

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. VICTORIO N. MEDRANO, RESPONDENT.

G.R. No. 177580. October 17, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Challenged via Petition for Review on Certiorari are the Decision[1] dated June 29, 2006 and Resolution dated April 2, 2007 of the Court of Appeals in CA-G.R. SP No. 93165[2] which nullified the Decision dated July 19, 2004 of the Office of the Ombudsman (petitioner), as modified, finding Victorio N. Medrano (respondent) guilty of sexual harassment in the administrative complaint against him and dismissed the said complaint for lack of jurisdiction.

Sometime in May 2003, Ma. Ruby A. Dumalaog (Ma. Ruby), a teacher at Jacobo Z. Gonzales Memorial National High School in Biñan, Laguna (the school), filed a sworn letter-complaint[3] before the Office of the Ombudsman (for Luzon) charging her superior-herein respondent, Officer-In-Charge (OIC) of the school and concurrently the principal of San Pedro Relocation Center National High School in San Pedro, Laguna, with (1) violation of Republic Act (R.A.) No. 7877 (Anti-Sexual Harassment Act of 1995), docketed as OMB-L-C-03-0613-E (criminal case), and (2) grave misconduct, docketed as OMB-L-A-03-0488-E (administrative case).

The administrative complaint, in essence, alleged that in the afternoon of March 28, 2003, respondent made sexual advances on Ma. Ruby and abused her sexually.

In his Counter-Affidavit,[4] respondent denied the charge, claiming that it was "maliciously designed to harass and threaten him to succumb to Ma. Ruby's demand that she be given a regular teaching post." He thus prayed for the dismissal of the complaint.

While the administrative case was pending investigation, Ma. Ruby filed an Urgent Ex-Parte Motion for Preventive Suspension,[5] alleging that respondent was "using the powers of his office by utilizing his subordinates in harassing her." By Order[6] of July 29, 2003, petitioner granted the motion and ordered the preventive suspension of respondent for six (6) months without pay.

Respondent, this time assisted by counsel, Atty. Alan P. Cabaero, moved for the lifting of the preventive suspension Order on the ground that the evidence of his guilt is not strong.[7] It was denied.

Undaunted, respondent filed a Supplemental Motion for Reconsideration[8] alleging that the Schools Division Superintendent Lilia T. Reyes had already designated Hereberto Jose D. Miranda as the new OIC of the school in his stead, effective September 1, 2003. By Order[9] of October 16, 2003, petitioner lifted the preventive suspension Order.

By Decision[10] of July 19, 2004 rendered in the administrative case, petitioner adjudged respondent guilty of grave misconduct and imposed upon him the penalty of dismissal from the service.

With respect to the criminal case, petitioner, by Resolution[11] of July 19, 2004, found probable cause to indict respondent for violation of the Anti-Sexual Harassment Act of 1995. An information for violation of said Act, docketed as Criminal Case No. 29190 before the Metropolitan Trial Court (MeTC) of Biñan, Laguna, was in fact filed.

Respondent moved for reconsideration of petitioner's issuances in both cases. Respecting the administrative case,[12] he assailed not only the factual findings and conclusions of petitioner, but, for the first time, he challenged its jurisdiction over the case. He argued that under Section 9 of R.A. No. 4670 (the Magna Carta for Public School Teachers), an administrative complaint against a public school teacher should be heard by an investigating committee of the Department of Education Culture & Sports, now Department of Education (DepEd), composed of the school superintendent of the division where the teacher belongs, a representative from a teachers' organization, and a supervisor of the division. He thus prayed for the dismissal of the administrative case as petitioner has no jurisdiction over it.

By Joint Order[13] of April 8, 2005, petitioner affirmed its Resolution in the criminal case but modified its Decision in the administrative case by finding respondent guilty of sexual harassment, instead of grave misconduct, and meted on him the penalty of suspension from the service for one (1) year, without pay.

Dissatisfied, respondent filed a Petition for Review (with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[14] before the Court of Appeals, assailing petitioner's decision in the administrative case, attributing to it grave abuse of discretion amounting to lack or excess of jurisdiction when it

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I

. . . assumed jurisdiction over the administrative case against petitioner, although under R.A. 4670, otherwise known as the Magna Carta for Public School Teachers, only the appropriate committee of the Department of Education has exclusive jurisdiction to hear and try administrative complaints against public school teachers.

II

. . . denied him his right to present before the Graft Investigation Officer the text messages sent by complainant which would have established the fact that the sexual harassment charge did not actually happen. x x x

III

. . . totally ignored his overwhelming evidence positively establishing his presence in another place at the time the alleged acts of sexual harassment were committed against complainant.

IV

. . . found him guilty of sexual harassment and imposed upon him the penalty of one (1) year suspension from the service.[15] (Underscoring supplied)

By the now assailed Decision of June 29, 2006, the appellate court annulled petitioner's July 19, 2004 Decision, as modified, in the administrative case and dismissed the complaint on the sole ground that petitioner has no jurisdiction over it. It held that although respondent raised the issue of jurisdiction only after petitioner rendered an adverse decision, "the rule on estoppel will not apply against [Medrano]" because such jurisdictional issue was raised "when the case was still before the Ombudsman." [16] It thus found no need to address the other issues raised by respondent.

Petitioner's Motion for Reconsideration[17] of the appellate court's Decision was denied by Resolution[18] of April 2, 2007, hence, the present Petition for Review on Certiorari.

Petitioner contends that the Court of Appeals erred in not ruling that it (petitioner) has concurrent jurisdiction with the DepEd over the administrative complaint against respondent.[19]

Instead of filing a comment on the present petition as directed, respondent filed a Manifestation With Motion In Lieu Of Comment[20] praying that "the instant petition be dismissed for being moot and academic" in view of the execution of an Affidavit of Desistance[21] by Ma. Ruby on September 17, 2007 before Assistant Provincial Prosecutor Ramonito Delfin of Biñan, Laguna, as well as the Order[22] of even date issued by the MeTC of Biñan dismissing the criminal case[23] against him due to her lack of interest to prosecute the case.

In her Affidavit of Desistance, Ma. Ruby stated, inter alia:

- That in retrospect and after an objective and sincere review of the events that led to the filing of the instant cases [referring to the criminal and administrative cases], I am now fully enlightened that said incident was just a product of mistake of fact and clear misunderstanding between me and the accused/respondent, who after all, was not actually criminally nor immorally motivated to do any form of offense/harm to my person. Thus, I am now retracting everything I said against the accused/respondent in my letter-complaint with the Office of the Ombudsman dated May 13, 2003, which became the basis for the filing of the criminal and administrative cases against him;
- That x x x, I am no longer interested in pursuing the criminal and administrative cases I filed against Mr. Victorio N. Medrano, and is now requesting the Honorable Court [referring to the trial court in the criminal case], the Office of the Ombudsman or the Honorable Supreme Court with whom the administrative case is pending, to dismiss the said cases. (Underscoring supplied)

Petitioner opposes respondent's move, contending that Ma. Ruby's Affidavit of Desistance and the dismissal of the criminal case do not constitute legal bases for dismissing the present petition and the administrative complaint.

The issues for resolution are:

- Whether the petition has become moot and academic, Ma. Ruby having executed an affidavit of desistance and the criminal case having been dismissed due to her lack of interest to prosecute the same;
- Whether petitioner has jurisdiction over the administrative complaint against respondent; and
- Whether respondent is estopped to question petitioner's assumption of jurisdiction over the administrative complaint.

With respect to the first issue, the Court holds in the negative.

The flaw in respondent's argument that the execution of Ma. Ruby's Affidavit of Desistance and the dismissal of the criminal case must result in the dismissal of the administrative case is that it ignores the whole of a difference between those two remedies. In *Gerardo R. Villaseñor and Rodel A. Mesa v. Sandiganbayan and Louella Mae Oco-Pesquerra* (Office of the Special Prosecutor, Ombudsman),[24] the Court stressed the distinct and independent character of the remedies available to an offended party against any impropriety or wrongdoing committed by a public officer, thus:

Significantly, there are three kinds of remedies available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereat, as different degrees of evidence are required in these several actions. In criminal cases, proof

beyond reasonable doubt is needed, whereas a mere preponderance of evidence will suffice in civil cases. In administrative cases, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of the criminal proceedings. (Underscoring supplied)

At any rate, an affidavit of desistance (or recantation) is, as a rule, viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.[25] And there is always the probability that it would later be repudiated, and criminal prosecution would thus be interminable.[26] Hence, such desistance, by itself, is not usually a ground for the dismissal of an action once it has been instituted in court.[27]

The suspicious and unreliable nature of Ma. Ruby's Affidavit of Desistance is evident. Firstly, her affidavit was executed only on September 17, 2007 or more than three (3) years after petitioner had rendered its July 19, 2004 Decision, as modified by its Joint Order of April 8, 2005 finding respondent guilty of sexual harassment. Secondly, unlike her six-page sworn letter-complaint of May 13, 2003 wherein she narrated in her own Pilipino dialect the factual details of respondent's acts complained of, Ma. Ruby's one-page Affidavit of Desistance is couched in English with legal terms and conclusions only one with a trained legal mind can formulate, e.g., "I am now fully enlightened that said incident was just a product of mistake of fact and clear misunderstanding between me and the accused/respondent, who after all, was not actually criminally nor immorally motivated to do any form of offense/harm to my person." Thirdly, Ma. Ruby's Affidavit is bereft of any factual particulars, engendering more questions that bolster its unreliability, e.g.: What was the "misunderstanding" between her and respondent? How was she "fully enlightened" about the whole incident? How did she arrive at her conclusion that he "was not actually criminally nor immorally motivated to do any form of offense/harm" against her person?

In fine, the bases of respondent's plea to have the present petition dismissed do not obliterate his liability in the administrative case subject of the present petition.

In resolving the second issue - whether petitioner has jurisdiction over the administrative complaint against respondent - it is necessary to examine the source, nature and extent of the power and authority of the Ombudsman vis-à-vis the provisions of the Magna Carta for Public School Teachers.

Section 5, Article XI of the Constitution "created the independent Office of the Ombudsman." Hailed as the "protectors of the people," the Ombudsman and his Deputies are bestowed with overreaching authority, powers, functions, and duties to act on complaints against public officials and employees, as provided in Sections 12 and 13 thereof, thus:

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.

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

- (1) 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;
- (2) 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;

(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;

(4) 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;

(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 when circumstances so warrant and with due prudence;

(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; and

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law. (Underscoring supplied)

The above enumeration of the Ombudsman's far-reaching powers is not exclusive as the framers of the Constitution gave Congress the leeway to prescribe, by subsequent legislation, additional powers, functions or duties to the Ombudsman, as mandated in Section 13(8), quoted above.

Pursuant to the constitutional command, Congress enacted R.A. No. 6770 (The Ombudsman Act of 1989) providing for the functional, structural organization, and the extent of the administrative disciplinary authority of the petitioner.[28] The provisions of this law "apply to all kinds of malfeasance, misfeasance, and nonfeasance" committed by any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, "during his tenure in office." [29] The acts or omissions which the petitioner may investigate are quite extensive:

SEC. 19. Administrative Complaints.- The Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;

(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.

Its mandate is not only to "act promptly on complaints" against such public officers or employees, but also to "enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people." [30]

R.A. No. 6770, however, restrains the petitioner from exercising its disciplinary authority "over officials who may be removed only by impeachment or over Members of Congress and the Judiciary," thus:

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.

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. (Underscoring supplied)

The above constitutional and statutory provisions taken together reveal the manifest intent of the lawmakers to bestow upon the petitioner full administrative disciplinary power over public officials and employees except those impeachable officials, Members of Congress and of the Judiciary.

When an administrative charge is initiated against a public school teacher, however, Section 9 of the Magna Carta for Public School Teachers specifically provides that the same shall be heard initially by an investigating committee composed of the school superintendent of the division, as chairman, a representative of the local or, in its absence, any existing provincial or national teachers' organization, and a supervisor of the division, as members, thus:

SEC. 9. Administrative Charges. - Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding Schools Superintendent of the Division or a duly authorized representative who should at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teachers' organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings and recommendations to the Director of Public Schools within thirty days from termination of the hearings; Provided, however, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education. (Underscoring supplied)

In *Fabella v. Court of Appeals*,^[31] the Court held:

The legislature enacted a special law, RA 4670 known as the Magna Carta for Public School Teachers, which specifically covers administrative proceedings involving public schoolteachers. Section 9 of said law expressly provides that the committee to hear public schoolteachers' administrative cases should be composed of the school superintendent of the division as chairman, a representative of the local or any existing provincial or national teachers' organization, and a supervisor of the division. x x x.

x x x x

The aforementioned Section 9 of RA 4670, therefore, reflects the legislative intent to impose a standard and a separate set of procedural requirements in connection with administrative proceedings involving public schoolteachers. x x x. (Emphasis and underscoring supplied)

Significantly, The Ombudsman Act of 1989 recognizes the existence of some "proper disciplinary authorit[ies]," such as the investigating committee of the DepEd mentioned in Section 9 of the Magna Carta for Public School Teachers. Thus, Section 23 of The Ombudsman Act of 1989 directs that the petitioner "may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against

erring public officers or employees." [32]

In light of this, the Court holds that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the DepEd.

In the instant case, respondent, although designated as then OIC of a public school and concurrently the school principal of another public school, is undoubtedly covered by the definition of the term "teacher" under the second paragraph of Section 2 of the Magna Carta for Public School Teachers which provides:

SEC 2. Title - Definition.- This Act shall x x x apply to all public school teachers except those in the professorial staff of state colleges and universities.

As used in this Act, the term 'teacher' shall mean all persons engaged in the classroom, in any level of instruction; on full time basis, including guidance counselors, school librarians, industrial arts or vocational instructors, and all other persons performing supervisory and/or administrative functions in all schools, colleges and universities operated by the Government or its political subdivisions; but shall not include school nurses, school physicians, school dentists, and other school employees. (Underscoring supplied)

Thus, the administrative complaint against respondent should have been referred by petitioner to the proper committee of the DepEd for the institution of appropriate administrative proceedings, in light of Section 23 of The Ombudsman Act of 1989.

This brings the Court to the third issue. While petitioner should have desisted from hearing the administrative complaint against respondent and referred it to the proper DepEd committee, given that it had already concluded the proceedings and had rendered a decision thereon, respondent is now barred from assailing petitioner's acts under the principle of estoppel. He had actively participated in the administrative proceedings before petitioner. In his Counter-Affidavit, he asked petitioner for affirmative relief by seeking the dismissal of the administrative complaint allegedly for being baseless. [33] From then on, he was assisted by counsel in filing several motions. When he was preventively suspended for six months without pay, he filed a Motion for Reconsideration praying that "a new Order be issued reversing or setting aside the preventive suspension Order." [34] When this was denied, he again filed a Supplemental Motion for Reconsideration [35] for the lifting of his suspension since he was already replaced as OIC, which motion was granted. It was only after petitioner had rendered an adverse Decision that he, in a Motion for Reconsideration, impugned petitioner's assumption of jurisdiction over his case. Verily, respondent cannot be permitted to challenge petitioner's acts belatedly.

In applying the principle of estoppel in *Alcala v. Villar*, [36] the Court held:

Respondent Jovencio D. Villar is the School Principal of Lanao National High School, Pilar, Cebu City. In February 1998, x x x, teachers of Lanao National High School, x x x, filed with the Office of the Ombudsman an administrative complaint against respondent for dishonesty.

x x x x

On June 22, 1999, the Office of the Ombudsman issued a resolution finding respondent guilty of dishonesty and dismissing him from the service. x x x.

On appeal, the Court of Appeals nullified and set aside the decision of the Office of the Ombudsman on the ground that the latter was without jurisdiction over the administrative complaints against public school teachers. It ruled that the governing law is Republic Act No. 4670, otherwise known as the Magna Carta for Public School Teachers, and not Republic Act No. 6770, the Ombudsman Act of 1989. x x x.

x x x x

x x x, in *Fabella v. Court of Appeals*, it was ruled that R.A. No. 4670, the Magna Carta for Public School Teachers, specifically covers and governs administrative proceedings involving public school teachers. x x x.

x x x x

The foregoing notwithstanding, the Court of Appeals erred when it nullified the proceedings before the Office of the Ombudsman. x x x. In *Emin v. De Leon*, a public school teacher was administratively charged with and found guilty of dishonesty under P.D. No. 807 (Civil Service Law). The Supreme Court ruled that R.A. No. 4670, the Magna Carta for Public School Teachers, is the applicable law and that the Civil Service Commission does not have jurisdiction over the administrative case. Nevertheless, the Court affirmed the dismissal from the service of the public school teacher as the latter was found to have been sufficiently afforded due process. x x x. Thus -

However, at this late hour, the proceedings conducted by the public respondent CSC can no longer be nullified on procedural grounds. Under the principle of estoppel by laches, petitioner is now barred from impugning the CSC's jurisdiction over his case.

x x x x

As held previously, participation by parties in the administrative proceedings without raising any objection thereto bars them from raising any jurisdictional infirmity after an adverse decision is rendered against them. x x x. Notably, in his Counter-Affidavit, petitioner himself invoked the jurisdiction of the Civil Service Commission by x x x further praying for 'any remedy or judgment which under the premises are just and equitable.' It is an undesirable practice of a party participating in the proceedings, submitting his case for decision and accepting the judgment only if favorable, but attacking it for lack of jurisdiction when adverse.

x x x x

In the same vein, respondent in the case should be barred under the principle of estoppel by laches from assailing the jurisdiction of the Ombudsman. Therefore, the Court of Appeals should have resolved the appeal on its merits, x x x. (Emphasis and underscoring supplied)

The ruling by the Court of Appeals that estoppel will not apply against respondent because he raised the issue of jurisdiction "when the case was still before the Ombudsman"[37] is thus bereft of merit.

The appellate court's citation of *Duero v. Court of Appeals*[38] in which this Court held that the therein private respondent Duero was not estopped from questioning the RTC jurisdiction, despite his active participation in the proceedings before it, is misplaced. For Duero involved lack of jurisdiction. The present case involves concurrent jurisdiction.

WHEREFORE, the petition is GRANTED. The assailed Court of Appeals Decision of June 29, 2006 and Resolution of April 2, 2007 in CA-G.R. SP No. 93165 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals which is directed to decide the case on the merits.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., Concur.

[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente; CA rollo, pp. 238-246.

[2] Entitled "*Victorino N. Medrano v. Ma. Ruby A. Dumalaog and Hon. Dep. Ombudsman for Luzon Victor C. Fernandez.*"

[3] CA rollo, pp. 25-30.

[4] Id. at 42- 49.

[5] Id. at 37-38.

[6] Id. at 40-41.

[7] Id. at 77-80.

[8] Id. at 107-109.

[9] Id. at 117-119.

[10] Id. at 120-128.

[11] Id. at 129-138.

[12] Id. at 139-152.

[13] In this Joint Order, Atty. Adoracion A. Agbada, Graft Investigation & Protection Officer II, Office of the Ombudsman, proposed the denial of respondent's separate motions for reconsideration of the July 19, 2004 Decision, but the proposal was modified by Deputy Ombudsman for Luzon Victor C. Fernandez as indicated in his marginal note therein, stating: "With modification. Pls. see Memorandum of Dir. Gonzales dated May 27, 2005." (Id. at 192-197) The Memorandum referred to contains the following recommendation:

"WHEREFORE, PREMISES CONSIDERED, it most respectfully recommended that the proposed Joint Order dated 08 April 2005 insofar as the recommendation in the criminal aspect is concerned be APPROVED. On the other hand, the recommendation with respect to the administrative case be DISAPPROVED. Respondent Victorio N. Medrano is hereby found guilty of SEXUAL HARASSMENT under Republic Act No. 7877 and hereby meted the penalty of ONE (1) YEAR SUSPENSION FROM OFFICE WITHOUT PAY." (Id. at 198-200).

[14] Id. at 2-24.

[15] Id. at 10-11.

[16] Id. at 38, 41.

[17] Id. at 244.

[18] Id. at 275-276.

[19] Petition, rollo, p. 13.

[20] Id. at 72-73.

[21] Appended to the Manifestation With Motion In Lieu Of Comment, id. at 74.

[22] Id. at 75.

[23] The acts complained of in the criminal case arose from the same incident subject of the instant administrative case.

[24] G.R. No. 180700, March 4, 2008. Vide Paredes v. Court of Appeals, G.R. No. 169534, July 30, 2007, 528 SCRA 577, 587-592; Barillo v. Gervacio, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 571-574; Ocampo v. Office of the Ombudsman, 379 Phil. 21 (2000); Paredes, Jr. v. Sandiganbayan, 322 Phil. 709, 730-731 (1996);

Tan v. Commission on Elections, 237 Phil. 353, 359 (1994).

[25] Victoriano v. People, G.R. Nos. 171322-24, November 30, 2006, 509 SCRA 483, 491-492.

[26] Id., citing People v. Ramirez, Jr., G.R. Nos. 150079-80, June 10, 2004, 431 SCRA 666, 676.

[27] Id. at 677.

[28] Office of the Ombudsman v. Court of Appeals, G.R. No. 160675, June 16, 2006, 491 SCRA 92, 110, citing Acop v. Office of the Ombudsman, 248 SCRA 566 (1995).

[29] Section 16 of R.A. No. 6770 provides:

"SEC. 16. Applicability.- The provisions shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure in office."

[30] Section 13 of R.A. No. 6770 provides:

"SEC. 13. Mandate.- The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people." (Underscoring supplied)

[31] 346 Phil. 940, 953, 955-956 (1997), reiterated later in Emin v. Chairman De Leon, 428 Phil. 172, 184 (2002) and in Alcala v. Villar, 461 Phil. 617 (2003).

[32] Section 23 of the law provides:

"SEC. 23. Formal Investigation.- (1) Administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.

"(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, x x x.

x x x x." (Underscoring supplied)

[33] CA rollo, p. 49.

[34] Id. at 77, 79.

[35] Id. at 107-110.

[36] Supra note 31 at 620-626.

[37] Assailed CA Decision of June 29, 2006, rollo, p. 41.

[38] 424 Phil. 12 (2002).

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