

**HON. WALDO Q. FLORES, IN HIS CAPACITY AS SENIOR DEPUTY
EXECUTIVE SECRETARY IN THE OFFICE OF THE PRESIDENT, HON.
ARTHUR P. AUTEA, IN HIS CAPACITY AS DEPUTY EXECUTIVE
SECRETARY IN...**

G.R. No. 170146. June 08, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This resolves the motion for reconsideration of our Decision dated August 25, 2010 setting aside the October 19, 2005 Decision of the Court of Appeals and reinstating the Decision dated March 23, 2004 of the Office of the President in O.P. Case No. 03-1-581, which found the respondent administratively liable for failure to declare in his 2001 and 2002 Sworn Statement of Assets and Liabilities (SSAL) two expensive cars registered in his name, in violation of Section 7, Republic Act (R.A.) No. 3019 in relation to Section 8 (A) of R.A. No. 6713. The OP adopted the findings and recommendations of the Presidential Anti-Graft Commission (PAGC), including the imposition of the penalty of dismissal from service on respondent, with all accessory penalties.

The motion is anchored on the following grounds:

- Respondent was subjected to two (2) administrative/criminal Investigations equivalently resulting in violation of his constitutional right against "double jeopardy".
- Who to follow between conflicting decisions of two (2) government agencies involving the same facts and issues affecting the rights of the Respondent.
- Respondent's constitutional right to due process was violated.
- Penalties prescribed by the Honorable Court is too harsh and severe on the alleged offense committed/omitted.[1]

On the first ground, the Court finds it bereft of merit. Respondent asserts that since the PAGC charge involving non-declaration in his 2001 and 2002 SSAL was already the subject of investigation by the Ombudsman in OMB-C-C-04-0568-LSC, along with the criminal complaint for unexplained wealth, the former can no longer be pursued without violating the rule on double jeopardy.

Double jeopardy attaches only (1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.[2] We have held that none of these requisites applies where the Ombudsman only conducted a preliminary investigation of the same criminal offense against the respondent public officer.[3] The dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.[4]

With respect to the second ground, respondent underscores the dismissal by the Ombudsman of the criminal and

administrative complaints against him, including the charge subject of the proceedings before the PAGC and OP. It is argued that the Office of the Ombudsman as a constitutional body, pursuant to its mandate under R.A. No. 6770, has primary jurisdiction over cases cognizable by the Sandiganbayan, as against the PAGC which is not a constitutional body but a mere creation of the OP. Under said law, it is the Ombudsman who has disciplinary authority over all elective and appointive officials of the government, such as herein respondent.

The argument is untenable.

The same wrongful act committed by the public officer can subject him to civil, administrative and criminal liabilities. We held in *Tecson v. Sandiganbayan*[5]:

[I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. (*Italics in the original.*)

Dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability.[6] *Res judicata* did not set in because there is no identity of causes of action. Moreover, the decision of the Ombudsman dismissing the criminal complaint cannot be considered a valid and final judgment. On the criminal complaint, the Ombudsman only had the power to investigate and file the appropriate case before the Sandiganbayan.[7]

In the analogous case of *Montemayor v. Bundalian*,[8] this Court ruled:

Lastly, we cannot sustain petitioner's stance that the dismissal of similar charges against him before the Ombudsman rendered the administrative case against him before the PCAGC moot and academic. To be sure, the decision of the Ombudsman does not operate as *res judicata* in the PCAGC case subject of this review. The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers. Petitioner was investigated by the Ombudsman for his possible criminal liability for the acquisition of the Burbank property in violation of the Anti-Graft and Corrupt Practices Act and the Revised Penal Code. For the same alleged misconduct, petitioner, as a presidential appointee, was investigated by the PCAGC by virtue of the administrative power and control of the President over him. As the PCAGC's investigation of petitioner was administrative in nature, the doctrine of *res judicata* finds no application in the case at bar. (*Emphasis supplied.*)

Respondent argues that it is the Ombudsman who has primary jurisdiction over the administrative complaint filed against him. Notwithstanding the consolidation of the administrative offense (non-declaration in the SSAL) with the criminal complaints for unexplained wealth (Section 8 of R.A. No. 3019) and also for perjury (Article 183, Revised Penal Code, as amended) before the Office of the Ombudsman, respondent's objection on jurisdictional grounds cannot be sustained.

Section 12 of Article XI of the 1987 Constitution mandated the Ombudsman to act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, instrumentality thereof, including government-owned or controlled corporations. Under Section 13, Article XI, the Ombudsman is empowered to conduct investigations on his own or upon complaint by any person when such act appears to be illegal, unjust, improper, or inefficient. He is also given broad powers to take the appropriate disciplinary actions against erring public officials and employees.

The investigative authority of the Ombudsman is defined in Section 15 of R.A. No. 6770:

SEC. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and 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;

x x x x (Emphasis supplied.)

Such jurisdiction over public officers and employees, however, is not exclusive.

This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies, such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local Sanggunians to investigate complaints against local elective officials.[9] (Emphasis supplied.)

Respondent who is a presidential appointee is under the disciplinary authority of the OP. Executive Order No. 12 dated April 16, 2001 created the PAGC which was granted the authority to investigate presidential and also non-presidential employees "who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned x x x." [10] On this score, we do not agree with respondent that the PAGC should have deferred to the Ombudsman instead of proceeding with the administrative complaint in view of the pendency of his petition for certiorari with the CA challenging the PAGC's jurisdiction. Jurisdiction is a matter of law. Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.[11]

It may be recalled that at the time respondent was directed to submit his counter-affidavit under the Ombudsman's Order dated March 19, 2004, the PAGC investigation had long commenced and in fact, the PAGC issued an order directing respondent to file his counter-affidavit/verified answer as early as May 19, 2003. The rule is that initial acquisition of jurisdiction by a court of concurrent jurisdiction divests another of its own jurisdiction.[12] Having already taken cognizance of the complaint against the respondent involving non-declaration in his 2001 and 2002 SSAL, the PAGC thus retained jurisdiction over respondent's administrative case notwithstanding the subsequent filing of a supplemental complaint before the Ombudsman charging him with the same violation.

As to the third ground raised by respondent, we find no merit in his reiteration of the alleged gross violation of his right to due process. Records bear out that he was given several opportunities to answer the charge against him and present evidence on his defense, which he stubbornly ignored despite repeated warnings that his failure to submit the required answer/counter-affidavit and position paper with supporting evidence shall be construed as waiver on his part of the right to do so.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[13] What is offensive to due process is the denial of the opportunity to be heard.[14] This Court has repeatedly stressed that parties who choose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due

process.[15] Having persisted in his refusal to file his pleadings and evidence before the PAGC, respondent cannot validly claim that his right to due process was violated.

In his dissenting opinion, my esteemed colleague, Justice Lucas P. Bersamin, concurred with the CA's finding that respondent's right to due process was violated by the "unilateral investigation" conducted by the PAGC which did not furnish the respondent with a copy of the "prejudicial PAGC resolution." The dissent also agreed with the CA's observation that there was a "rush" on the part of the PAGC to find the respondent guilty of the charge. This was supposedly manifested in the issuance by the PAGC of its resolution even without taking into consideration any explanation and refutation of the charges that he might make, and even before the CA could finally resolve his suit to challenge the PAGC's jurisdiction to investigate him. On the other hand, the dissent proposed that the non-submission by respondent of his counter-affidavit or verified answer as directed by the PAGC should not be taken against him. Respondent's refusal was "not motivated by bad faith, considering his firm belief that PAGC did not have jurisdiction to administratively or disciplinarily investigate him."

We do not share this view adopted by the dissent.

Records reveal that on August 26, 2003, the CA already rendered a decision in CA-G.R. SP No. 77285 dismissing respondent's petition challenging the jurisdiction of the PAGC. Respondent's motion for reconsideration was likewise denied by the CA. Upon elevation to this Court via a petition for review on certiorari (G.R. No. 160443), the petition suffered the same fate. Under the First Division's Resolution dated January 26, 2004, the petition was denied for failure of the petitioner (respondent) to show that the CA committed any reversible error in the assailed decision and resolution. Said resolution became final and executory on April 27, 2004. Thus, at the time respondent submitted his counter-affidavit before the Ombudsman on May 21, 2004, there was already a final resolution of his petition challenging the PAGC's investigative authority.

On the other hand, the PAGC submitted to the OP its September 1, 2003 resolution finding respondent guilty as charged and recommending that he be dismissed from the service, after the expiration of the 60-day temporary restraining order issued on June 23, 2003 by the CA in CA-G.R. SP No. 77285. The OP rendered its Decision adopting the PAGC's findings and recommendation on March 23, 2004. As thus shown, a period of ten (10) months had elapsed from the time respondent was directed to file his counter-affidavit or verified answer to the administrative complaint filed against him, up to the rendition of the OP's decision. It cannot therefore be said that the PAGC and OP proceeded with undue haste in determining respondent's administrative guilt.

Still on respondent's repeated claim that he was denied due process, it must be noted that when respondent received a copy of the OP Decision dated March 23, 2004, his petition for review filed in this Court assailing the CA's dismissal of CA-G.R. SP No. 77285 was already denied under Resolution dated January 26, 2004. However, despite the denial of his petition, respondent still refused to recognize PAGC's jurisdiction and continued to assail the same before the CA in CA-G.R. SP No. 84254, a petition for review under Rule 43 from the OP's March 23, 2004 Decision and May 13, 2004 Resolution.[16] In any event, respondent was served with a copy of the OP Decision, was able to seek reconsideration of the said decision, and appeal the same to the CA.

We also find nothing irregular in considering the investigation terminated and submitting the case for resolution based on available evidence upon failure of the respondent to file his counter-affidavit or answer despite giving him ample opportunity to do so. This is allowed by the Rules of Procedure of the PAGC. The PAGC is also not required to furnish the respondent and complainant copy of its resolution.

The dissent of Justice Bersamin assails the OP's complete reliance on the PAGC's findings and recommendation which "constituted a gross violation of administrative due process as set forth in *Ang Tibay v. Court of Industrial Relations*[17]." Among others, it is required that "[T]he tribunal or any of its judges must act on its or his own

independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision". Justice Bersamin thus concludes that the OP should have itself reviewed and appreciated the evidence presented and independently considered the facts and the law of the controversy." It was also pointed out that the OP's statement that the respondent's arguments in his Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint were a mere reiteration of matters previously considered, was "a patent untruth."

We disagree.

The OP decision, after quoting verbatim the findings and recommendation of the PAGC, adopted the same with a brief statement preceding the dispositive portion:

After a circumspect study of the case, this Office fully agrees with the recommendation of PAGC and the legal premises as well as the factual findings that hold it together. Respondent failed to disclose in his 2001 and 2002 SSAL high-priced vehicles in breach of the prescription of the relevant provisions of RA No. 3019 in relation to RA No. 6713. He was, to be sure, afforded ample opportunity to explain his failure, but he opted to let the opportunity pass by.[18]

The relevant consideration is not the brevity of the above disquisition adopting fully the findings and recommendation of the PAGC as the investigating authority. It is rather the fact that the OP is not a court but an administrative body determining the liability of respondent who was administratively charged, in the exercise of its disciplinary authority over presidential appointees.

In *Solid Homes, Inc. v. Laserna*, [19] this Court ruled that the rights of parties in an administrative proceedings are not violated by the brevity of the decision rendered by the OP incorporating the findings and conclusions of the Housing and Land Use Regulatory Board (HLURB), for as long as the constitutional requirement of due process has been satisfied. Thus:

It must be stated that Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in administrative proceedings, as in the case at bar. Said section applies only to decisions rendered in judicial proceedings. In fact, Article VIII is titled "Judiciary," and all of its provisions have particular concern only with respect to the judicial branch of government. Certainly, it would be error to hold or even imply that decisions of executive departments or administrative agencies are oblige[d] to meet the requirements under Section 14, Article VIII.

The rights of parties in administrative proceedings are not violated as long as the constitutional requirement of due process has been satisfied. In the landmark case of *Ang Tibay v. CIR*, we laid down the cardinal rights of parties in administrative proceedings, as follows:

- 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.
- 2) The tribunal must consider the evidence presented.
- 3) The decision must have something to support itself.
- 4) The evidence must be substantial.
- 5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
- 6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.
- 7) The board or body should, in all controversial question, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;" and that the decision be rendered

"in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on which it is based. For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.

At bar, the Office of the President apparently considered the Decision of HLURB as correct and sufficient, and said so in its own Decision. The brevity of the assailed Decision was not the product of willing concealment of its factual and legal bases. Such bases, the assailed Decision noted, were already contained in the HLURB decision, and the parties adversely affected need only refer to the HLURB Decision in order to be able to interpose an informed appeal or action for certiorari under Rule 65.

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Accordingly, based on close scrutiny of the Decision of the Office of the President, this Court rules that the said Decision of the Office of the President fully complied with both administrative due process and Section 14, Article VIII of the 1987 Philippine Constitution.

The Office of the President did not violate petitioner's right to due process when it rendered its one-page Decision. In the case at bar, it is safe to conclude that all the parties, including petitioner, were well-informed as to how the Decision of the Office of the President was arrived at, as well as the facts, the laws and the issues involved therein because the Office of the President attached to and made an integral part of its Decision the Decision of the HLURB Board of Commissioners, which it adopted by reference. If it were otherwise, the petitioner would not have been able to lodge an appeal before the Court of Appeals and make a presentation of its arguments before said court without knowing the facts and the issues involved in its case.[20] (Emphasis supplied.)

Since respondent repeatedly refused to answer the administrative charge against him despite notice and warning by the PAGC, he submitted his evidence only after an adverse decision was rendered by the OP, attaching the same to his motion for reconsideration. That the OP denied the motion by sustaining the PAGC's findings without any separate discussion of respondent's arguments and belatedly submitted evidence only meant that the OP found the same lacking in merit and insufficient to overturn its ruling on respondent's administrative liability.

On the fourth ground cited by the respondent, we maintain that the penalty of dismissal from the service is justified as no acceptable explanation was given for the non-declaration of the two expensive cars in his 2001 and 2002 SSAL.

Pursuant to Section 11, paragraph (b) of R.A. No. 6713, any violation of the law "proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him." Respondent's deliberate attempt to evade the mandatory disclosure of all assets acquired during the period covered was evident when he first claimed that the vehicles were lumped under the entry "Machineries/Equipment" or still mortgaged, and later averred that these were already sold by the end of the year covered and the proceeds already spent.

Under this scheme, respondent would have acquired as many assets never to be declared at anytime. Such act erodes the function of requiring accuracy of entries in the SSAL which must be a true and detailed statement. It undermines the SSAL as "the means to achieve the policy of accountability of all public officers and employees in the government" through which "the public are able to monitor movement in the fortune of a public official; [as] a valid check and balance mechanism to verify undisclosed properties and wealth." [21]

IN VIEW OF THE FOREGOING, the motion for reconsideration is DENIED WITH FINALITY.

Let entry of judgment be made in due course.

SO ORDERED.

Carpio Morales, (Chairperson), Velasco, Jr.,[*] Del Castillo,**] and Sereno, JJ., concur.

[*] Designated Additional Member per Raffle dated April 12, 2011.

**] Designated Additional Member per Raffle dated May 6, 2011.

[1] Rollo, p. 477.

[2] *Almario v. Court of Appeals*, G.R. No. 127772, March 22, 2001, 355 SCRA 1, 7.

[3] *Apolinario v. Flores*, G.R. No. 152780, January 22, 2007, 512 SCRA 113, 122.

[4] *Trinidad v. Office of the Ombudsman*, G.R. No. 166038, December 4, 2007, 539 SCRA 415, 424, citing *Vincoy v. Court of Appeals*, G.R. No. 156558, June 14, 2004, 432 SCRA 36, 40.

[5] G.R. No. 123045, November 16, 1999, 318 SCRA 80, 87-88.

[6] *Office of the Court Administrator v. Enriquez*, A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10; *Office of the Court Administrator v. Cañete*, A.M. No. P-91-621, November 10, 2004, 441 SCRA 512, 520.

[7] *Apolinario v. Flores*, *supra* note 3.

[8] G.R. No. 149335, July 1, 2003, 405 SCRA 264, 272-273.

[9] *Office of the Ombudsman v. Galicia*, G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339, citing *Panlilio v. Sandiganbayan*, G.R. No. 92276, June 26, 1992, 210 SCRA 421; *Cojuangco, Jr. v. Presidential Commission on Good Government*, G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226; *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004, 427 SCRA 46; and *Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995, 251 SCRA 242.

[10] Sec. 4 (b).

[11] *Office of the Ombudsman v. Estandarte*, G.R. No. 168670, April 13, 2007, 521 SCRA 155, 173, citing *Deltaventures Resources, Inc. v. Hon. Cabato*, 384 Phil. 252, 261 (2000).

[12] See *Panlilio v. Salonga*, G.R. No. 113087, June 27, 1994, 233 SCRA 476, 482.

[13] *Medina v. Commission on Audit (COA)*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 696-697, citing *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

[14] *Octava v. Commission on Elections*, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 764, citing *Garments and Textile Export Board v. Court of Appeals*, G.R. Nos. 114711 & 115889, February 13, 1997, 268 SCRA 258, 299.

[15] *Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 138.

[16] Rollo, pp. 100-104.

[17] 69 Phil. 635 (1940).

[18] Rollo, p. 90.

[19] G.R. No. 166051, April 8, 2008, 550 SCRA 613.

[20] Id. at 626-627 and 629.

[21] Ombudsman v. Valeroso, G.R. No. 167828, April 2, 2007, 520 SCRA 140, 150.

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