

HADJI PANGSAYAN T. ABDULRAHMAN, PETITIONER, VS. THE OFFICE OF THE OMBUDSMAN FOR MINDANAO AND GUIAMALUDIN A. SENDAD, RESPONDENTS.

G.R. No. 175977. August 19, 2013

Ponente: SERENO, C.J.

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SERENO, C.J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Resolutions dated 21 July 2005[1] and 14 November 2006[2] of the Court of Appeals Mindanao Station (CA) in CA-G.R. SP No. 85727. The CA Resolutions dismissed the petition for certiorari impugning the Order of Implementation[3] issued by the Office of the Ombudsman for Mindanao (Ombudsman), which had directed the Depm1ment of Environment and Natural Resources (DENR) Region XII (XII) Regional Executive Director (RED) to dismiss petitioner from service.

Petitioner was a Land Management Inspector of the Community Environment and Natural Resources Office (CENRO) of Kalamansig, Sultan Kudarat.[4] In a letter[5] dated 29 August 1990 addressed to Regional Director Salvador Ranin of the National Bureau of Investigation, Cotabato City, private respondent reported the alleged illegal activities of petitioner and Guialil Sayutin (Sayutin), an employee of CENRO 3-B Maganoy, Maguindanao.[6]

According to private respondent, petitioner solicited from him the total amount of PP5,450[7] as consideration for the titling in private respondent's name of lands located in South Upi, Maguindanao, and covered by the homestead applications of Unos Pacutin and Ting Midtimbang. On the other hand, Sayutin received documents belonging to private respondent from Ellen Alcoriza (Alcoriza), records officer of CENRO Salimbao, Sultan Kudarat, without authority therefor.[8] Sayutin later lost the aforesaid documents.[9]

The letter-complaint found its way to the Ombudsman. Instead of submitting a counter-affidavit in compliance with the Ombudsman's Order dated 17 July 1992,[10] petitioner filed a Manifestation¹¹ dated[11] August 1992. He manifested that private respondent had already executed an Affidavit of Desistance.[12] In that affidavit, private respondent indicated that he had forgiven petitioner after the latter produced the missing documents and returned the money solicited together with incidental expenses. Thus, petitioner prayed that he be dropped as respondent in the complaint.

In a Resolution[13] dated 14 March 1995, the Ombudsman recommended the dismissal of petitioner, Sayutin, and Alcoriza from service. It found Sayutin and Alcoriza guilty of gross neglect of duty and petitioner of grave misconduct. As regards the Manifestation and the attached Affidavit of Desistance filed by petitioner, the Ombudsman ruled that these documents failed to controvert and, in fact, admitted the material allegations of the complaint.[14]

A copy of the Resolution was ordered furnished to the DENR XII RED, who was directed to implement the dismissal of petitioner, Sayutin, and Alcoriza, and to show proof of compliance within 10 days from receipt.[15]

Petitioner filed a motion for reconsideration but it was denied in an Order dated 19 February 1999.[16] He then filed a Motion for New Trial or Second Motion for Reconsideration,[17] attaching thereto the Affidavit[18] of private respondent, as well as the Joint-Affidavit[19] of Mama Sangeban, Jr. (Sangeban) and Mario Tuhok (Tuhok), both dated 16 August 1999.

In his Affidavit, private respondent stated that the amount of ₱5,450 was actually paid to Sangeban, the driver of a truck, and Tuhok, the owner of two horses. The truck and two horses were used in transporting private respondent, petitioner and Undi Tumindig when they went to South Upi, Maguindanao to conduct an ocular inspection of the lands covered by the homestead applications of Unos Pacutin and Ting Midtimbang. This statement was corroborated by Sangeban and Tuhok in their Joint-Affidavit.

In an Order dated 23 August 1999, the Ombudsman denied the motion for being a second motion for reconsideration.[20] Under the mistaken notion that petitioner's Motion for New Trial or Second Motion for Reconsideration had yet to be resolved by the Ombudsman, the new DENR Region XII RED ordered the retention of petitioner in the latter's position pending the resolution of the second motion for reconsideration.

Petitioner filed a petition for review before the CA docketed as CA-G.R. SP No. 55737[21] assailing the Ombudsman's Resolution recommending his dismissal. In a Decision dated 28 June 2001, the CA dismissed the petition for lack of merit.[22] The Decision attained finality on 4 September 2001.[23]

In a letter[24] dated 15 March 2004, the DENR XII RED officer-in-charge inquired about the status of the case of petitioner as the latter was then still reporting for work and even applying for a promotion.

On 31 March 2004, the Ombudsman issued an Order of Implementation[25] directing DENR XII RED officer-in-charge Jim Sampulna to implement the dismissal from service of petitioner and to show proof of compliance within 10 days from receipt.

Petitioner received a copy of the Order of Implementation on 13 August 2004.[26] On 16 August 2004, he filed a Petition for Certiorari and Prohibition with Prayer for a Status Quo Order[27] before the CA, alleging that the Ombudsman had issued the Order of Implementation with grave abuse of discretion amounting to lack of jurisdiction. He argued that the Order of

Implementation should have been addressed to the Secretary of Environment and Natural Resources as the head of office who had the power to appoint and dismiss him.[28] Petitioner also questioned the Order of Implementation for being a direct order to dismiss. According to him, this was beyond the authority of the Ombudsman, which was only empowered to recommend the removal of erring public employees.[29] Finally, petitioner argued that while the Order of Implementation was in the nature of an execution of judgment, which may not be stayed, the petition presented an exception.[30]

On 21 July 2005, the CA issued the first assailed Resolution dismissing the petition for the following reasons: (1) failure to implead private respondent; and (2) failure to attach copies of the pleadings and documents relevant to the petition.[31] Petitioner filed a Motion for Reconsideration dated 17 August 2005.[32]

On 14 November 2006, the CA issued the second assailed Resolution denying the Motion for Reconsideration.[33] It ruled that it could excuse the second infirmity, since it could very well require petitioner to submit additional requirements necessary for the resolution of the petition. To excuse the first infirmity, however, would render the petition non-adversarial.[34]

The CA also found additional grounds to dismiss the appeal. Petitioner did not file a motion for reconsideration of the Order of Implementation. Thus, his petition was rendered dismissible for failure to exhaust administrative

remedies.[35]

The CA likewise ruled that there are three essential dates that must be indicated in a petition for certiorari: (1) when judgment or final order was received; (2) when the motion for reconsideration was filed; and (3) when notice of denial thereof was received.[36] According to the CA, since petitioner did not file a motion for reconsideration of the Order of Implementation before filing a petition for certiorari, he also failed to comply with the requirement of stating the material dates in the petition.[37]

ISSUES

Petitioner now comes before us on a Petition for Review on Certiorari[38] raising the following issues:

- Whether the Rules of Court should be given liberal construction, especially when there are substantial issues to be resolved; and
- Whether the CA misapprehended facts by concluding that petitioner failed to exhaust administrative remedies.

OUR RULING

The acceptance of a petition for certiorari, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court.[39] Thus, the court may reject and dismiss a petition for certiorari (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars.[40]

In this case, the CA dismissed petitioner's special civil action for certiorari because of procedural errors, namely: (1) failure to implead private respondent; (2) failure to attach copies of the pleadings and documents relevant to the petition; (3) failure to file a motion for reconsideration of the Order of Implementation; and, consequently, (4) failure to allege material dates in the petition.

Petitioner argues that the rules of procedure should be liberally construed when substantial issues need to be resolved.

Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice.[41] "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules." [42]

Thus, we have given due course to a petition because it was meritorious, even though we recognized that the CA was correct in dismissing the petition for certiorari in the light of the failure of petitioner to submit material documents.[43] We have affirmed the CA when it granted a petition for certiorari despite the litigant's failure to file a motion for reconsideration beforehand.[44] We have also had occasion to excuse the failure to comply with the rule on the statement of material dates in the petition, since the dates were evident from the records.[45]

Failure to implead private respondent

In this case, it was an error for the CA to dismiss the petition for failure to comply with Section 5, Rule 65 of the Rules of Court, which states:

Section 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and

defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. (Emphasis supplied)

Section 11, Rule 3 of the Rules of Court, states that neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action.[46] If it was truly necessary to implead Guiamaludin Sendad, what the CA should have done was to order petitioner to add him as private respondent to the case.

Failure to file a motion for reconsideration

The CA stood ready to excuse the failure of petitioner to attach copies of the pleadings and documents relevant to the petition, since his omission could be remedied by requiring him to submit additional requirements necessary for the resolution of the petition. However, the CA could not excuse his failure to move for reconsideration of the issuance of the Order of Implementation prior to the filing of the petition for certiorari before it. On the other hand, petitioner insists that he has filed a motion for reconsideration not once, but twice.[47]

The CA is correct on this point. It is clear that upon receipt of a copy of the Order of Implementation dated 31 March 2004, petitioner immediately filed the petition for certiorari and prohibition before the CA three days later. The motions for reconsideration that petitioner referred to were filed by him in connection with the Resolution dated 14 March 1995 recommending his dismissal from service.

There are well-settled exceptions[48] to the general rule that a motion for reconsideration is a condition precedent to the filing of a petition for certiorari under Rule 65 of the Rules of Court.[49] However, none of them finds application in this case, especially since questions raised in the certiorari proceeding before the CA were different from those passed upon by the Ombudsman. The question raised before the CA was the legality of the Order of Implementation. On the other hand, what was passed upon by the Ombudsman was whether petitioner was guilty of grave misconduct.

The issue of grave abuse of discretion

Nevertheless, while we agree that in clearly meritorious cases, the higher demands of substantial justice can transcend the rigid observance of procedural rules, it is not the case here.

While petitioner initially questioned the Order of Implementation because it became a direct order to dismiss – allegedly beyond the authority of the Ombudsman, empowered as it is, only to recommend the removal of erring public employees – his main argument was that the Order of Implementation should have been addressed to the Secretary of Environment and Natural Resources as the head of office who had the power to appoint and dismiss him.[50]

In *Ledesma v. Court of Appeals*[51] and subsequent cases,[52] this Court has already made the pronouncement that the power of the Ombudsman to impose administrative liability is not merely advisory, but actually mandatory in nature. However, this power is shared with the head of office or any other officer concerned.[53] Thus, when Section 13(3) of Article XI[54] of the Constitution and Section 15(3)[55] of Republic Act No. 6770 (The Ombudsman Act of 1989) uses the word “recommend” in connection with the action to be taken against an erring government employee, the intention is to course the implementation through the proper officer.[56]

In this case, petitioner claims that the order should have been addressed to the Secretary of Environment and Natural Resources as the head of office. According to petitioner, directing it to the DENR XII RED amounted to grave abuse of discretion on the part of the Ombudsman.

We are not persuaded.

Grave abuse of discretion is “the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.”[57] It is more than mere imputation of caprice, whimsicality or arbitrariness; and it is not present when the acts are found to be mere errors of judgment or simple abuse of discretion.[58]

Petitioner himself manifested that at the time that private respondent filed the complaint, the former was employed at DENR XII on a contractual basis.[59] The employment status of petitioner is shown in the Contracts of Technical Services dated 3 July 1988[60] and 1 January 1989[61] executed between him and Atty. Dacilo M. Adap (Atty. Adap), Regional Technical Director of DENR XII. Also, attached to the record is a handwritten note dated 8 March 1990 from DENR XII RED Macorro Macumbal instructing Atty. Adap to renew the contractual employment of petitioner.[62]

Thus, when the recommendation to dismiss petitioner from service was issued by the Ombudsman through the Resolution dated 14 March 1995, the recommendation was coursed through then DENR XII RED Macorro Macumbal. Later, due to the query of the DENR XII RED officer-in-charge regarding the status of the case of petitioner, the Order of Implementation dated 31 March 2004 was directed to the former to effect petitioner's dismissal.

The Ombudsman was never informed of any change in the status of appointment of petitioner. Thus, the Ombudsman had reason to believe that his employment continued to be under a contract of service. Even if this belief was mistaken, we find that it does not amount to grave abuse of discretion.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Leonardo-De Castro, Bersamin, Mendoza,[*] and Reyes, JJ., concur.

[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.

[1] Rollo, pp. 151-152. The Resolution of the Court of Appeals (CA) Mindanao Station's Twenty-Second Division was penned by Associate Justice Normandie B. Pizarro with Associate Justices Arturo O. Tayag and Rodrigo F. Lim, Jr. concurring.

[2] Id. at 153-158. The Resolution of the CA Mindanao Station's Twenty-First Division was penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez concurring.

[3] Id. at 91-93.

[4] Id. at 85.

[5] Id. at 84.

[6] Id. at 85.

[7] Id.

- [8] Id.
- [9] Id. at 84.
- [10] Id. at 122.
- [11] Id. at 122-124.
- [12] Id. at 112.
- [13] Id. at 85-88.
- [14] Id. at 86.
- [15] Id. at 87.
- [16] Id. at 89.
- [17] Id. at 125-140.
- [18] Id. at 113-114.
- [19] Id. at 96.
- [20] Id. at 89-90.
- [21] Id. at 171.
- [22] Id.
- [23] Id.
- [24] Id. at 94-95.
- [25] Id. at 91-93.
- [26] Id. at 98.
- [27] Id. at 97-104.
- [28] Id. at 99-A.
- [29] Id. at 100.
- [30] Id. at 101-102.
- [31] Id. at 151-152.
- [32] Id. at 159-167.
- [33] Id. at 153-158.
- [34] Id at 154-155.
- [35] Id. at 156.
- [36] Santos v. CA, 413 Phil. 41, 53 (2001).
- [37] Rollo, pp. 156-157.
- [38] Id. at 7-18.

[39] *Serrano v. Galant Maritime Services, Inc.*, 455 Phil. 992, 997 (2003).

[40] *Id.*

[41] *Go, Jr. v. CA*, G.R. No. 172027, 29 July 2010, 626 SCRA 180, 189.

[42] *Id.*

[43] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458 (2005).

[44] *PLDT v. Imperial*, 524 Phil. 204 (2006).

[45] *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518 (2005).

[46] *Cuyo v. People*, G.R. No. 192164, 12 October 2011, 659 SCRA 69, 73.

[47] *Rollo*, p. 15.

[48] (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or public interest is involved.

[49] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135703, 15 April 2009, 585 SCRA 18.

[50] *Rollo*, p. 36.

[51] 503 Phil. 396 (2005).

[52] *Fajardo v. Ombudsman*, G.R. No. 173268, 23 August 2012, 679 SCRA 97; *Ombudsman v. Beltran*, G.R. No. 168039, 5 June 2009, 588 SCRA 574; *Boncalon, v. Ombudsman (Visayas)*, G.R. No. 171812, 24

December 2008, 575 SCRA 449; *Ombudsman v. Court of Appeals*, 554 Phil. 656 (2007); *Ombudsman v. Lucero*, 537 Phil. 917 (2006); *Ombudsman v. Court of Appeals*, 537 Phil. 751 (2006).

[53] *Ledesma v. Court of Appeals*, *supra* note 51.

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

xxx

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

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

x x x.

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect 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;

[56] *Ledesma v. Court of Appeals*, *supra*.

[57] *Republic v. Sandiganbayan (Fourth Division)*, G.R. No. 152375, 16 December 2011, 662 SCRA 152, 186.

[58] *Id.*

[59] *Rollo*, p. 61; *Records*, p. 4.

[60] *Records*, p. 29.

[61] *Id.* at 73.

[62] *Id.* at 27.

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