RODOMIEL J. DOMINGO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN KATHRYN JOY B. PAGUIO, ALLAN JAY M. ESGUERRA, AND NEIL PATRICK H. CELIS, RESPONDENTS.

G.R. No. 176127. January 30, 2009

Ponente: TINGA, J.

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TINGA, J.:

Assailed in this petition is the Decision[1] dated 20 September 2006 as well as the resolution[2] dated 5 January 2007 of the Court of Appeals in CA-G.R. SP No. 92597, affirming in toto the decision of the Office of the Ombudsman[3] (OMB) in OMB-C-A-05-0007-A, finding Rodomiel J. Domingo (petitioner) guilty of violation of Section 4(b) of Republic Act (R.A.) No. 6713[4] and imposing upon him the penalty of suspension for a period of six (6) months.

The antecedent facts follow.

A complaint-affidavit was filed before the Office of the Ombudsman by Sangguniang Kabataan (SK) officials Kathryn Joy Paguio, Allan Jay Esguerra and Neil Patrick Celis (respondents) against petitioner as Barangay Chairman and Barangay Treasurer Fe T. Lao (Lao), both of Barangay 686, Zone 75, District V, Manila, for malversation, falsification of public document, dishonesty and grave misconduct.[5]

Respondents alleged that petitioner and Lao misappropriated the cash advance taken by respondents from the SK funds amounting to P16,784.00 in the year 2002. They added that petitioner gave a

false statement in his Justification supporting the 2003 Barangay Budget and Expenditures by declaring that his barangay had no incumbent SK officials at that time contrary to the fact that respondents are duly elected and incumbent SK officials of the barangay.[6]

In support of their claims, respondents presented as evidence: (1) the Audit Observation Memorandum dated 9 February 2004 issued by the Office of the City Auditor of Manila;[7] (2) the photocopy of the certified true copy of the allegedly falsified Justification;[8] (3) the certificate of canvass of voters and proclamation of the winning candidates for SK Chairman and Council members during the SK election on 15 July 2002;[9] and (4) the affidavit of Esguerra, Danilo Baldivia and Paolo Tagabe attesting to the fact that their services were hired by respondent Paguio to paint the barangay sidewalk.[10]

Petitioner denied the allegations in his counter-affidavit and asserted that all financial transactions of the barangay, particularly the expenditures, were supported by pertinent documents and properly liquidated. He explained that the check covering the sum of P16,784.00, the object of the alleged misappropriation, had been properly liquidated with the submission of pertinent documents as of 26 June 2003.[11]

In his reply-affidavit, petitioner questioned the authenticity of the Justification in that his signature therein was forged.[12]

The OMB rendered judgment finding petitioner guilty of violation of Section 4(b) of R.A. No. 6713, the dispositive portion of which reads:

> WHEREFORE, finding respondent Barangay Chairman Rodomiel J. Domingo of Barangay 686, Zone 75, District V, Manila, GUILTY of violation of Section 4(b) of R.A. [No.] 6713, he should be meted the penalty of suspension from office for a period of six (6) months pursuant to Section 11 of the same Act.
>
> Let the charge for Dishonesty based on the alleged misappropriation of public funds against both respondents be DISMISSED without prejudice to its [refilling] upon finding of irregularities by the Office of the City Auditor of Manila in the barangay transactions after the completion of the audit.[13]

The charge of misappropriation was dismissed for being premature since the audit of the subject barangay transaction had not been concluded by the Office of the City Auditor. The OMB also dismissed the charge of falsification of public document on the ground that questions pertaining to the authenticity of a signature in a document necessitate judicial determination.[14] Respondents did not appeal from the dismissal of these charges.

However, petitioner was held administratively liable for the irregular submission of a falsified instrument to the Manila Barangay Bureau (MBB) in connection with his barangay's 2003 budget.

Petitioner filed a motion for reconsideration which the OMB denied on 11 October 2005.[15] The OMB reiterated that petitioner was not made administratively liable for falsification of the contested document but for the submission of the same. It explained that being the Chief Executive Officer of the barangay, petitioner assumes full responsibility on the propriety of all documents submitted in support of the proposed budget and thereafter made part of the records of the proper agency. Moreover, petitioner did not contest the certification appearing thereon as to the existence of the assailed document in the records of the barangay bureau.[16]

After denial of his motion for reconsideration, petitioner filed a petition for review with the Court of Appeals. The appellate court denied the petition and affirmed the OMB's decision in toto.

Aggrieved, petitioner filed the instant petition seeking the reversal of the Court of Appeals' decision on two grounds: first, that he cannot be held administratively liable for any act beyond his control and knowledge under R.A. No. 6713; and second, that the imposition of the penalty of six (6)-month suspension is excessive.

Petitioner argues that the act for which he was indicted is clearly beyond his knowledge and control. He stresses that he could not have possibly falsified his own signature. Moreover, he insists that if he indeed was responsible for the insertion of the Justification, he could have put his genuine signature instead of falsifying it. He also maintains that he has no access or control over the submission of documents relative to the release of funds for specific projects, as the responsibility rests either with the Barangay Secretary or Treasurer.[17] Finally, petitioner challenges his suspension from office as excessive in view of the fact that no undue injury or damage is done to the cause of public service, or to respondents themselves.[18]

The OMB maintains that its findings are supported by substantial evidence. The submission of a Justification which contains a false declaration runs afoul of the conduct a public servant must exhibit at all times, i.e., highest sense of honesty and integrity.

With respect to the penalty imposed, the graft office defends its propriety stressing that it is in accordance with R.A. No. 6713.[19]

Respondents merely echo the stance of the OMB with the argument that by submitting the falsified Justification in connection with the 2003 barangay budget, petitioner failed the mark of professionalism required of a Barangay Chairman.[20]

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Petitioner's fundamental point is that one can not be indicted for the submission of a document which he himself has repudiated. The Court of Appeals shared the OMB's view that petitioner had failed to controvert the existence of the Justification and its entry into the records of the MBB as certified by the Chief of its Barangay Assistance Unit.

While generally this Court may not review the factual findings of the Ombudsman, especially when affirmed by the Court of Appeals,[21] we take exception in this case as the findings are contradicted by the evidence on record.[22]

At the outset, petitioner had questioned the existence of the Justification, claiming that his purported signature thereon was forged. The OMB rightfully deferred ruling on the authenticity of the signature on the Justification on the ground that said finding necessitates a judicial determination. However, the OMB held petitioner liable for the submission of the Justification to the MBB. It explained that the failure of petitioner to contest the certification appearing on the Justification as to its existence in the records of the barangay bureau should lead to the conclusion that the document came from petitioner, he being the chief executive officer of the barangay. This conclusion is clearly non sequitur. It is also illogical. The OMB cannot defer ruling on the issue of falsification and in the same breadth not only assume the same document as falsified but on that assumption proceed to hold petitioner liable.

On the merits, the Court is also unconvinced that there is substantial evidence establishing petitioner's culpability. Petitioner had a hand in the preparation and submission of the documents in support of the budget, such as the 2003 barangay budget,[23] budget proposal,[24] barangay development plan for 2003,[25] and statement of income and expenditures for 2003.[26] In all these documents, the existence of the SK was recognized and corresponding allocations were made for it. With these attestations on petitioner's part, there is absolutely no rhyme or reason for him to issue the questioned Justification and attest to the non-existence of these SK officials, more so in light of respondents' assertion that he did so in connection with the process for the approval of this barangay's 2003 budget.

The sole evidence relied upon by the OMB in holding petitioner liable is the undated Justification. The handwritten entry "Copy Budget 2004"[27] as certified by the Chief of the MBB appears to be a clerical error because the Justification was ostensibly made in connection with the 2003 budget. The OMB stated that "the fact of whether or not the same (Justification) was intended for 2003 or 2004 budget is immaterial as the irregularity of its entry in the records of the barangay bureau was the issue." However, its entry into the barangay records was in itself questionable. In both cases, the submission of the Justification cannot be logically pinpointed to petitioner. If the Justification was intended for 2003, there would have been a gross inconsistency between the Justification and the documents relating to the 2003 budget submitted by petitioner. Likewise, if the Justification was intended for 2004, respondents should have presented the 2004 budget since the burden is on them to prove the charges against petitioner. But respondents failed to do so.

The Justification, if indeed it was officially submitted, was denominated as such and so submitted to justify the non-inclusion of the SK in the barangay budget. But the 2003 budget contained an appropriation item for the SK. Thus, if at all, the Justification is a stray and aberrant document which could not have emanated from petitioner.

The charge of violation of Section 4(b) of R.A. No. 6713 deserves further comment. The provision commands that "public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill." Said provision merely enunciates "professionalism as an ideal norm of conduct to be observed by public servants, in addition to commitment to public interest, justness and sincerity, political neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy

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and simple living. Following this perspective, Rule V of the Implementing Rules of R.A. No. 6713 adopted by the Civil Service Commission mandates the grant of incentives and rewards to officials and employees who demonstrate exemplary service and conduct based on their observance of the norms of conduct laid down in Section 4. In other words, under the mandated incentives and rewards system, officials and employees who comply with the high standard set by law would be rewarded. Those who fail to do so cannot expect the same favorable treatment. However, the Implementing Rules does not provide that they will have to be sanctioned for failure to observe these norms of conduct. Indeed, Rule X of the Implementing Rules affirms as grounds for administrative disciplinary action only acts "declared unlawful or prohibited by the Code." Rule X specifically mentions at least twenty-three (23) acts or omissions as grounds for administrative disciplinary action. Failure to abide by the norms of conduct under Section 4(b) of R.A. No. 6713 is not one of them.

Furthermore, there is obviously a denial of due process in this case. The due process requirement mandates that every accused or respondent be apprised of the nature and cause of the charge against him, and the evidence in support thereof be shown or made available to him so that he can meet the charge with traversing or exculpatory evidence.[28] A cursory reading of the complaint-affidavit does not reveal that petitioner was charged with violation of Section 4(b) of R.A. No. 6713. Likewise, in the OMB's Evaluation Report, the charges indicated were for malversation, falsification, dishonesty and grave misconduct.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated 20 September 2006 affirming the 1 August 2005 Decision of the Office of the Ombudsman is REVERSED AND SET ASIDE. The charge of violation of Section 4(b) of R.A. No. 6713 against petitioner is ordered DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Corona[*], Carpio Morales, and Brion, JJ., concur.

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[*]Additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 558.

[1] Rollo, pp. 16-27; Penned by Associate Justice Renato C. Dacudao, concurred in by Associate Justices Rosmari D. Carandang and Estela M. Perlas-Bernabe.

[2]Id. at 53.

[3] CA rollo, pp. 16-23; Presided by Lourdes S. Padre Juan, Graft Investigation and Prosecution Officer II.

[4]Section 4. Norms of Conduct of Public Officials and Employees.--(A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

x x x

(b) Professionalism.--Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue advantage.

x x x

[5]Ombudsman Records, pp. 1-3.

[6] Id. at 6.

[7] Id. at 4-5.

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[8]Id. at 6.

[9]Id. at 7.

[10]Id. at 8-11..

[11]Id. at 25-26.

[12]Id. at 44.

[13] CA rollo, p. 22.

[14] Id. at 20-21.

[15] Id. at 25-30.

[16] Id. at 35-36.

[17]Rollo, p. 9.

[18] Id. at 12.

[19]Id. at 79.

[20]Id. at 89.

[21] Gatmaitan v. Gonzales, G.R. No. 149226, 26 June 2006, 492 SCRA 591; Bedruz v. Office of the Ombudsman, G.R. No. 161077, 10 March 2006, 484 SCRA 452.

[22]Heirs of Dicman v. Cariño, G.R. No. 146459, 8 June 2006, 492 SCRA 591; PCL Manufacturing Industries Corporation v. Court of Appeals, G.R. No. 147970, 31 March 2006, 486 SCRA 214; Allied Banking Corporation v. Quezon City Government, G.R. No. 154126, 11 October 2005, 472 SCRA 303.

[23] Id. at 33-34.

[24]Id. at 35-40.

[25]Id. at 41-43.

[26] Id. at 45-46.

[27]Id. at 21.

[28] Buscaino v. Commission on Audit, 369 Phil. 886, 902 (1999).

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