OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, HONORABLE VICTOR C. FERNANDEZ, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR LUZON, AND THE GENERAL INVESTIGATION BUREAU-A, REPRESENTED BY MA...

G.R. No. 172553. December 14, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated December 23, 2005 and the Resolution[3] dated May 3, 2006 of the Court of Appeals in CA-G.R. SP No. 90567. The decision of the appellate court reversed the Order[4] dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon in Administrative Case No. OMB-C-A-05-0032-A, while its resolution denied the motion for reconsideration of herein petitioners.

We quote hereunder the preliminary facts of the case, as succinctly stated in the Decision of the Court of Appeals dated December 23, 2005:

> Sometime in November 1998, Ligorio Naval filed a complaint before the Office of the Ombudsman, accusing Jessie Castillo, the mayor of the Municipality of Bacoor, Cavite, among others, of violating Section[s] 3(e), (g) and (j) of the Anti-Graft and Corrupt Practices Act, in relation to the award of the construction of the municipal building of Bacoor, Cavite, worth more than 9 Million Pesos, to St. Martha's Trading and General Contractors. Naval alleged that the latter was not qualified for the award; its license had expired at the time the contract was signed, and was classified as belonging to Category "C," hence, may only undertake projects worth 3 Million Pesos or lower. The complaint was docketed as OMB-1-98-2365.
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> Castillo submitted certifications to the effect that the contractor was not a holder of an expired license, and was classified as a Category "A" contractor.
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> On 29 April 1999, the Ombudsman ruled that Naval's allegation of lack of qualification of the contractor has been satisfactorily controverted by Castillo, and dismissed the complaint. Naval moved for reconsideration, which was denied on 27 August 1999.
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> In a series of communications with Deputy Ombudsman Margarito P. Gervacio, Jr., Naval insinuated that his evidence [was] not considered and the complaint was dismissed in exchange for millions of pesos. Ombudsman Gervacio relayed the said allegations to Ombudsman Aniano Desierto, who ordered a reevaluation of the 29 April 1999 decision.
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> In a Memorandum dated 30 May 2000, Graft Investigation and Prosecution Officer II, Julieta Calderon, recommended that OMB-1-98-2365 be revived, re-docketed, and be subjected to a further preliminary investigation, with the inclusion of additional respondents. On 30 September 2000, Ombudsman Gervacio approved the said memorandum. Thereafter, the Fact-Finding and Intelligence Bureau of the Ombudsman executed a complaint-affidavit for gross negligence and conduct prejudicial to the interest of the service,

> against 5 municipal officers, including [Jesus Francisco], which was docketed as OMB-C-A-05-0032-A.[5] (Emphases ours.)

The respondents specifically named in Administrative Case No. OMB-C-A-05-0032-A were Saturnino F. Enriquez, Salome O. Esagunde, Federico Aquino, Eleuterio Ulatan and herein respondent Jesus D. Francisco, Sr.,[6] all of whom were members of the Prequalification, Bids and Awards Committee (PBAC) of the Municipality of Bacoor, Cavite. Francisco was then the Municipal Planning and Development Officer of the Municipality of Bacoor, Cavite.

The complaint stated, among others, that when the Municipality of Bacoor conducted its prequalification of documents and bidding, St. Martha's Trading and General Contractor's license was not renewed. Furthermore, the said contractor was allegedly not qualified to undertake the construction of the P9.5 million project as it can only enter into a contract for a project that is worth P3 million or less. The complaint likewise sought to place the aforementioned individuals under preventive suspension pending the investigation of the case.[7]

On May 30, 2005, Director Joaquin F. Salazar of the Office of the Deputy Ombudsman for Luzon issued an Order[8] preventively suspending the above PBAC members. The same was approved by Deputy Ombudsman for Luzon Victor C. Fernandez on May 31, 2005.[9] The Order decreed thus:

> WHEREFORE, in accordance with Section 24, R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, respondents Saturnino F. Enriquez, Salome Esagunde, Jesus D. Francisco, Sr., Federico Aquino, and Eleuterio Ulatan, all municipal employees of Bacoor, Cavite are hereby PREVENTIVELY SUSPENDED during the pendency of this case until its termination, but not to exceed the total period of six (6) months without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.
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> In accordance with Section 27, par. (1), R.A. No. 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.[10] (Emphasis ours.)

Francisco received the above Order on July 1, 2005.[11] Consequently, on July 22, 2005, he filed before the Court of Appeals a Petition for Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. He argued that the Office of the Deputy Ombudsman for Luzon committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered his preventive suspension since the transactions questioned in the case had already been passed upon in OMB-1-98-2365 entitled, Naval v. Castillo, which was dismissed for lack of merit. Furthermore, Francisco averred that the imposition of preventive suspension was not justified given that: (1) he was charged with gross negligence and conduct prejudicial to the interest of the service, not dishonesty, oppression, grave misconduct or neglect in the performance of duty, as required by law; (2) it was not shown that he caused prejudice to the government that would warrant his removal from office; and (3) his stay in office would not prejudice the case filed against him as the documentary evidence therein were not in his possession.[12]

On December 2, 2005, Francisco moved for the early resolution of his petition, reiterating his prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

On December 23, 2005, the Court of Appeals rendered its assailed Decision, finding in favor of Francisco. Thus, said the Court of Appeals:

> The petition has merit.

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> Francisco argues that while he may not have been charged in OMB-1-98-2365, which was dismissed, still the transaction involved therein is the same transaction for which he was charged in OMB-C-A-05-0032-A, thus barred under the principle of res judicata.
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> We agree. The respondents in OMB-C-A-05-0032-A were administratively charged for gross negligence and conduct prejudicial to the interest of the service when they awarded the contract to construct their municipal hall to St. Martha's Contractor, allegedly an unqualified contractor, because both at the time of the bidding and at the time of contract signing, the contractor had an expired license. Moreover, St. Martha's Contractor belongs to "small B" category, which means it cannot enter into a contract for a project worth 3 Million Pesos or less. Therefore, the respondents should have disqualified the said contractor.
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> The said allegation was the exact matter decided by the Ombudsman in OMB-1-98-2365, to wit:
>
> "x x x x
>
> Contrary to the allegation of the complainant that the awardee, St. Martha's Trading and General Contractor was not qualified to undertake the project being classified under "Category C", respondent submitted a xerox copy of a letter dated 05 January 1999 of Jaime Martinez, OIC-Engineer DPWH, Trece Martirez City stating that St. Martha's Trading & General Contractor is classified under "Category A". He likewise submitted a certification dated 06 April 1999 issued by Carolina C. Saunar, Supervising TIDS of the Philippine Contractors Accreditation Board to the effect that St. Martha's Trading & General Contractor is a holder of Contractor's License No. 24109 originally issued on 18 December 1997 with Category "A" and classification of General Building and General Engineering. x x x.
>
> After a thorough study and evaluation of the records of the case as well as after the conduct of an actual ocular investigation, this Office finds the defenses interposed by the respondent to be meritorious."

A judgment bars a subsequent action, with the concurrence of the following requirements: (a) the first judgment must be a final one; (b) the court rendering the judgment must have jurisdiction over the subject matter and over the parties; (c) it must be a judgment or order on the merits; and (d) there must be between the two cases, identity of parties, identity of subject matter and identity of action.

The order of dismissal in OMB-1-98-2365 should operate as a bar to OMB-C-A-05-0032-A. There is no question that the order dismissing the charges in OMB-1-98-2365, is a judgment on the merits, by a court having jurisdiction over the subject matter and over the parties, and had attained finality. There is, between OMB-1-98-2365 and OMB-C-A-05-0032-A, an identity of parties, an identity of subject matter and an identity of action. While it may be argued that there was no absolute identity of parties, a shared identity of interest by the parties in both cases is sufficient to invoke the coverage of the principle. The substitution of parties will not remove the case from the doctrine of res judicata; otherwise, the parties could renew the litigation by the simple expedient of substitution of parties.

WHEREFORE, the petition is hereby GRANTED. The 30 May 2005 order of the Office of the Ombudsman in OMB-C-A-05-0032-A is hereby SET ASIDE.[13]

On January 18, 2006, the Office of the Deputy Ombudsman for Luzon filed a Motion for Reconsideration[14] on the above decision, but the same was denied in the assailed Resolution dated May 3, 2006.

On June 26, 2006, the Office of the Deputy Ombudsman for Luzon and the General Investigation Bureau-A of the said office, through the OSG (petitioners), filed the instant petition, praying for the reversal of the adverse rulings of the Court of Appeals.

Respondent filed his Comment[15] on January 8, 2007 while petitioners filed a Reply[16] on March 19, 2007. In

a Resolution[17] dated April 23, 2007, the Court directed the parties to submit their respective memoranda. The OSG, in a Manifestation and Motion,[18] adopted its Petition and Reply as its Memorandum in the instant case. In turn, respondent filed his Memorandum[19] on September 7, 2007.

Upon elevation of the records to this Court, it became apparent that the Office of the Deputy Ombudsman for Luzon issued a Joint Resolution,[20] dismissing Administrative Case No. OMB-C-A-05-0032-A for lack of probable cause. The said resolution was approved by Acting Ombudsman Orlando C. Casimiro on February 28, 2008.[21]

The Court finds that the petition at bar, which seeks the reinstatement of the Order of preventive suspension dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon, has been rendered moot. In view of the above-stated supervening event that occurred after the filing of the instant petition, the same has ceased to present a justiciable controversy.

In Ombudsman v. Peliño,[22] the Court clarified that "[p]reventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the purpose thereof is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him."

Section 24 of Republic Act No. 6770 expressly provides for the power of the Ombudsman or his Deputy to place a public officer or employee under preventive suspension, to wit:

> SECTION 24. Preventive Suspension. -- The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.
>
> The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis ours.)

Similarly, Section 9, Rule III of the Rules of Procedure of the Ombudsman[23] in administrative cases recites:

> SECTION 9. Preventive Suspension. - Pending investigation, the respondent may be preventively suspended without pay if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct, or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the just, fair and independent disposition of the case filed against him.
>
> The preventive suspension shall continue until the case is terminated; however, the total period of preventive suspension should not exceed six months. Nevertheless, when the delay in the disposition of the case is due to the fault, negligence or any cause attributable to the respondent, the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis ours.)

To recall in the instant case, the Order of the Office of the Deputy Ombudsman for Luzon dated May 30, 2005, which placed the respondents in Administrative Case No. OMB-C-A-05-0032-A under preventive suspension, was received by respondent Francisco on July 1, 2005. Instead of filing a motion for reconsideration[24] thereon, Francisco filed before the Court of Appeals a Petition for Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. The appellate court, however, did not issue a temporary restraining

order or a preliminary injunction. Accordingly, the six-month period of the preventive suspension was not interrupted. Having received notice of the Order on July 1, 2005, the period of suspension lapsed on December 28, 2005.[25]

Of greater importance, however, is the fact that Administrative Case No. OMB-C-A-05-0032-A was already terminated by the Office of the Deputy Ombudsman for Luzon when it dismissed the case in a Joint Resolution, approved by the Acting Ombudsman on February 28, 2008. Consequently, the Order of the Office of the Deputy Ombudsman for Luzon placing Francisco and his co-respondents under preventive suspension in Administrative Case No. OMB-C-A-05-0032-A has already lost its significance.

Barbieto v. Court of Appeals[26] reiterates that "[t]ime and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value."

While the Court is mindful of the principle that "[t]he `moot and academic' principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and fourth, the case is capable of repetition yet evading review,"[27] the above exceptions do not find application in the instant case.

WHEREFORE, the Court hereby DENIES the instant petition for mootness. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Villarama, Jr., and Mendoza,[*] JJ., concur.

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[*] Per Raffle dated December 14, 2011.

[1] Rollo, pp. 9-29.

[2] Id. at 75-81; penned by Associate Justice Santiago Javier Ranada with Associate Justices Mariano C. del Castillo (now a member of this Court) and Mario L. Guariña III, concurring.

[3] Id. at 70-73.

[4] Records, pp. 23-25; penned by Director Joaquin F. Salazar and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[5] Rollo, pp. 76-77.

[6] Records, p. 1.

[7] Id. at 3-4.

[8] Id. at 23-25; penned by Director Joaquin F. Salazar.

[9] Id. at 25.

[10] Id. at 24.

[11] CA rollo, p. 36.

[12] Id. at 13-14.

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[13] Rollo, pp. 78-80.

[14] CA rollo, pp. 69-78.

[15] Rollo, pp. 57-64.

[16] Id. at 82-94.

[17] Id. at 95-96.

[18] Id. at 98-100.

[19] Id. at 104-119.

[20] Records, pp. 73-80.

[21] Id. at 80.

[22] G.R. No. 179261, April 18, 2008, 552 SCRA 203, 216.

[23] Ombudsman Administrative Order No. 7 dated April 10, 1990, as amended by Administrative Order No. 17 dated September 15, 2003.

[24] Section 8, Rule III of the Rules of Procedure of the Office of the Ombudsman states that:

SEC. 8. Motion for Reconsideration or Reinvestigation; Grounds- Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

[25] See Radaza v. Court of Appeals (G.R. No. 177135, October 15, 2008, 569 SCRA 223, 237) where the Court explained that:

"In ascertaining the last day of the period of suspension, one (1) month is to be treated as equivalent to thirty (30) days, such that six (6) months is equal to one hundred eighty (180) days. x x x. This is in line with the provisions of Article 13 of the New Civil Code, which provides:

ART. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days of twenty[-]four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included."

[26] G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840.

[27] David v. Macapagal-Arroyo, G.R. No. 171369, May 3, 2006, 489 SCRA 160, 214-215.

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