

OFFICE OF THE OMBUDSMAN, Petitioner, vs. LALINETH LISONDRA, TERESITA SERGIO, and THE HONORABLE COURT OF APPEALS (FORMER TWENTY-FIRST DIVISION), Cagayan de Oro City, Respondents.

G.R. No. 174045. March 07, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Certiorari under Rule 65[1] of the Rules of Court filed by petitioner Office of the Ombudsman (OMB) seeking to set aside the Decision[2] of the Court of Appeals dated 31 May 2005 and Resolution[3] dated 30 May 2006 in CA-G.R. No. 79242. In the assailed Decision, the Court of Appeals declared that the OMB has no power to impose the penalty of dismissal from service of a public officer or employee, and its power is limited only to the recommendation of the said penalty if the public officer or employee concerned is found to be at fault.

The antecedent facts as narrated by petitioner are:

Administrative charges for dishonesty and grave misconduct were filed by complainant Renato S. Muñoz, Mayor of the Municipality of La Paz, Agusan del Sur, before the OMB against therein respondents Milagros A. Orlandez, Rey C. Torralba, and Tomas B. Gomez, docketed as OMB-M-A-02-215-H. Complainant alleged that on 5 December 2000, the Municipality of La Paz, Agusan del Sur, paid to Ronwood Construction Supply the amount of P300,000.00 as payment for the delivery of 2,400 bags of Portland cement intended to be used for the concreting of Morgadez Street (Poblacion-Hospital Road Section). However, complainant, upon investigation of why the said project remained unfinished and incomplete, discovered from Municipal Supply Officer (MSO) Teresita G. Sergio and Municipal Planning Development Officer (MPDO) Lalineth A. Lisondra that there was actually no delivery of 2,400 bags of Portland cement made by Ronwood Construction Supply to the Municipality.

To substantiate his complaint, complainant submitted to the OMB the sworn affidavits of MSO Sergio and MPDO Lisondra.

Acting on the foregoing complaint, the OMB, on 22 August 2002, issued an Order, directing Orlandez, Torralba, and Gomez to file their respective counter-affidavits within a period of 10 days reckoned from their receipt of said Order.

In her counter-affidavit,[4] Orlandez asserted that the complaint against her is politically motivated. She averred that the determination of whether or not there was actual delivery is not within her duties and responsibilities as the Treasurer of the Municipality of La Paz, Agusan del Sur. She claimed that her duty is confined solely to releasing appropriated amount for the intended use after being satisfied with the sufficiency and validity of the supporting documents. She further posited that it was MPDO Lisondra who issued and signed the Certificate of Inspection relative to the delivery of 2,400 bags of cement by Ronwood Construction Supply.

Gomez also filed his counter-affidavit and categorically declared that as a Storekeeper I under the Office of the Economic Enterprise, he never inspected nor was informed of any delivery of 2,400 bags of Portland cement from Ronwood Construction Supply.

Torralba, Clerk III of the said Municipality, maintained that he was present during the delivery of the 2,400 bags of Portland cement and, in fact, personally made the inspection together with MPDO Lisondra.

On the basis of the sworn statement of Orlandez, the OMB issued an Order dated 28 October 2002, impleading MPDO Lisondra as fourth respondent.

On the same day, the OMB issued Subpoena Duces Tecum for the production of the original or certified true copies of all documents relative to the subject matter of the case before it.

On 19 November 2002, the Commission on Audit submitted the pertinent documents, to wit:

- Request for Obligation of Allotment
- Unnumbered Disbursement Voucher
- Photocopy of the LBP Check
- Status of Appropriation dated 4 December 2000
- Photocopy of Official Receipt with Serial No. 3299 issued by Ronwood Construction Supply
- Photocopy of Sales Invoice with Serial No. 5281
- Purchase Request dated 6 November 2000
- Call of Quotations
- Purchase Order
- Certificate of Inspection

Upon perusal of the Certificate of Inspection, it appears that aside from MPDO Lisondra, Torralba, and Gomez, the other signatories therein are Melly B. Campos and Teresita G. Sergio. Thus, on 6 January 2003, the OMB issued an Order impleading as additional respondents Campos and Sergio and directing them to file their counter-affidavits.

In the meantime, on 17 December 2002, MPDO Lisondra filed with the OMB her counter-affidavit wherein she admitted that she pre-signed the Certificate of Inspection regarding the delivery of 2,400 bags of Portland cement but proffered the following explanation:

It is our practice that because we travel to various areas in La Paz (hinterland) the delivering party may be in a hurry to secure the receipt/inspection certificate because they would be going home to Butuan City or elsewhere. At that time, it was difficult to reach La Paz. Thus, we PRE-SIGN leaving blank the items to be filled up LIKE THE DATE OF DELIVERY.[5]

She declared in her counter-affidavit that receiving supplies was not part of her duties and functions but somehow her name was included in the Certificate of Inspection form as one of the signatories therein.

On 30 January 2003, Campos, the representative from the Municipal Treasury whose signature similarly appears on the Certificate of Inspection, filed her counter-affidavit and corroborated the earlier statement of her co-respondent Torralba that there was actual delivery of 2,400 bags of Portland cement at the Municipal gym of La Paz.

As to Sergio, she averred that when the Certificate of Inspection was presented to her by co-respondent Torralba on 11 December 2002, it was already signed by Torralba, as well as MPDO Lisondra and Gomez. She claimed that she was the last to sign the said document and that she signed the same upon the proddings of Torralba who intimated to her that the 2,400 bags of Portland cement could not be delivered unless and until the Certificate of Inspection is submitted. She further posited that she signed the Certificate of Inspection because she had noted that the voucher was already paid and the official receipt was already issued. She also confirmed the earlier statement of MPDO Lisondra that it had been their usual practice at the Municipality of La Paz, Agusan del Sur to pre-sign the Certificate of Inspection since the delivering party may be in a hurry to secure the said certificate because they would still be going back home to Butuan City, and could not wait for the signatories thereof, who frequently travel to various areas in the Municipality of La Paz, to return.

The OMB scheduled the case for a preliminary conference on 11 March 2003 but the respondents therein filed their manifestation waiving their right to a formal hearing. Hence, on even date, the OMB issued an Order submitting the case for Decision based on the evidence on record.

In a Decision dated 26 May 2003, the OMB held:

WHEREFORE, premises considered, respondents Tomas B. Gomez, Lalineth Lisondra, Rey Torralba, Melly B. Campos and Teresita Sergio are hereby found guilty of DISHONESTY and are hereby meted the supreme penalty of DISMISSAL FROM SERVICE with forfeiture of all benefits and with prejudice to re-employment in any branch, instrumentality or agency of the government, including government owned or controlled corporation. The herein case against respondent Milagros Orlandez is hereby dismissed.[6]

Respondents filed a Motion for Reconsideration which the OMB denied in its Order dated 24 July 2003.

MPDO Lisondra and Sergio filed a Petition for Review on Certiorari before the Court of Appeals.[7]

The appellate court, in a Decision dated 31 May 2005, ruled on their appeal in this wise:

WHEREFORE, the petition is DENIED in so far as it seeks to set aside the finding of the Ombudsman that Petitioners LALINETH A. LISONDRA and TERESITA SERGIO are administratively liable for dishonesty. The petition is GRANTED in so far as it seeks to nullify the penalty directly imposed by the OMBUDSMAN upon Petitioners. The OFFICE OF THE OMBUDSMAN is hereby DIRECTED TO TRANSMIT ITS FINDINGS AND RECOMMENDATIONS relative to this case to the incumbent Municipal Mayor or Chief Executive Officer of the Municipality of La Paz, Agusan del Sur pursuant to Section 13(3), Article XI of the 1987 Constitution and Section 15(3) of Republic Act No. 6770.[8]

The OMB filed a Motion for Partial Reconsideration, which, in a Resolution dated 30 May 2006, the Court of Appeals resolved thus:

WHEREFORE, Public Respondent's motion for reconsideration and Petitioners' urgent motion for the issuance of a preliminary injunction are hereby DENIED.[9]

The Court of Appeals found precedent in the following cases and explained:

In *Concerned Officials of the Metropolitan Waterworks and Sewerage System vs. Vasquez*, 240 SCRA 502 (1995), the Supreme Court declared:

The powers, functions and duties of the Ombudsman have been categorized into the following headings: Investigatory Power, Prosecutory Power, Public Assistance Functions, Authority to Inquire and Obtain Information, and Function to Adopt, Institute and Implement Preventive Measures.

The power to dismiss is not found in the above enumerations of the powers, functions and duties of the Ombudsman; neither can it be logically placed under any of the abovementioned categories.

In *Tapiador vs. OFFICE OF THE OMBUDSMAN* and *Atty. Ronaldo P. Ledesma*, G.R. No. 129124, March 15, 2002, the Supreme Court emphatically held that “[u]nder Section 13, subparagraph (3), of the 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.” (Emphasis Ours) Likewise, in *PNB-REPUBLIC BANK vs. COURT OF APPEALS* and *PLANTERS DEVELOPMENT BANK*, G.R. No. 127370, September 14, 1999, the Supreme Court declared, thus:

The power of the Ombudsman is only investigatory in character and its resolution cannot constitute a valid and final judgment because its duty, assuming it determines that there is an actionable criminal or non-criminal act or omission, is to file the appropriate case before the Sandiganbayan (Italics supplied for emphasis.).[10]

To show its vigorous dissent, the OMB filed the instant Petition before us raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO EXCESS OR LACK OF JURISDICTION IN ISSUING THE 30 MAY 2006 RESOLUTION CONSIDERING THAT:

- A. THE CONSTITUTION DOES NOT BAR THE OFFICE OF THE OMBUDSMAN FROM EXERCISING ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC OFFICIALS AND EMPLOYEES IN GENERAL.

- B. CONGRESS CONSTITUTIONALLY CLOTHED THE OFFICE OF THE OMBUDSMAN WITH FULL ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC OFFICIALS AND EMPLOYEES IN GENERAL, COMPLETE WITH ALL THE REQUISITE COMPONENTS AS CONTAINED IN R.A. NO. 6770, CONSIDERING THAT:

- i. THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;

- ii. CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, AND IN THE EXERCISE OF ITS PLENARY LEGISLATIVE POWERS, ENACTED R.A. NO. 6770 PROVIDING THEREIN THE OMBUDSMAN’S FULL AND COMPLETE ADMINISTRATIVE DISCIPLINARY POWER AND DUTY;

- iii. THERE IS NOTHING IN THE SAID STATUTORY GRANT OF ADMINISTRATIVE DISCIPLINARY POWER WHICH CAN BE REMOTELY CONSIDERED INCONSISTENT WITH THE 1987 CONSTITUTION; AND

- iv. VESTING THE OMBUDSMAN WITH FULL DISCIPLINARY AUTHORITY IS ABSOLUTELY IN CONSONANCE WITH THE SOVEREIGN INTENT, AS EXPRESSED BY THE LETTER OF, AND IN THE DELIBERATIONS ON, THE 1987 CONSTITUTION, I.E., THE INTENT TO CREATE AN EFFECTIVE, RATHER THAN EFFETE (sic), PROTECTOR OF THE PEOPLE INSULATED FROM POLITICAL INFLUENCE.

- C. THE DISCIPLINARY AUTHORITY GRANTED TO THE OMBUDSMAN INCLUDES THE AUTHORITY TO DETERMINE THE PENALTY AND TO CAUSE THE SAME TO BE IMPLEMENTED BY THE HEAD OF AGENCY CONCERNED, CONSIDERING THAT:

- i. R.A. NO. 6770 CONTAINS EXPRESS PROVISIONS GRANTING THE OMBUDSMAN THE AUTHORITY TO DETERMINE AND CAUSE THE IMPLEMENTATION OF ADMINISTRATIVE PENALTIES;

- ii. A DISCIPLINARY POWER BEREFT OF THE NECESSARY COMPONENT OF DETERMINING THE PENALTY AND CAUSING THE IMPLEMENTATION THEREOF IS OTIOSE (sic);
- iii. EVEN ASSUMING THAT THE IMPLEMENTATION OF PENALTIES ASSESSED BY THE OMBUDSMAN IS SUBJECT TO SECTION 13(3), ART. XI OF THE CONSTITUTION, AND THE INDEPENDENT FIRST PART OF SECTION 15(30) OF R.A. NO. 6770, THE LATTER PROVISIONS STILL EMPOWER THE OMBUDSMAN TO “ENSURE COMPLIANCE” WITH ITS “RECOMMENDATIONS;” AND
- iv. A CONTRARY RULE CAN ONLY RESULT IN FURTHER LEGAL AND PRACTICAL ABSURDITIES.[11]

We find merit in the Petition and rule to grant the writ of certiorari.

OMB’s postulation may be summarized into whether or not the Court of Appeals correctly held that OMB has no power to impose penalty on public officers.

The OMB is a constitutionally created office. The mandate of the OMB is expressed in Section 12, Article XI of the Constitution:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.[12]

Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the OMB:

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

- Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government owned or controlled corporation 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.
- 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.
- Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, 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.
- Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- 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.
- Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

However, the framers of the Constitution did not mean for the foregoing enumeration to be exclusive. They still intended to confer on Congress the discretion to give the OMB other powers, functions, and duties that will enable it to effectively execute its general mandate as protector of the people from the abuses of public officials and employees. The following debate of Commissioners Colayco and Monsod during the interpellation by Commissioner Rodrigo in the Constitutional Commission of 1986 relative to the powers, functions, and duties of the Ombudsman is enlightening:

MR. RODRIGO: Let us go back to the division between the powers of the Tanodbayan and the Ombudsman which says that:

The Tanodbayan . . . shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.

The powers of the Ombudsman are enumerated in Section. 12.

MR. COLAYCO: They are not exclusive.

MR. RODRIGO: So, these powers can also be exercised by the Tanodbayan?

MR. COLAYCO: No, I was saying that the powers enumerated here for the Ombudsman are not exclusive.

MR. RODRIGO: Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislative may vest him with powers taken away from the Tanodbayan, may it not?

MR. COLAYCO: Yes.

MR. MONSOD: Yes.

x x x x

MR. RODRIGO: And precisely, Section 12(6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law."

x x x x

MR. COLAYCO: Madam President, that is correct.

MR. MONSOD: Madam President, perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, the Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO: Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD: I agree with the Commissioner.

MR. RODRIGO: Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD: Yes, because we want to avoid what happened in 1973. I read the committee report which

recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law – the last one, P.D. No. 1630 – did not follow the main thrust; instead it created the Tanodbayan (2 record, 270-271).

x x x x

MR. MONSOD (reacting to statements of Commissioner Blas Ople): May we just state that perhaps the [H]onorable Commissioner has looked at it in too much of an absolutist position. The Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We did not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability.[13] (Emphases supplied.)

Clearly, the Legislature, as it deems fit, may enact a statute that would identify with even more particularity or even add to the powers, functions, and duties of the OMB already enumerated in Section 13, Article XI of the 1987 Constitution. In the exercise of this discretion, Congress thus enacted Republic Act No. 6770.

Republic Act No. 6770[14] provides for the functional and structural organization of the OMB. In passing Republic Act No. 6770, Congress deliberately endowed the OMB with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office.[15] Moreover, the Legislature has vested the OMB with broad powers to enable him to implement his own actions.[16]

Section 15 of Republic Act No. 6770, specifying the powers, functions and duties of the OMB, includes the following paragraph:

(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.

The proviso in Section 3 forecloses any doubt as to the powers of the OMB to impose disciplinary sanctions. Unmistakably, one can easily glean from the foregoing that: 1) the OMB has the power to order the removal, suspension, or demotion of an erring officer or employee and/or to impose a fine or censure and prosecute the same; and 2) the refusal by an officer without just cause to comply with an order imposing such afore-named sanctions shall be a ground for disciplinary action against said officer.

We held in *Ledesma v. Court of Appeals*[17] that Republic Act No. 6770 is consistent with the intent of the framers of the 1987 Constitution, who conferred on Congress the discretion to give the OMB powers that are not merely persuasive in character. Thus, in addition to the power of the OMB to prosecute and conduct

investigations, the lawmakers, by enacting Republic Act No. 6770, intended to provide the OMB with the power to punish for contempt and preventively suspend any officer under its authority pending an investigation when the case so warrants.

Office of the Ombudsman v. Court of Appeals[18] is more succinct and elaborate. Here, we found that the provisions of Republic Act No. 6770 reveal the manifest intent of Congress to bestow on the OMB full administrative disciplinary authority including the power to remove, suspend, demote, fine, censure, or prosecute the erring public official or employees, thus:

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.

x x x x.

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. And this intent was given validation by the Court in *Uy v. Sandiganbayan* [G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 666], where it stated that:

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people’s complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions.[19] (Emphasis supplied.)

Immediately following is *Estarija v. Ranada*,[20] in which we held that under Republic Act No. 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 thus:

[W]e hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound.[21] The 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 Republic Act No. 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.[22] (Emphasis supplied.)

Of most recent vintage is *Office of the Ombudsman v. Masing*[23] which put to rest any uncertainty on this issue and pronounced that the manifest intent of the lawmakers was to bestow on the OMB full administrative disciplinary authority in accord with constitutional deliberations. The Court held:

We reiterated this ruling in *Office of the Ombudsman v. Laja* (GR No.169241 May 2, 2006 488 SCRA 574) where we emphasized that “the Ombudsman’s order to remove, suspend, demote, fine, censure, or prosecute an officer or employee is not merely advisory or recommendatory but is actually mandatory.” (Emphasis supplied.)

In declaring that the OMB only has the power to recommend, but not to impose, the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, the

appellate court mainly relied on the following statement made by the Court in *Tapiador v. Office of the Ombudsman*[24]:

Besides, assuming *arguendo*, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the 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.

However, in *Ledesma*, we already elucidated on the weight to be given to the afore-quoted statement in *Tapiador*, by declaring that the reference to the power of the OMB in the latter case is, at best, merely an obiter dictum that cannot be cited as a doctrinal declaration of this Court.

[A] cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein 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, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.[25]

In all, it is already well-settled that the OMB’s power as regards the administrative penalty to be imposed on an erring public officer or employee is not merely recommendatory. The OMB has the power to directly impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, other than a member of Congress and the Judiciary, found to be at fault, within the exercise of its administrative disciplinary authority as provided in the Constitution, Republic Act No. 6770, as well as jurisprudence. This power gives the said constitutional office teeth to render it not merely functional, but also effective. Section 21 of Republic Act No. 6770 provides:

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.

A writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. “Grave abuse of discretion” implies such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[26]

Given the foregoing, we find that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the OMB has no power to impose the administrative penalty of removal on culpable public officers.

WHEREFORE, premises considered, the Petition is GRANTED. The Decision of the Court of Appeals dated 31 May 2005 and the Resolution dated 30 May 2006 are hereby REVERSED and SET ASIDE. The Decision dated 26 May 2003 of the Office of the Ombudsman in OMB-M-A-02-215-H is REINSTATED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

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- [1] Certiorari, Prohibition, Mandamus.
- [2] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello, concurring. Rollo, pp. 90-102.
- [3] Id. at 78-80.
- [4] Records, pp. 15-16.
- [5] Rollo, p. 93.
- [6] Rollo, p. 88.
- [7] Docketed as CA-G.R. SP No. 79242.
- [8] Rollo, pp. 101-102.
- [9] Id. at 80.
- [10] Id. at 100-101.
- [11] Id. at 204-206.
- [12] Office of the Ombudsman v. Court of Appeals, G.R. No. 160675, 16 June 2006, 491 SCRA 92, 108.
- [13] Estarija v. Ranada, G.R. No. 159314, 26 June 2006, 492 SCRA 671-673.
- [14] Entitled An Act Providing For The Functional And Structural Organization Of The Office Of Ombudsman, And For Other Purposes.
- [15] Uy v. Sandiganbayan, G.R. Nos. 105965-70, 20 March 2001, 354 SCRA 651, 660.
- [16] Id. at 666.
- [17] G.R. No. 161629, 29 July 2005, 465 SCRA 437.
- [18] Supra note 12.
- [19] Id. at 116-119.
- [20] Supra note 13.
- [21] 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;
- (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 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;

(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;

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein;

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

x x x x

Sec. 22. Investigatory Power. – The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

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.

[22] *Estarija v. Ranada*, supra note 13 at 674.

[23] G.R. No. 165416, No. 165584, No. 165731, 22 January 2008.

[24] 429 Phil. 47, 58 (2002).

[25] *Office of the Ombudsman v. Court of Appeals*, supra note 12 at 106-107.

[26] *Bedruz v. Sandiganbayan*, G.R. No. 161640, 9 December 2005, 477 SCRA 286, 294.

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