

FRANKLIN ALEJANDRO, PETITIONER. VS. OFFICE OF THE OMBUDSMAN FACT-FINDING AND INTELLIGENCE BUREAU, REPRESENTED BY ATTY. MARIA OLIVIA ELENA A. ROXAS, RESPONDENT.

G.R. No. 173121. April 03, 2013

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari,[1] tiled by Franklin Alejandro (petitioner), assailing the February 21, 2006 decision[2] and the June 15, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 88544. The CA dismissed for prematurity the petitioner's appeal on the August 20, 2004 decision[4] of the Office of the Deputy Ombudsman in OMB-C-A-03-0310-I finding him administratively liable for grave misconduct.

The Factual Antecedents

On May 4, 2000, the Head of the Non-Revenue Water Reduction Department of the Manila Water Services, Inc. (MWSI) received a report from an Inspectorate and Special Projects team that the Mico Car Wash (MICO), owned by Alfredo Rap Alejandro, has been illegally opening an MWSI fire hydrant and using it to operate its car-wash business in Binondo, Manila.[5]

On May 10, 2000, the MWSI, in coordination with the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG), conducted an anti-water pilferage operation against MICO.[6]

During the anti-water pilferage operation, the PNP-CIDG discovered that MICO's car-wash boys indeed had been illegally getting water from an MWSI fire hydrant. The PNP-CIDG arrested the car-wash boys and confiscated the containers used in getting water. At this point, the petitioner, Alfredo's father and the Barangay Chairman or punong barangay of Barangay 293, Zone 28, Binondo, Manila, interfered with the PNP-CIDG's operation by ordering several men to unload the confiscated containers. This intervention caused further commotion and created an opportunity for the apprehended car-wash boys to escape.[7]

On August 5, 2003, the respondent Office of the Ombudsman Fact- Finding and Intelligence Bureau, after conducting its initial investigation, filed with the Office of the Overall Deputy Ombudsman an administrative complaint against the petitioner for his blatant refusal to recognize a joint legitimate police activity, and for his unwarranted intervention.[8]

In its decision[9] dated August 20, 2004, the Office of the Deputy Ombudsman found the petitioner guilty of grave misconduct and ordered his dismissal from the service. The Deputy Ombudsman ruled that the petitioner cannot overextend his authority as Barangay Chairman and induce other people to disrespect proper authorities. The Deputy Ombudsman also added that the petitioner had tolerated the illegal acts of MICO's car-wash boys.[10]

The petitioner filed a motion for reconsideration which the Office of the Deputy Ombudsman denied in its

order[11] of November 2, 2004.

The petitioner appealed to the CA via a petition for review under Rule 43 of the Rules of Court. In its decision[12] dated February 21, 2006, the CA dismissed the petition for premature filing. The CA ruled that the petitioner failed to exhaust proper administrative remedies because he did not appeal the Deputy Ombudsman's decision to the Ombudsman.

The petitioner moved for the reconsideration of the CA ruling. On June 15, 2006, the CA denied the motion.[13]

The Petition

The petitioner posits that the CA erred in dismissing his petition outright without considering Rule 43 of the Rules of Court and Administrative Order No. 07 (otherwise known as the Rules of Procedure of the Office of the Ombudsman),[14] on the belief that the filing of a motion for reconsideration of the decision of the Office of the Overall Deputy Ombudsman can already be considered as an exhaustion of administrative remedies. The petitioner further argues that the Office of the Ombudsman has no jurisdiction to order his dismissal from the service since under Republic Act No. (RA) 7160 (otherwise known as the Local Government Code of 1991), an elective local official may be removed from office only by the order of a proper court. Finally, he posits that the penalty of dismissal from the service is not warranted under the available facts.

The Office of the Deputy Ombudsman, through the Office of the Solicitor General, pointed out in its Comment[15] that the petitioner failed to exhaust administrative remedies since he did not appeal the decision of the Deputy Ombudsman to the Ombudsman. The Office of the Deputy Ombudsman maintained that under RA 6770[16] (The Ombudsman Act of 1989), the Office of the Ombudsman has disciplinary authority over all elective and appointive officials. It also asserted that sufficient evidence exists to justify the petitioner's dismissal from the service.

As framed by the parties, the case poses the following issues:

I.

WHETHER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRES A REQUEST FOR RECONSIDERATION FROM THE OFFICE OF THE DEPUTY OMBUDSMAN TO THE OMBUDSMAN FOR THE PURPOSE OF A RULE 43 REVIEW.

II.

WHETHER THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION OVER ELECTIVE OFFICIALS AND HAS THE POWER TO ORDER THEIR DISMISSAL FROM THE SERVICE.

III.

WHETHER PETITIONER'S ACT CONSTITUTES GRAVE MISCONDUCT TO WARRANT HIS DISMISSAL.

The Court's Ruling

We deny the petition for lack of merit.

Preliminary Issues

The CA committed no reversible error in affirming the findings and conclusions of the Deputy Ombudsman.

No further need exists to exhaust administrative remedies from the decision of the Deputy Ombudsman because he was acting in behalf of the Ombudsman

We disagree with the CA's application of the doctrine of exhaustion of administrative remedies which states that

when there is “a procedure for administrative review, x x x appeal, or reconsideration, the courts x x x will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.”[17]

Section 7, Rule III of Administrative Order No. 07, dated April 10, 1990, provides that:

Section 7. FINALITY OF DECISION. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770. [italics supplied; emphasis and underscore ours]

Administrative Order No. 07 did not provide for another appeal from the decision of the Deputy Ombudsman to the Ombudsman. It simply requires that a motion for reconsideration or a petition for certiorari may be filed in all other cases where the penalty imposed is not one involving public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary. This post-judgment remedy is merely an opportunity for the Office of the Deputy Ombudsman, or the Office of the Ombudsman, to correct itself in certain cases. To our mind, the petitioner has fully exhausted all administrative remedies when he filed his motion for reconsideration on the decision of the Deputy Ombudsman. There is no further need to review the case at the administrative level since the Deputy Ombudsman has already acted on the case and he was acting for and in behalf of the Office of the Ombudsman.

The Ombudsman has concurrent jurisdiction over administrative cases which are within the jurisdiction of the regular courts or administrative agencies

The Office of the Ombudsman was created by no less than the Constitution.[18] It is tasked to exercise disciplinary authority over all elective and appointive officials, save only for impeachable officers. While Section 21 of The Ombudsman Act[19] and the Local Government Code both provide for the procedure to discipline elective officials, the seeming conflicts between the two laws have been resolved in cases decided by this Court.[20]

In *Hagad v. Gozo-Dadole*,[21] we pointed out that “there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent x x x as to compel us to only uphold one and strike down the other.” The two laws may be reconciled by understanding the primary jurisdiction and concurrent jurisdiction of the Office of the Ombudsman.

The Ombudsman has primary jurisdiction to investigate any act or omission of a public officer or employee who is under the jurisdiction of the Sandiganbayan. RA 6770 provides:

Section 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[.] [italics supplied; emphasis and underscore ours]

The Sandiganbayan’s jurisdiction extends only to public officials occupying positions corresponding to salary

grade 27 and higher.[22] Consequently, as we held in *Office of the Ombudsman v. Rodriguez*,[23] any act or omission of a public officer or employee occupying a salary grade lower than 27 is within the concurrent jurisdiction of the Ombudsman and of the regular courts or other investigative agencies.[24]

In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction.[25] In this case, the petitioner is a Barangay Chairman, occupying a position corresponding to salary grade 14.[26] Under RA 7160, the sangguniang panlungsod or sangguniang bayan has disciplinary authority over any elective barangay official, as follows:

Section 61. Form and Filing of Administrative Complaints. – A verified complaint against any erring local elective official shall be prepared as follows:

x x x x

(c) A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory. *[italics supplied]*

Since the complaint against the petitioner was initially filed with the Office of the Ombudsman, the Ombudsman's exercise of jurisdiction is to the exclusion of the sangguniang bayan whose exercise of jurisdiction is concurrent.

The Ombudsman has the power to
impose administrative sanctions

Section 15 of RA 6770[27] reveals the manifest intent of the lawmakers to give the Office of the Ombudsman full administrative disciplinary authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to 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 corresponding penalty.[28]

These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions; its power is not merely recommendatory. We held in *Office of the Ombudsman v. Apolonio*[29] that:

It is likewise apparent that under RA 6770, the lawmakers intended to provide the Office of the Ombudsman with sufficient muscle to ensure that it can effectively carry out its mandate as protector of the people against inept and corrupt government officers and employees. The Office was granted the power to punish for contempt in accordance with the Rules of Court. It was given disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies (with the exception only of impeachable officers, members of Congress and the Judiciary). Also, it can preventively suspend any officer under its authority pending an investigation when the case so warrants.[30] *(italics supplied; emphasis and underscore ours)*

Substantive Issue

The petitioner is liable for grave misconduct

At the outset, we point out that the maintenance of peace and order is a function of both the police and the Barangay Chairman, but crime prevention is largely a police matter.

At the time when the police officers were hauling the confiscated equipment, they were creating a commotion. As Barangay Chairman, the petitioner was clearly in the performance of his official duty when he interfered. Under

Section 389(b)(3) of RA 7160, the law provides that a punong barangay must “[m]aintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions[.]” The PNP- CIDG’s anti-water pilferage operation against the car-wash boys was affecting the peace and order of the community and he was duty-bound to investigate and try to maintain public order.[31]

After the petitioner introduced himself and inquired about the operation, the police officers immediately showed their identifications and explained to him that they were conducting an anti-water pilferage operation. However, instead of assisting the PNP-CIDG, he actually ordered several bystanders to defy the PNP-CIDG’s whole operation. The petitioner’s act stirred further commotion that unfortunately led to the escape of the apprehended car-wash boys.[32]

The petitioner, as Barangay Chairman, is tasked to enforce all laws and ordinances which are applicable within the barangay, in the same manner that the police is bound to maintain peace and order within the community. While the petitioner has general charge of the affairs in the barangay, the maintenance of peace and order is largely a police matter, with police authority being predominant[33] especially when the police has begun to act on an enforcement matter.[34] The maintenance of peace and order in the community is a general function undertaken by the punong barangay. It is a task expressly conferred to the punong barangay under Section 389(b)(3) of RA 7160.[35] On the other hand, the maintenance of peace and order carries both general and specific functions on the part of the police. Section 24 of RA 6975 (otherwise known as “the Department of the Interior and Local Government Act of 1990”),[36] as amended,[37] enumerates the powers and functions of the police. In addition to the maintenance of peace and order, the police has the authority to “[i]nvestigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution[.]” and are charged with the enforcement of “laws and ordinances relative to the protection of lives and properties.”[38] Examined side by side, police authority is superior to the punong barangay’s authority in a situation where the maintenance of peace and order has metamorphosed into crime prevention and the arrest of criminal offenders.

In this case, a criminal act was actually taking place and the situation was already beyond the general maintenance of peace and order. The police was, at that point, under the obligation to prevent the commission of a crime and to effect the arrest, as it actually did, of criminal offenders.

From another perspective, the peace and order function of the punong barangay must also be related to his function of assisting local executive officials (i.e., the city mayor), under Section 389(b), Chapter III of the Local Government Code.[39] Local executive officials have the power to employ and deploy police for the maintenance of peace and order, the prevention of crimes and the arrest of criminal offenders.[40] Accordingly, in the maintenance of peace and order, the petitioner is bound, at the very least, to respect the PNP-CIDG’s authority even if he is not in the direct position to give aid. By interfering with a legitimate police operation, he effectively interfered with this hierarchy of authority. Thus, we are left with no other conclusion other than to rule that Alejandro is liable for misconduct in the performance of his duties.

Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[41] If the misconduct does not involve any of the additional elements to qualify the misconduct as grave, the person charged may only be held liable for simple misconduct. "Grave misconduct necessarily includes the lesser offense of simple misconduct." [42]

Sufficient records exist to justify the imposition of a higher penalty against the petitioner. His open interference in a legitimate police activity and defiance of the police's authority only show his clear intent to violate the law in

fact, he reneged on his first obligation as the grassroot official tasked at the first level with the enforcement of the law. The photographs, taken together with the investigation report of the Police Superintendent and the testimonies of the witnesses, even lead to conclusions beyond interference and defiance; the petitioner himself could have been involved in corrupt activities, although we cannot make this conclusive finding at this point.[43] We make this observation though as his son owns MICO whose car-wash boys were engaged in water pilferage. What we can conclusively confirm is that the petitioner violated the law by directly interfering with a legitimate police activity where his own son appeared to be involved. This act qualifies the misconduct as grave. Section 52(A)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that the penalty for grave misconduct is dismissal from the service.

WHEREFORE, in view of the foregoing, we hereby DENY the petition for lack of merit, and AFFIRM the decision of the Court of Appeals in CA-G.R. SP No. 88544.

SO ORDERED.

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

[*]Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1437 dated March 25, 2013.

[1] Filed under Rule 45 of the Rules of Court; rollo, pp. 9-25.

[2] Penned by Associate Justice Eliezer R. de los Santos. and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag; id. at 168-172.

[3] Id. at 189-190.

[4] Id. at 98-108.

[5] Id. at 98.

[6] Id. at 169.

[7] Ibid.

[8] Id. at 42.

[9] Supra note 4.

[10] Id. at 106.

[11] Rollo, pp. 114-117.

[12] Supra note 2.

[13] Supra note 3.

[14] Dated October 15, 1991.

[15] Rollo, pp. 220-246.

[16] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes.

[17] Hon. Carale v. Hon. Abarintos, 336 Phil. 126, 135-136 (1997).

[18] CONSTITUTION, Article XI, Section 5.

[19] Section 21. Official 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.

[20] Office of the Ombudsman v. Rodriguez, G.R. No. 172700, July 23, 2010, 625 SCRA 299.

[21] G.R. No. 108072, December 12, 1995, 251 SCRA 242, 251.

[22] RA 8249, “An Act Further Defining the Jurisdiction of the Sandiganbayan.”

[23] Supra note 20.

[24] Uy v. Sandiganbayan, 407 Phil. 154 (2001).

[25] Civil Service Commission v. Alfonso, G.R. No. 179452, June 11, 2009, 589 SCRA 88.

[26] RA 6758, “Compensation and Position Classification Act of 1989.”

[27] Section 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;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations 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 officer or employee at fault or who neglect[s] 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;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, 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 of the matters mentioned in paragraphs (1), (2), (3) and (4)

hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

(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[.]
[italics supplied]

[28] *Cabalit v. Commission on Audit-Region VII*, G.R. Nos. 180236, 180341 and 180342, January 17, 2012, 633 SCRA 133.

[29] G.R. No. 165132, March 7, 2012, 667 SCRA 583.

[30] *Id.* at 596.

[31] *Rollo*, p. 15.

[32] *Id.* at 99.

[33] On the basis and predominance of the police's authority.

[34] RA 7160, Section 389(b)(1).

[35] (3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions[.]

[36] Section 1.

[37] RA 8551 or the "Philippine National Police Reform and Reorganization Act of 1998" and Republic Act No. 9708 or "An Act Extending for Five (5) Years the Reglementary Period for Complying with the Minimum Educational Qualification for Appointment to the Philippine National Police (PNP) and Adjusting the Promotion System Thereof, Amending for the Purpose Pertinent Provisions of Republic Act No. 6975 and Republic Act No. 8551 and for Other Purposes."

[38] RA 6975, Section 24(a), (b) and (c), as amended.

[39] (b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) Enforce all laws and ordinances which are applicable within the barangay;

(2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;

(3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions[.]

40 Section 62, Title VIII of RA 8551 (Participation of Local Government Executives in the Administration of the PNP) provides:

It shall also include the power to direct the employment and deployment of units or elements of the PNP, through the station commander, to ensure public safety and effective maintenance of peace and order within the locality. For this purpose, the terms "employment" and "deployment" shall mean as follows:

"Employment" refers to the utilization of units or elements of the PNP for purposes of protection of lives and properties, enforcement of laws, maintenance of peace and order, prevention of crimes, arrest of criminal

offenders and bringing the offenders to justice, and ensuring public safety, particularly in the suppression of disorders, riots, lawlessness, violence, rebellious and seditious conspiracy, insurgency, subversion or other related activities.

[41] Imperial, Jr. v. Government Service Insurance System, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 506, citing Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 233.

[42] Santos v. Rasalan, G.R. No. 155749, February 8, 2007, 515 SCRA 97, 104.

[43] Rollo, pp. 41-42.

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