OFFICE OF THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS AND MA. MELLY JAUD MAGBANUA, RESPONDENTS.

G.R. No. 168079. July 17, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for certiorari[1] assailing the 9 May 2005 Decision[2] of the Court of Appeals (Cebu City) in CA-G.R. SP No. 73085. The Court of Appeals set aside the 3 May 2000 Decision of the Office of the Ombudsman Visayas (Ombudsman Visayas) and the 6 June 2000 Memorandum and the 28 May 2002 Order[3] of the Office of the Ombudsman Manila (petitioner) in OMB-VIS-ADM-98-0466 insofar as it imposed upon Ma. Melly Jaud Magbanua (respondent) the penalty of dismissal from the service.

The Antecedent Facts

Respondent was the Local Treasury Operations Assistant of the City Treasurer's Office in Bacolod City. On 27 February 1998, the Commission on Audit (COA) conducted an examination of respondent's cash and account. The examination disclosed a shortage of P265,450. Upon demand, respondent failed to produce the missing amount.

Respondent alleged that the shortage was due to the machinations and dishonest acts of Cash Clerk I Monina Baja (Baja). Respondent alleged that Baja, acting as Paymaster, received payroll funds for distribution to specific offices. In her liquidation report, Baja reflected twice the missing amount of P265,450 representing cash advances for 26 September 1997 under Voucher No. 6205 to the following persons:

P. Villamor, et al. P 5,100

L. Oyanib, et al. 21,900

R. Makila, et al. 74,950

M. Abada, et al. 163,500

P 265,450

Baja was impleaded in the case before the Ombudsman Visayas. Baja denied that respondent designated her as Paymaster. She also denied that she received the payroll funds. Baja alleged that her assigned task was only to take charge of the listing of payrolls and vouchers to be included in the respective cash advances of the disbursing officers.

Respondent and Baja failed to appear during the preliminary conference conducted on 26 July 1999. Despite their non-appearance, they were given time to submit their respective Memoranda or Position Papers before the case

was considered submitted for decision.

The Ruling of the Ombudsman

In a Decision dated 3 May 2000, the Ombudsman Visayas found respondent guilty of Neglect of Duty, and Baja guilty of Dishonesty, thus:

> WHEREFORE, premises considered, it is respectfully recommended that respondent MA. MELLY JAUD MAGBANUA be meted the penalty of SUSPENSION for SIX (6) MONTHS WITHOUT PAY for NEGLECT OF DUTY. For having been found guilty of DISHONESTY, respondent MONIN[]A BAJA is meted the penalty of DISMISSAL FROM SERVICE WITH FORFEITURE OF ALL BENEFITS AND DISQUALIFICATION TO HOLD PUBLIC OFFICE.[4]

Petitioner reviewed the Decision of the Ombudsman Visayas. In a Memorandum dated 6 June 2000,[5] petitioner imposed upon both respondent and Baja the penalty of dismissal from the service, thus:

> WHEREFORE, premises considered, and upon finding that respondent MA. MELLY JAUD MAGBANUA GUILTY of GROSS NEGLECT OF DUTY and for VIOLATIONS OF REASONABLE OFFICE RULES AND REGULATIONS and respondent MONINA BAJA GUILTY OF DISHONESTY, they are both meted the penalty of DISMISSAL from service pursuant to the provisions of Section 22(b) and (a), respectively, of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292. The penalty prescribed under Section 22(c), a lesser offense, is deemed absorbed in a much graver offense.
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> Accordingly, the herein reviewed Decision dated May 3, 2000 of GIO Corazon C. Arnado-Carrillo is hereby MODIFIED insofar as the recommended penalty of respondent MAGBANUA is concerned.[6]

Respondent filed a motion for reconsideration. In an Order dated 28 May 2002,[7] petitioner denied the motion.

Respondent filed a petition for certiorari before the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals found that petitioner did not commit any reversible error in finding respondent guilty of Gross Neglect of Duty. The Court of Appeals ruled that respondent was an accountable officer. On the other hand, Baja was not officially designated as Disbursing Officer or Paymaster but was merely assigned to "take charge of the listing of payrolls and vouchers to be included in the respective cash advances of disbursing officers." The Court of Appeals sustained petitioner in finding that respondent was grossly remiss in her obligations as an accountable officer when she allowed Baja to release payroll funds which formed part of her own cash advance. In addition, respondent allowed Baja to prepare the necessary disbursement and liquidation reports which respondent should have prepared herself. The Court of Appeals ruled that respondent did not even review or examine the reports prepared by Baja.

However, the Court of Appeals ruled that while petitioner's findings were correct, petitioner has no power to impose directly sanctions against government officials and employees who are subject of its investigation. Citing Tapiador v. Office of the Ombudsman,[8] the Court of Appeals ruled that petitioner's power is limited and it may only recommend, not impose, the appropriate sanctions.

Petitioner challenges before this Court the ruling of the Court of Appeals.

The Issues

The sole issue in this case is whether the Office of the Ombudsman has the power to impose directly administrative penalties on public officials or employees.

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The Ruling of this Court

The petition has merit.

The powers of the Ombudsman are found in Article XI of the 1987 Constitution, which states in part that the Ombudsman shall "exercise such other powers or performs such functions or duties as may be provided by law." Sections 15, 21, and 25 of Republic Act No. 6770 (RA 6770), otherwise known as the Ombudsman Act of 1989, provide:

> SEC. 15. Powers, Functions and Duties. The Office of the Ombudsman shall have the following powers, functions ad duties:
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;
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> (2) x x x x
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> (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.
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> x x x x

SEC. 21. Officials Subject to Disciplinary Authority; Exceptions. 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.

x x x x

SEC. 25. Penalties. (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges. (Emphasis and underscoring supplied)

In ruling that the power of petitioner is only recommendatory, the Court of Appeals relied on the following statement of the Court in Tapiador:

> Besides, assuming arguendo, that petitioner [was] administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from 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.[9]

The Court has already settled this issue. In Ledesma v. Court of Appeals,[10] the Court observed that the main issue in Tapiador was the failure of the complainant to present substantial evidence to prove the charges in the administrative case. The Court ruled that the reference in Tapiador to the power of the Ombudsman is at best merely an obiter dictum. The Court ruled that the statement on the Ombudsman's power was not supported by sufficient explanation and was susceptible to varying interpretations. The Court categorically stated that the statement in Tapiador cannot be cited as a doctrinal declaration of the Court. The Court recognized the authority of the Office of the Ombudsman under Article XI of the 1987 Constitution and RA 6770, thus:

> It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in RA 6770 intended that the implementation of the order be coursed through the proper officer x x x.
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> It is thus clear that 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. The Constitutional Commission left to [the] Congress to empower the Ombudsman with prosecutorial functions which it did when RA 6770 was enacted. x x x.[11]

More at point is the Office of the Ombudsman v. Court of Appeals.[12] In that case, the Office of the Ombudsman found respondents guilty of simple misconduct and meted on them the penalty of suspension for one month. The Court of Appeals affirmed the finding of the Office of the Ombudsman that respondents were guilty of simple misconduct but ruled that the Office of the Ombudsman committed grave abuse of discretion in imposing on them the penalty of suspension for one month. The Court of Appeals also cited Tapiador in ruling that the power of the Office of the Ombudsman is limited only to the recommendation of the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault.

The Court in Office of the Ombudsman v. Court of Appeals found the petition of the Office of the Ombudsman meritorious, ruling that in Ledesma, the Court already rejected the argument that the power of the Ombudsman is only advisory or recommendatory in nature.[13] The Court ruled:

> In the present case, the Court similarly upholds the Office of the Ombudsman's power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, in the exercise of its administrative disciplinary authority. The exercise of such power is well founded in the Constitution and Republic Act No. 6770.
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> x x x x
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> [The] provisions in Republic Act 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.
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> x x x x
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> The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, 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. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not

merely a passive one. x x x.[14]

In Estarija v. Ranada,[15] petitioner assailed as unconstitutional his dismissal from the service by the Ombudsman. Petitioner in Estarija alleged that the Ombudsman did not have direct and immediate power to remove government officials, whether elective or appointive, who are not removable by impeachment. The Court upheld the constitutionality of Sections 15, 21, and 25 of RA 6770, thus affirming that the powers of the Office of the Ombudsman are not merely recommendatory. The Court ruled in Estarija that under RA 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.
The Court reiterated the Ledesma and Estarija rulings in Barillo v. Gervasio[16] and in Office of the Ombudsman v. Court of Appeals.[17]

While Section 15(3) of RA 6770 states that the Ombudsman has the power to "recommend x x x removal, suspension, demotion x x x" 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" of RA 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.

Section 21 of RA 6770 vests in the Ombudsman "disciplinary authority over all elective and appointive officials of the Government," except impeachable officers, members of Congress, and the Judiciary. And under Section 25 of RA 6770, the Ombudsman may impose in administrative proceedings the "penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman x x x."

Clearly, under RA 6770 the Ombudsman has the power to impose directly administrative penalty on public officials or employees. Hence, the Court of Appeals erred in ruling that petitioner has no power to impose directly administrative penalties on public officials or employees.

WHEREFORE, we GRANT the petition. We SET ASIDE the 9 May 2005 Decision of the Court of Appeals in CA-G.R. SP No. 73085 insofar as it declares that the Office of the Ombudsman has no authority to directly impose the penalty of dismissal from service upon respondent Ma. Melly Jaud Magbanua. We REINSTATE the 6 June 2000 Memorandum of the Office of the Ombudsman Manila which affirmed with modification the 3 May 2000 Decision of the Office of the Ombudsman Visayas, as well as the Order dated 28 May 2002 which denied respondent's motion for reconsideration.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia,Velasco, Jr., and Nachura, JJ., concur.

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring.

[3] Erroneously stated as 8 July 2002 Order in the dispositive portion of the Court of Appeals' Decision.

[4] Rollo, pp. 95-96.

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[5] Approved by Overall Deputy Ombudsman Margarito P. Gervasio, Jr. on 7 June 2000.

[6] Id. at 96.

[7] Approved by Ombudsman Aniano A. Desierto on 14 June 2002.

[8] 429 Phil. 47 (2002).

[9] Id. at 58.

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

[11] Id. at 450, 452-453.

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

[13] See Office of the Ombudsman v. Court of Appeals, G.R. No. 167844, 22 November 2006, 507 SCRA 593.

[14] Id. at 108, 116, 119.

[15] G.R. No. 159314, 26 June 2006, 492 SCRA 652.

[16] G.R. No. 155088, 31 August 2006, 500 SCRA 561.

[17] Supra note 13.

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