine, concurring; rollo, pp. 93-101.

[2] Id. at 104-106.

[3] CA rollo, pp. 37-39.

[4] Rollo, p. 94.

[5] CA rollo, pp. 120-123.

[6] Id. at 187.

[7] Id. at 183-194.

[8] Id. at 192-193. (Emphasis theirs.)

[9] Id. at 195-203.

[10] Id. at 251.

[11] Id. at 29-34.

[12] Id. at 12-13.

[13] Id. at 317-330.

[14] Rollo, pp. 93-101.

[15] Id. at 100.

[16] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

[17] Rollo, pp. 96-100.

[18] Id. at 108-131.

[19] Id. at 104-106.

[20] Id. at 21-24.

[21] Supra note 16, at 333.

[22] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

[23] Id. at 448-449.

[24] G.R. No. 160675, June 16, 2006, 491 SCRA 92, 110.

[25] G.R. Nos. 120422 and 120428, September 27, 1995, 248 SCRA 566.

[26] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[27] Secs. 19, 21, 22, 23, 24, 25, and 27.

[28] *Supra* note 24, at 116.

[29] *Ledesma v. Court of Appeals*, *supra* note 22; *Estarija v. Ranada*, *supra* note 26; *Office of the Ombudsman v. Court of Appeals*, *supra* note 24.

[30] CA rollo, pp. 190-191. (Emphasis supplied.)

[31] *Id.* at 134-135.

[32] *Id.* at 137.

[33] *Id.* at 138.

[34] *Id.* at 139.

[35] *Id.* at 251.

[36] *Id.* at 250.

[37] *Id.* at 310.

[38] *Filipino v. Macabuhay*, G.R. No. 158960, November 24, 2006, 508 SCRA 50, 59-60.

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