

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. RICARDO EVANGELISTA, CONCEPCION MELICAN, GRACE LIMOS AND THE HON. COURT OF APPELAS (SIXTEENTH DIVISION) RESPONDENTS.

G.R. No. 177211. March 13, 2009

Ponente: TINGA, J.

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TINGA, J.:

Respondents Ricardo Evangelista, Concepcion Melican and Grace Limos (respondents) are the mayor, municipal treasurer and accountant respectively, of Aguilar, Pangasinan.

In this petition for certiorari and prohibition,[1] the Office of the Ombudsman assails the Court of Appeals' decision[2] dated March 23, 2007 setting aside the Ombudsman's order placing respondents under preventive suspension.

The facts follow.

In an affidavit-complaint dated November 13, 2006, Priscilla Villanueva, the Co-Chair of the Local School Board of Aguilar, accused the respondents of having misappropriated the Special Education Fund (SEF).[3] The complainant alleged that the three respondents had used the SEF to purchase speech kit tapes and textbooks without the approval of the Local School Board. She also alleged that the speech kit tapes and textbooks were not received by the recipients, as evidenced by attached certifications of principals and head teachers of different public schools within Aguilar debunking such receipt.[4] Villanueva specially pleaded that the respondents be preventively suspended.[5]

In an order dated January 9, 2007,[6] the Ombudsman placed respondents under preventive suspension for a period of four (4) months. The dispositive portion of the order reads:

WHEREFORE PREMISES CONSIDERED, it is most respectfully recommended that the request of complainant Priscilla B. Villanueva for the preventive suspension of the respondents be GRANTED. In accordance with Section 24, R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, respondents RICARDO EVANGELISTA, CONCEPCION MELICAN and GRACE LIMOS are hereby PREVENTIVELY SUSPENDED during the pendency of the case until termination, but not to exceed the total period of four (4) months, without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.

In accordance with Section 27, par. (1), R.A. No. 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order, unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall be interrupted within the period prescribed. The Honorable Secretary of the Interior and Local Government and Department of Finance are hereby directed to implement this Order immediately upon receipt hereof, and to notify this Office within five (5) days from said receipt of the status of said implementation.

SO ORDERED.[7]

The Ombudsman held that the proofs submitted by Villanueva showed strong evidence of guilt, that if duly proven the acts imputed against the respondents would constitute grave misconduct and dishonesty and that their continued stay in office would prejudice the fair and independent disposition of the case against them.

The suspension order was served on respondent Evangelista on January 13, 2007. Two (2) days later, the same process was effected on respondent Limos.

On January 17, 2007, respondents filed a petition for certiorari with the Court of Appeals assailing the order of the Ombudsman.[8] They claimed that they had been denied due process since they were never furnished with a copy of Villanueva's complaint. They also alleged that the unsubstantiated allegations of Villanueva do not constitute sufficient evidence to suspend them. Lastly, they averred that the order had been hastily issued.

The Court of Appeals granted the petition and set aside the order of the Ombudsman. The appellate court observed that even a cursory reading of the assailed order reveals that the requirements of R.A. No. 6770 were not complied with. It pointed out that under Section 26(2) of R.A. No. 6770, the Ombudsman is required to inform the accused of the charges; yet, the respondents learned of the charges against them only upon receipt of the suspension order. Rejecting the tenability of the preventive suspension order, the appellate ruled that the documents which could possibly be tampered were beyond the reach of the respondent as they had been kept in the custody of the Commission on Audit. In addition, the Court of Appeals found that there was haste in ordering the suspension since the Ombudsman signed the order prior to the Deputy Ombudsman's recommendation of approval.

Aggrieved by the decision of the appellate court, the Ombudsman assails the same before this Court via a petition for review on certiorari. The Ombudsman claims that the order complied with the two requirements in Section 24 of R.A. No. 6770, namely: the evidence of guilt being strong and the charge against such officer or employee involving as it does dishonesty, oppression or grave misconduct or neglect in the performance of duty. Furthermore, as the function of a petition for certiorari is to correct errors of jurisdiction, it can not include a review of the Ombudsman's factual findings. The Ombudsman also asserts that the reliance by the appellate court on Section 26(2) of R.A. No. 6770 is misplaced since a preventive suspension order has to satisfy only the requirements laid down in Section 24 of the same law. Finally, there is ample jurisprudence supporting the legality of a preventive suspension order issued even prior to the hearing of the charges.

In their defense, the respondents reiterate that they were denied due process when they were not informed of the charges against them prior to their preventive suspension. The irregularities concerning the SEF imputed to them are baseless, they add. They claim that Villanueva had effected the concoction and circulation of a bogus Special Prosecutor's order finding them guilty of grave misconduct and dishonesty, as well as recommending their dismissal from service. Lastly, they assert that the re-election of Evangelista has rendered the preventive suspension order moot and academic following the doctrine laid down in *Mayor Garcia v. Hon. Mojica*. [9]

The petition is meritorious.

There is a procedural matter that must first be resolved.

Generally, to challenge appellate court decisions reversing rulings of the Ombudsman in administrative cases, the special civil action for certiorari under Rule 65 is not the appropriate recourse. As the Ombudsman assails the appellate court's misapplication of the law, the proper remedy is a petition for review on certiorari under Rule 45. Errors of judgment committed by the appellate court are not correctible by a petition for certiorari.[10] Respondents, however, failed to raise this lapse of the Ombudsman as an error. In any event, the issues raised by

the Ombudsman merit a full-blown discussion. Thus, the Court opts to adopt a liberal construction of the Rules of Court, treating the petition for certiorari as a petition for review in order to avert a miscarriage of justice,[11] especially since the petition for certiorari was filed within the fifteen-(15) day period prescribed for a petition for review under Section 2, Rule 45 of the Rules of Court. Specifically, the petition was filed on April 13, 2007 or exactly 15 days after the Ombudsman received the decision on March 29, 2007.

Now, on the substantive aspects.

It is the consistent and general policy of the Court not to interfere with the Office of the Ombudsman's exercise of its investigatory and prosecutory powers.[12] The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well.[13] It is within the context of this well-entrenched policy that the Court proceeds to pass upon the validity of the preventive suspension order issued by the Ombudsman in this case.

As early as 1995, this Court ruled in *Lastimosa v. Vasquez*[14] and *Hagad v. Gozo-Dadole*,[15] that neither prior notice nor a hearing is required for the issuance of a preventive suspension order. The well-settled doctrine is solidly anchored on the explicit text of the governing law which is Section 24 of R.A. No. 6770. The provision defines the authority of the Ombudsman to preventively suspend government officials and employees. It reads:

SEC. 24. Preventive Suspension.--The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Clearly, the plain language of the above-quoted provision debunks the appellate court's position that the order meting out preventive suspension may not be issued without prior notice and hearing and before the issues are joined. Under Section 24, two requisites must concur to render the preventive suspension order valid. The first requisite is unique and can be satisfied in only one way. It is that in the judgment of the Ombudsman or the Deputy Ombudsman, the evidence of guilt is strong. The second requisite, however, may be met in three (3) different ways, to wit: (1) that the offense charged involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charge would warrant removal from the service; or (3) the respondent's continued stay in office may prejudice the case filed against him.

Undoubtedly, in this case, there is no showing of grave abuse of discretion on the Ombudsman's part in finding the evidence to be strong. In issuing the preventive suspension order, the Ombudsman considered the following: the Local Budget Preparation Form No. 151 indicating the balance of the SEF;[16] records from the office of the municipal accountant;[17] a letter dated December 13, 2004 of Villanueva to the Municipal Treasurer requesting clarification of the SEF balance;[18] status of appropriation, allotment and obligation of the SEF as of December 31, 2003;[19] SEF statement of income and expenses for 2003;[20] the letter of the municipal accountant to Mayor Evangelista enumerating the disbursements charged to the SEF which includes disbursements for speech kits and textbooks for 2003-2005;[21] certifications dated February 11, 2005 issued by principals and head teachers stating they did not receive speech kits nor text books for 2004-2005.[22]

The SEF was suddenly reduced to P343,763.30 from P783,937.60 without sufficient justification as revealed by this Court's evaluation of the Status of Appropriation, Allotment and Obligation as well as the Statement of Income and Expense, both certified as correct by respondent Limos no less.[23] Moreover, the certifications of numerous head teachers and principals that their schools did not receive the speech kits and textbooks are likewise strong evidence of dishonesty and grave misconduct on the respondents' part.[24] This is bolstered by the fact that no disbursement was authorized by the local school board.

In this case, the second requisite is satisfied by two circumstances. First, the offense definitely involves dishonesty, oppression or grave misconduct or neglect in the performance of duty. Second, the charge would warrant removal from the service.

Dishonesty is intentionally making a false statement in any material fact.[25] Per the findings of the Ombudsman, there is strong evidence that private respondents made false statements as to the status of the SEF as well as the purchase of speech kits and textbooks. Likewise, a mayor like any other local elective official may be removed from office for dishonesty, oppression, gross negligence or dereliction of duty in accordance with Section 60(c) of the Local Government Code. In regard to respondents Melican and Limos, both are members of the civil service under Section 22, Rule XIV of the Omnibus Rules of Civil Service, dishonesty is a grave offense punishable with dismissal even as a first offense.

The penalty of dismissal is reiterated in Civil Service Memorandum Circular No. 30, series of 1989,[26] and also in Civil Service Memorandum Circular No. 19, series of 1999.[27] Section 9, Rule XIV, Section 9 of the Omnibus Rules and the aforecited circulars likewise state that the penalty of dismissal from the service shall carry with it cancellation of civil service eligibility, forfeiture of leave credits and retirement benefits, and disqualification from any employment in the government service.[28]

The appellate court strangely juxtaposed the requisites found in Section 26 of R.A. No. 6770 governing inquiries by the Ombudsman with those found in Section 24 of the same law. Section 24 does not require that notice of the charges against the accused must precede an order meting out preventive suspension. While a preventive suspension order may stem from a complaint, the Ombudsman is not required to furnish the respondent with a copy of the complaint prior to ordering preventive suspension. The requisites for the Ombudsman to issue a preventive suspension order are clearly contained in Section 24 of R.A. No. 6770. The appellate court cannot alter these requirements by insisting that the preventive suspension order also meet the requisites found in Section 26 of the same law.

The appellate court's stance that there is no longer any reason for the preventive suspension of the respondents as the pertinent documents are with the Commission on Audit likewise has no merit. Respondents argue there is no reason for suspension pendente lite as they could no longer tamper with the evidence. This Court found a similar argument in *Bunye v. Escarreal*[29] devoid of merit. We reiterate the rule that the prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure non-intervention and noninterference from accused's camp.[30] Similar to Section 13 of Republic Act No. 3019, Section 24 of R.A. No. 6770 emphasizes the principle that a public office is a public trust.[31] Part and parcel of this principle is a presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.[32] Relatedly, the Ombudsman has full discretion to select which evidence it will gather and present, free from any interference.

This Court also holds that there was no undue haste on the Ombudsman's part in issuing the preventive suspension order. The fact that the Ombudsman signed the order prior to her Deputy Ombudsman's recommendation does not affect its validity. A review of Section 24 of R.A. No. 6770 reveals that the recommendation of the Deputy

Ombudsman is not a condition sine qua non for the Ombudsman to issue a preventive suspension order.

A preventive suspension is not a penalty and such an order when issued by the Ombudsman is accorded the highest deference unless the order violates Section 24 of R.A. No. 6770.[33]

A final note. The preventive suspension order insofar as Mayor Evagelista is concerned has been rendered moot and academic. The Mayor was re-elected and proclaimed during the May 2007 elections as evidenced by the certificate of canvass of votes and proclamation of winning candidates for the Municipality of Aguilar, Pangasinan.[34] This Court has consistently ruled that elective officials may not be held administratively liable for misconduct committed during a previous term of office.[35] The rationale for this rule is that it is assumed that the electorate returned the official to power with full knowledge of past misconduct and in fact condoned it. It should be stressed that this forgiveness only applies to the administrative liability; the State may still pursue the official in a criminal case.

WHEREFORE, the petition is partially GRANTED. The Decision dated March 23, 2007 of the Court of Appeals is REVERSED and SET ASIDE insofar as it refers to respondents Grace Limos and Concepcion Melican. The preventive suspension order issued by the Ombudsman on said respondents is AFFIRMED. Said Decision of the Court of Appeals is AFFIRMED with respect to respondent Ricardo Evangelista.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 2-26 with annexes.

[2] Justice Juan Q. Enriquez ponente, Justices Vicente S.E. Veloso and Marlene Gonzales-Sison members; id. at 28-37.

[3] CA rollo, pp. 59-63.

[4] Id. at 74-82.

[5] Id. at 62.

[6] CA rollo, pp. 16-24.

[7] Id. at 22-23.

[8] Id. at 2-15.

[9] G.R. 139043, September 10, 1999, 314 SCRA 207 .

[10] Villarule v. NLRC, 348 Phil. 427 (1998); Paa v. Court of Appeals, 347 Phil. 122 (1997); Meralco v. La Campana Food Products Inc., 317 Phil. 91 (1995), Azarcon v Sandiganbayan, 268 SCRA 747 (1997); B.F. Corporation v. Court of Appeals, 351 Phil. 507 (1998); Casil v. Court of Appeals, 349 Phil. 187 (1998).

[11] Rules of Court, Rule 1, Sec. 6.

[12] Estrada v. Desierto, G.R. No. 156160, 9 December 2004, 445 SCRA 655; Kara-an v. Office of the Ombudsman, G.R. No. 119990, 21 June 2004, 432 SCRA 457, 467.

[13] Alba v. Hon. Nitorreda, 325 Phil. 229 (1996); Knecht v. Hon. Desierto, 353 Phil. 494 (1998).

[14] 313 Phil. 358 (1995).

- [15] Hon. Hagad v. Hon. Gozo-Dadole, 321 Phil. 604 (1995).
- [16] CA rollo, p. 64.
- [17] Id. at 65.
- [18] Id. at 66.
- [19] Id. at 68.
- [20] Id. at 69.
- [21] Id. at 72-73.
- [22] Id. at 74-80.
- [23] Id. at 68.
- [24] Id.
- [25] Sevilla v. Gocon, 467 Phil. 512, 521 (2004).
- [26] Entitled Guidelines in the Application of Penalties in Administrative Cases.
- [27] Entitled REvised Uniform Rules on Administrative Cases in the Civil Service.
- [28] Civil Service Commission Memorandum Circular No. 19 (1999), Sec. 58, qualifies this further: " x x x unless otherwise provided in the decision."
- [29] G.R. No. 110216, September 10, 1993, 226 SCRA 332.
- [30] Id.
- [31] Dr. Beroña v. Sandiganbayan, 479 Phil. 182 (2004).
- [32] Rios v. The 2nd Division of the Sandiganbayan, 345 Phil. 85, 92 (1997).
- [33] Quimbo v. Gervacio, G.R. No. 155620, August 9, 2005, 466 SCRA 277, 282; Pimentel v. Garchitorena, G.R. Nos. 98340-42, 10 April 1982, 208 SCRA 122, 124 (1992); See Section 24, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws state that: SEC. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.
- [34] Rollo, p. 246.
- [35] Pascual v. Provincial Board, 106 Phil. 466 (1959); Lizares v. Hechanova, 17 SCRA 58 (1966); Aguinaldo v. Santos, G.R. No. 94115, 21 August 1992, 212 SCRA 768; Salalima v. Guingona, 326 Phil. 847 (1996); Mayor Garcia v. Hon. Mojica, 372 Phil. 892 (1999).

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