

DEPUTY OMBUDSMAN FOR THE VISAYAS PRIMO C. MIRO, GRAFT INVESTIGATOR II VIRGINIA PALANCA SANTIAGO, and GRAFT INVESTIGATOR I CHARINA NAVARRO-QUIJANO, Petitioners, VS. CLETO ABUGAN,...

G.R. No. 168892. March 24, 2008

Ponente: CORONA, J.

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CORONA, J.:

The focal issue in this petition for review under Rule 45 of the Rules of Court is whether the Office of the Ombudsman is imbued with the power to directly impose administrative sanctions on erring government officials.

The assailed decision of the Court of Appeals (CA) in CA-G.R. SP. No. 77922[1] held that, under the Constitution, the Office of the Ombudsman's authority was merely recommendatory.

The antecedent facts as summarized by the CA:

On October 18, 1998, around 7:00 [pm], Jerry Tan parked his Mitsubishi L-300 Van, with Motor No. 4D56A-B1207, Chassis No. LO69WQZJL and Plate No. THE 541, registered in his name under Certificate of Registration [(CR)] No. 29367360, at Don Jose Avila St., Cebu City, just at the back of Cebu City Doctor's Hospital ... [W]hen he went back, he could no longer find his vehicle.

On 19 October 1998, Jerry Tan reported the matter to the Philippine National Police, Traffic Management Office [(PNP-TMO)] headed by [Senior Inspector] Venacio Camarillo Labiano, Jr. [(Labiano, Jr.)]. He then posted a claim with the Philippine First Insurance Co., Inc. [PICI], being the vehicle's insurer. He submitted to the company a [c]ertificate of [n]on-[r]ecovery issued by the PNP-TMO duly signed by Labiano, which [stated] that...the PNP-[Traffic Management Group] had not yet recovered his vehicle. [PICI] paid the claim of Jerry Tan and was subrogated to all the rights of the latter.

Further investigation conducted by the NBI shows that on 20 October 1998, just [two days] after the vehicle was lost, [the Land Transportation Office [(LTO)], Lapu-Lapu City, issued ... a new [CR] covering the same vehicle still in the name of [Jerry Tan]. However, the vehicle's I.C. Motor number was changed from 4D56A-B1207 to 4D56A-B-B1270; the plate number from THE 541 to GJN 311; the name of the previous owner from Ma. Luisa Lidot to Luis V. Yu...

On 7 January 1999, the registration of the vehicle was renewed with the LTO Lapu-Lapu City under Official Receipt [(OR)] No. 0456, still in the name of Jerry Tan... [O]n 13 January 1999, [another CR] ... in the name of Cristina Labiano, daughter of Labiano, was [also] issued ... It was made to appear therein that Jerry Tan sold the subject vehicle to Cristina Labiano.

When the NBI requested [respondent Cleto Abugan, as the then LTO Registrar] to produce the documents supporting the registration of the said vehicle in the name of Cristina Labiano, he could not produce the same...

[Respondent] also denied any knowledge in the issuance of the CR and OR covering the subject vehicle. He

alleged that the LTO file copy of the OR and CR do not bear his signature. He contends that the transaction involving the registration of the vehicle did not reach his office and further alleged that it could be the LTO cashier, Mrs. Adelaida Lopez, who had a hand in the anomalous registration.

In her [s]worn [s]tatement given before the NBI, Mrs. Adelaida Lopez averred that it was [respondent] who allowed the registration of the vehicle even without the supporting documents.[2]

The Philippine First Insurance Co., Inc. later filed a complaint in the National Bureau of Investigation (NBI) against respondent Abugan, Venacio Camarillo Labiano, Jr. (Labiano, Jr.) and Cristina Labiano for carnapping, falsification of public/official document, and violation of RA 3019[3] and RA 6713.[4] After the NBI conducted its investigation, it recommended the prosecution, to petitioner Deputy Ombudsman for Visayas Primo C. Miro (Miro), of respondent Abugan and Labiano, Jr., for falsification of public/official document and violation of RA 6713.[5]

On March 12, 2002, petitioners Miro and his co-petitioners, Virginia Palanca Santiago and Charina Navarro-Quijano,[6] made the following finding:

...[I]t appears that several transactions involving the vehicle of Mr. Jerry Tan are recorded in the LTO, Lapu-Lapu, as can be gathered from the documents recovered from said office. Pertinently, there [was] the issuance of the new certificate of registration in the name of Jerry Tan just two days after the carnapping incident. Another [was] the issuance of the certificate of registration covering said carnapped vehicle in the name of Cristina Labiano, without the supporting documents. Respondent Abugan anchors his defense on the [fact that his signature does not appear on the documents involving Jerry Tan's] vehicle. Thus[,] he ratiocinates that the absence of his signature only goes to show his non-involvement in any of those transactions...[7]

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Apparently, the procedure being adopted by the LTO, Lapu-Lapu, significantly, that of its Head of Office, respondent Abugan, leaves much to be desired... [A]llowing the issuance of the [c]ertificates of [r]egistration without the needed documents...[8]

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WHEREFORE, premises considered, it is hereby deemed that respondent Cleto Abugan of the [LTO], Lapu-Lapu City, is guilty of Grave Misconduct...[and is] hereby meted the penalty of [d]ismissal from the [s]ervice with [f]orfeiture of [a]ll [b]enefits and [p]erpetual [d]isqualification to [h]old [p]ublic [o]ffice.[9]

Respondent filed a motion for reconsideration (MR) but it was denied by petitioners.[10]

Respondent went up to the CA via Rule 43[11] assailing petitioners' decision. In its assailed decision of December 9, 2004, the CA affirmed the findings of petitioners but held that, instead of directly imposing the penalty on respondent, they should have recommended it instead to his superior official. According to the CA:

...[R]elative to the authority of [petitioners] to impose the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold public office on [respondent] the same...must be modified in the sense that [petitioners] cannot directly impose the penalty as in this case considering that [the authority of the Office of the Ombudsman] is limited "to directing the officer concerned to take appropriate action against a public official or employee at fault and recommending his removal, suspension, demotion, fine, [censure] or prosecution, and ensure compliance therewith.

Thus, in the case of Tapiador vs. Office of the Ombudsman, et al [L-129124, March 15, 2002] the Supreme Court ruled:

"xxx Besides, assuming arguendo, that petitioner was administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, particularly that his position in the BID, under

Section 13, subparagraph (3) of Article [XI] of the 1987 Constitution,[12] the Ombudsman can only 'recommend' the removal of the public official or employee found to be at fault, to the public official concerned."

WHEREFORE, foregoing premises considered, the assailed decision dated March 12, 2002 and the Order dated April 4, 2003[13] of the Ombudsman for the Visayas... is affirmed with modification insofar as the latter is concerned by recommending to the official concerned the removal or dismissal [from the service] of herein [respondent] Cleto Abugan of the [LTO], Lapu-Lapu City, having been found guilty of grave misconduct[,] with forfeiture of all benefits and perpetual disqualification to hold public office...[14] (emphasis supplied)

Petitioners sought a reconsideration of the decision. The Office of the Solicitor General (OSG) also filed an MR for and on their behalf. In the MRs, it was argued that the statement quoted by the CA in Tapiador was merely an obiter dictum as the Office of the Ombudsman's disciplinary power was not the main issue in that case. According to petitioners and the OSG, the Constitution and RA 6770[15] did not make the Office of the Ombudsman a mere recommendatory institution with no disciplinary powers to enforce its decisions.

The CA denied petitioners' and the OSG's MRs. Hence, this petition.

Petitioners now seek to reverse in part the CA's decision. They essentially argue that the CA should not have relied heavily on the obiter dictum in Tapiador that the Office of the Ombudsman was supposedly powerless to impose sanctions in administrative cases.

We grant the petition.

In *Ledesma v. CA*,[16] we ruled that the statement in Tapiador that made reference to the power of the Office 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. In that case, we said:

The point of contention is the binding power of any decision or order that emanates from the Office of the Ombudsman after it has conducted its investigation. Under Section 13 (3) of Article XI of the 1987 Constitution, it is provided:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and 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.

Petitioner [*Ledesma*] insists that the word "recommend" [in Article XI, Section 13 (3) of the 1987 Constitution] be given its literal meaning; that is, the Ombudsman action is only advisory in nature rather than the one having any binding effect citing *Tapiador v. Office of the Ombudsman*, thus...

...Besides, assuming arguendo, that [*Ledesma* was] administratively liable, the Ombudsman has no authority to directly dismiss [him] from the government service...[U]nder 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 official concerned.

For their part, the [public respondents] Solicitor General and the Office of the Ombudsman argue that the word "recommend" must be taken in conjunction with the phrase "and ensure compliance therewith..."

We agree with the ratiocination of the public respondents. Several reasons militate against the literal interpretation of [Article XI, Section 13 (3) of the Constitution]...[A] cursory reading of *Tapiador* reveals that the main point of

the case was the failure of the complainant 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, it is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as doctrinal declaration of this Court nor is it safe from judicial examination. (emphasis supplied)

In the same case, we held that, under RA 6770, the Office of the Ombudsman was mandated not only to act promptly on complaints but also to enforce the administrative, civil and criminal liabilities of erring government officers and employees to promote efficient government service.[17] RA 6770 endowed the Office of the Ombudsman with the power to penalize public officers and employees to ensure accountability in public office.[18]

The pertinent provisions of RA 6770 read:

Section 15. Powers, Functions and Duties – The Office of the Ombudsman shall have the following powers, functions and duties:

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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 disciplinary authority as provided under Section 21 of this Act....

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Section 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 officials who may be removed only by impeachment or over Members of the Congress, and the Judiciary. (emphasis supplied)

In *Office of the Ombudsman v. CA*,^[19] we affirmed the aforecited statutory provisions by declaring that the Office of the Ombudsman “was intended to possess full administrative disciplinary authority,” that is, it could directly impose administrative sanctions on erring government officials. In the same case, we said that the exercise of such power was “well founded in the Constitution and RA 6770.” We declared:

The provisions in [RA] 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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The legislative history of [RA 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...[T]he lawmakers envisioned the Office of the Ombudsman to be an “activist watchman,” not merely a passive one. (emphasis supplied)

In *Estarija v. Ranada*,^[20] we also stated:

Through the enactment of RA 6670...the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress and the Judiciary....[T]he 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 RA 6770 and the 1987 Constitution, the Ombudsman has the power to directly remove from government service an erring public official...(emphasis supplied)

The power of the Office of the Ombudsman to directly impose administrative sanctions was again affirmed in the recent cases of *Barillo v. Gervasio*,^[21] *Office of the Ombudsman v. CA*^[22] and *Balbastro v. Junio*.^[23]

WHEREFORE, the petition is hereby GRANTED. The assailed decision of the Court of Appeals in CA-G.R. SP. No. 77922 is hereby MODIFIED. Accordingly, we rule that the penalty of dismissal from the service, with forfeiture of all his benefits and perpetual disqualification to hold public office, was correctly imposed on respondent Cleto Abugan by petitioners, Deputy Ombudsman for the Visayas Primo C. Miro and Graft Investigation Officers Virginia Palanca Santiago and Charina Navarro-Quijano.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna, and Leonardo De Castro, JJ., concur.

[1] Dated December 9, 2004. Penned by Justice Merceditas Gozo-Dadole (retired), with the concurrence of Justices Pampio A. Abarintos and Vicente L. Yap (retired) of the Eighteenth Division of the Court of Appeals. Rollo, pp. 68-79.

[2] *Id.*, pp. 70-71.

[3] The Anti-Graft and Corrupt Practices Act.

[4] Code of Conduct for Government Officials and Employees.

[5] The NBI also recommended that Labiano, Jr. be prosecuted for carnapping and for violation of RA 3019.

[6] Graft Investigation Officers.

[7] Rollo, p. 161.

[8] *Id.*, p. 162.

[9] *Id.*, p. 163. In the same decision, petitioners likewise found Senior Inspector Labiano, Jr. guilty of dishonesty and imposed the penalty of dismissal from the service with forfeiture of all his benefits. Petitioners also disqualified him perpetually from holding any public office.

[10] Order dated 4 April 2003. *Id.*, pp. 167-168.

[11] Appeals from Quasi-Judicial Agencies to the CA.

[12] Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

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(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. (emphasis supplied)

[13] Supra at note 10.

[14] Supra at note 1.

[15] The Ombudsman Act of 1989.

[16] G.R. No. 121629, 29 July 2005, 465 SCRA 437.

[17] Id.; see also *Uy v. Sandiganbayan*, 407 Phil. 154 (2001).

[18] Id.

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

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

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

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

[23] G.R. No. 154678, 17 July 2007, 527 SCRA 680.

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