

THE OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ALEX M. VALENCERINA, RESPONDENT.

G.R. No. 178343. July 14, 2014

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for certiorari[1] are the Resolutions dated June 15, 2006[2] and April 24, 2007[3] of the Court of Appeals (CA) in CA-G.R. SP No. 91977 which enjoined the execution of the Order[4] dated June 8, 2005 of Ombudsman Simeon V. Marcelo in OMB-ADM-0-00-0547, pending appeal.

The Facts

Sometime in October 1997, Ecobel Land, Inc. (Ecobel) through its Chairman, Josephine Boright (Boright), applied for a medium term loan financial facility with the Government Service Insurance System (GSIS) Investment Management Group (or Finance Group) to finance the construction of its condominium project in Ermita, Manila (project).[5] The loan application was denied due to the following grounds: (a) the collateral was insufficient; (b) Ecobel did not have the needed track record in property development; and (c) the loan was sought during the Asian financial crisis.[6]

Intent on pursuing the project, Ecobel, this time, applied for asurety bond with the GSIS to guarantee the re-payment of the principal loan obligation to be procured with the Philippine Veterans Bank (PVB).[7] Ecobel's application was "APPROVED in principle subject to analysis/evaluation of the project and the offered collaterals." [8]

In a Memorandum[9] dated January 27, 1998, respondent Alex M. Valencerina (Valencerina), then Vice-President for Marketing and Support Services of the GSIS General Insurance Group (GIG), submitted Ecobel's Guarantee Payment Bond application for evaluation and endorsement of the GSIS Investment Committee (INCOM). In the said Memorandum, Valencerina made it appear that Ecobel's application was fully secured by reinsurance and real estate collaterals,[10] and that its approval was urgent considering Ecobel's limited time to avail of the loan from the funder.[11] Such memorandum was coursed through GIG Senior Vice-President, Amalio A. Mallari (Mallari), who scribbled thereon his own endorsement, stating "Strongly reco. based on info and collaterals herein stated." [12]

On March 10, 1998, the INCOM approved Ecobel's application[13] and GSIS Surety Bond G(16) GIF Bond 029132[14] dated March 11, 1998 (subject bond) was correspondingly issued indicating the following parties: Ecobel, represented by its Chairman, Boright, as principal (obligor), PVB as obligee, and Mallari, in representation of the GSIS General Insurance Fund, the purpose of which was to guarantee the repayment of the principal and interest on the loan granted to the principal through the obligee to be used for the construction of the project.[15]

Later, however, or on November 19, 1998, GSIS President and General Manager Federico Pascual issued a

memorandum suspending the processing and issuance of guaranty payment bonds.[16] Accordingly, Valencerina prepared a cancellation notice to Ecobel for Mallari's signature, but was told that the subject bond could no longer be cancelled because it was already a "done deal." [17] Thus, upon the request of Mallari, Valencerina signed a Certification dated January 14, 1999, stating that the subject bond: (a) was genuine and authentic; (b) constituted a valid and binding obligation on the part of GSIS; and (c) may eventually be transferred to Bear, Stearns International, Ltd. (BSIL), Aon Financial Products, Inc. or any of their assignees, subject to the prior written or facsimile notification to the GSIS by the current obligee, PVB, and that confirmation or approval from GSIS is not required.[18] Said certification further stated that GSIS had no counterclaim, defense or right of set-off with respect to the subject bond, provided that drawing conditions (covered in a separate certification)[19] have been satisfied.[20]

Notwithstanding the issuance of the subject bond on March 11, 1998, Ecobel paid its yearly premium only on February 9, 1999 through a postdated check dated February 26, 1999, and thereon submitted the certificates of title for the collaterals required therefor. However, the certificate of title of the major collateral (situated in Lipa City, Batangas), i.e., Transfer Certificate of Title No. 66289, was eventually found to be spurious.[21]

Consequently, Valencerina, in the letters[22] dated February 12 and 24, 1999 informed Boright that the subject bond was "invalid and unenforceable" and that Ecobel's check payment was disregarded by the GSIS. Despite the bond cancellation notices, Ecobel was still able to secure a US\$10,000,000.00 loan from BSIL using the subject bond.[23] Thereafter, it offered to pay the bond premiums to the GSIS London Representative Office, which was accepted by Vice-President for International Operations of the GIG, Fernando U. Campaña[24] (Campaña), who was neither furnished copies nor informed of the cancellation of the subject bond.[25]

Ecobel defaulted in the payment of its loan, prompting BSIL to serve upon it a notice of default and its intention to recover the repayment amount under the terms of their loan agreement and the subject bond. The GSIS was similarly advised.[26]

In a Certification dated March 20, 2000, PVB Executive President and Chief Operating Officer Florencio Z. Sioson declared that PVB did not accept the proposal for it to be named obligee under the subject bond and that there was no contract between Ecobel and PVB.[27]

In view of the foregoing events, the GSIS conducted an investigation on the circumstances surrounding the processing and issuance of the subject bond[28] and forwarded its report to the Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman (OMB), which then conducted its own fact-finding investigation.[29] On May 31, 2000, the FFIB issued a Fact Finding Report,[30] recommending the filing of appropriate criminal and administrative charges against the concerned GSIS officials[31] including Valencerina. Accordingly, an administrative case was filed against the said officials for Gross Neglect of Duty, and Inefficiency and Incompetence in the Performance of Official Duties before the OMB, docketed as OMB-ADM-0-00-0547.

The OMB Proceedings

In a Decision[32] dated January 27, 2005, the OMB Preliminary Investigation and Administrative Adjudication Bureau-B (PIAB-B) found Valencerina, among others, guilty of gross neglect of duty, and inefficiency and incompetence in the performance of official duties, and ordered his dismissal from service with the accessory penalties provided for under Sections 57 and 58 of the Uniform Rules on Administrative Cases.[33]

In an Order[34] dated June 8, 2005 (June 8, 2005 Order), Ombudsman Simeon V. Marcelo modified the PIAB-B decision, among others, finding Valencerina guilty, instead, of grave misconduct, but imposing the same

penalties.

Valencerina moved for reconsideration but was, however, denied in an Order[35] dated September 1, 2005. Dissatisfied, he filed before the CA a petition for review[36] under Rule 43 of the Rules of Court (Rules), with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against the execution of the June 8, 2005 Order.

The CA Proceedings

On November 22, 2005,[37] the CA issued a 60-day TRO which expired on January 21, 2006.[38]

Subsequently, in an Order[39] dated April 25, 2006, Ombudsman Ma. Merceditas N. Gutierrez directed GSIS President and General Manager Winston F. Garcia to execute the June 8, 2005 Order. Thus, in a Memorandum[40] dated June 8, 2006, the GSIS informed Valencerina that he is “deemed dismissed from the service as of the close of office hours” that day.

Aggrieved, Valencerina filed an Urgent Motion for Issuance of Writ of Preliminary Mandatory Injunction[41] with the CA, which, finding the necessity to preserve the status quo between the parties,[42] granted the same in a Resolution[43] dated June 15, 2006 (June 15, 2006 Resolution). Consequently, the corresponding writ of preliminary injunction[44] was issued on June 20, 2006, and in a Memorandum[45] dated June 21, 2006, the GSIS directed Valencerina to return to work.

At odds with the return directive, the OMB filed a motion for reconsideration[46] of the June 15, 2006 Resolution which was denied in a Resolution[47] dated April 24, 2007. The CA pointed out that “[u]nder Rule 43 of the [Rules], an appeal shall not stay the judgment to be reviewed unless the [CA] shall direct otherwise,”[48] and that it has resolved to stay the assailed judgment and orders during the pendency of the case.

Unperturbed, the OMB filed the instant petition for certiorari.

The Issue Before the Court

The essential issue in this case is whether or not the CA committed grave abuse of discretion in issuing the writ of preliminary injunction.

The Court’s Ruling

There is merit in the petition.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman[49] (Section 7, Rule III), as amended by Administrative Order No. 17 dated September 15, 2003, provides that the office’s decision imposing the penalty of removal, among others, shall be executed as a matter of course and shall not be stopped by an appeal thereto, viz.:

Section 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphases and underscoring supplied)

Based on the afore-quoted provision, it is clear that the OMB's June 8, 2005 Order imposing the penalty of removal on Valencerina was immediately executory, notwithstanding the pendency of his appeal. The general rule on appeals from quasi-judicial bodies stated under Section 12, Rule 43 of the Rules – which provides that “[t]he appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just” – would not apply in this case for the following reasons:

First, Section 3,[50] Rule V of the OMB Rules of Procedure provides that the Rules may apply suppletorily or by analogy only when the procedural matter is not governed by any specific provision in the said rules. Here, and as earlier conveyed, Section 7, Rule III categorically provides that an appeal shall not stop the office's decision imposing the penalty of removal, among others, from being executory.

Second, it is a fundamental legal principle that when two rules apply to a particular case, that which was specially designed for the said case must prevail over the other. Evidently, the aforesaid Section 7, Rule III is a special rule applicable to administrative complaints cognizable by the OMB,[51] while Section 12, Rule 43 of the Rules applies to appeals from quasi-judicial bodies[52] in general, including the OMB. Thus, as between the two rules, Section 7, Rule III should prevail over the application of Section 12, Rule 43 of the Rules in appeals from a decision of the OMB in an administrative case. As held in the case of *OMB v. Samaniego*:[53]

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.[54]

Third, the OMB is constitutionally authorized to promulgate its own rules of procedure.[55] This is fleshed out in Sections 18 and 27 of Republic Act No. (RA) 6770,[56] otherwise known as “The Ombudsman Act of 1989,” which empower the OMB to “promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties” and to accordingly amend or modify its rules as the interest of justice may require. As such, the CA cannot stay the execution of decisions rendered by the said office when the rules the latter so promulgates categorically and specifically warrant their enforcement, else the OMB's rule-making authority be unduly encroached and the constitutional and statutory provisions providing the same be disregarded.[57]

Fourth, the previous ruling in *Lapid v. CA*[58] (as quoted in *Lopez v. CA*[59] and *OMB v. Laja*[60]) wherein the Court, relying on the old OMB Rules of Procedure, i.e., Administrative Order No. 7 dated April 10, 1990, had opined that “the fact that the [Ombudsman Act] gives parties the right to appeal from [the OMB's] decisions should generally carry with it the stay of these decisions pending appeal,”[61] cannot be successfully invoked by Valencerina in this case for the reason that the said pronouncement had already been superseded by the more recent ruling in *Buencamino v. CA*[62](*Buencamino*). In *Buencamino*, the Court applied the current OMB Rules of Procedure, i.e., Administrative Order No. 17 dated September 15, 2003, which were already in effect at the time the CA assailed Resolutions dated June 15, 2006 and April 24, 2007 were issued, and, hence, governing. The pertinent portions of the *Buencamino* ruling are hereunder quoted for ready reference:

In interpreting the above provision, this Court held in *Laja*, citing *Lopez* that “only orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalties of public censure, reprimand or suspension of not more than one month or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision. It is only then that execution shall perforce issue as a matter of right. The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory.”

However, as aptly stated by the Office of the Ombudsman in its comment, Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

Sec. 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Clearly, considering that an appeal under Administrative Order No. 17, the amendatory rule, shall not stop the Decision of the Office of the Ombudsman from being executory, we hold that the Court of Appeals did not commit grave abuse of discretion in denying petitioner’s application for injunctive relief.[63] (Emphases and underscoring supplied, with those in the original omitted)

Lastly, it must be emphasized that the OMB Rules of Procedure are only procedural. Hence, Valencerina had no vested right that would be violated with the execution of the OMB’s removal order pending appeal. In fact, the rules themselves obviate any substantial prejudice to the employee as he would merely be considered under preventive suspension, and entitled to the salary and emoluments he did not receive in the event he wins his appeal. As aptly pronounced in *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong*, in the latter’s capacity as Sec. of DPWH:[64]

[T]he Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.[65]

Based on the foregoing reasons, the CA’s Resolutions granting Valencerina’s prayer for a writ of preliminary injunction staying the execution of the Ombudsman’s June 8, 2005 Order are therefore patently erroneous and,

thus, tainted with grave abuse of discretion. As jurisprudence dictates, grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence,[66] as in this case.

WHEREFORE, the petition is GRANTED. The Resolutions dated June 15, 2006 and April 24, 2007 of the Court of Appeals in CA-G.R. SP No. 91977 are hereby REVERSED and SET ASIDE. The Writ of Preliminary Injunction dated June 20, 2006 issued in the said case is LIFTED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Mendoza,[*] JJ., concur.

[*] Designated Additional Member per Raffle dated July 9, 2014.

[1] Rollo, pp. 6-50.

[2] Id. at 52-A to 52-C. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Mario L. Guariña III and Arcangelita M. Romilla-Lontok, concurring.

[3] Id. at 57-58. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Lucas P. Bersamin (now Supreme Court Associate Justice) and Arcangelita M. Romilla-Lontok, concurring.

[4] Id. at 91-93.

[5] Id. at 9.

[6] Id. See also OMB records, Folder 1, p. 4.

[7] Id.

[8] OMB records, Folder 2, p. 2.

[9] Id. at 7-9.

[10] Id. at 8.

[11] Id. at 9.

[12] Rollo, p. 63.

[13] Id.

[14] OMB records, Folder 2, pp. 10-11.

[15] Rollo, pp. 63-64.

[16] OMB records, Folder 1, p. 7.

[17] Id.

[18] Id.

[19] A Certification dated March 30, 1998 set forth the “Drawing Conditions” as follows: (1) presentation of original surety bond to GSIS at its office in either Manila or London; together with; (2) presentation of a demand for payment stating non-payment in full or in part by the Bond Principal; and (3) notification of assignment to GSIS of US Dollar Loan obligations of the Bond Principal. (Id.)

[20] Id.

[21] Rollo, p. 64.

[22] OMB records, Folder 2, pp. 16-17.

[23] OMB records, Folder 1, pp. 8-9.

[24] “Campana” in some parts of the records.

[25] Rollo, p. 65. See also OMB records, Folder 1, p. 9.

[26] Rollo, p. 65.

[27] OMB records, Folder 1, p. 11.

[28] Id. at 11-12.

[29] Id. at 2-3.

[30] Id. at 2-17. Submitted by Graft Investigation Officer II Mateo B. Altajeros, and approved by Ombudsman Aniano A. Desierto.

[31] Namely, Mallari, Campaña, and Leticia Bernardo, then Manager of Surety Department of the GIG.

[32] Rollo, pp. 59-90.

[33] Id. at 88.

[34] Id. at 91-93.

[35] Id. at 94-111.

[36] Id. at 112-135. Dated November 8, 2005.

[37] Id. at 52-A.

[38] Id. at 213.

[39] Id. at 211-214.

[40] Id. at 216. Issued by Concepcion L. Madarang, Senior Vice-President of the GSIS Administration Group pursuant to the directive of PGM Garcia. See id. at 215.

[41] Id. at 217-227.

[42] Id. at 52-B.

[43] Id. at 52-A to 52-C.

[44] Id. at 54-55.

[45] Id. at 255.

[46] Id. at 228-248. Dated June 21, 1006.

[47] Id. at 57-58.

[48] Id. at 57. Obviously referring to Section 12, Rule 43 of the Rules of Court.

[49] Administrative Order No. 7 dated April 10, 1990. (OMB Rules of Procedure)

[50] Section 3. Rules of Court, application. – In all matters not provided in these rules, the Rules of Court shall apply in a supplementary character, or by analogy whenever practicable and convenient.

[51] See Section 2, Rule I of the OMB Rules of Procedure.

[52] See Section 1, Rule 43 of the Rules of Court.

[53] G.R. No. 175573, October 5, 2010, 632 SCRA 140.

[54] *Id.* at 145.

[55] Section 13(8), Article XI of the 1987 Philippine Constitution.

[56] Entitled “AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.”

[57] See *Facura v. CA*, G.R. Nos. 166495 and 184129, February 16, 2011, 643 SCRA 427, 452.

[58] 390 Phil. 236 (2000).

[59] 438 Phil. 351 (2002).

[60] G.R. No. 169241, May 2, 2006, 488 SCRA 574.

[61] *Lapid v. CA*, *supra* note 56, at 249.

[62] 549 Phil. 511 (2007).

[63] *Id.* at 515-516; citations omitted.

[64] 529 Phil. 619 (2006).

[65] *Id.* at 630-631.

[66] See *Spouses Marquez v. Spouses Alindog*, G.R. No. 184045, January 22, 2014, citing *Tagolino v. House of Representatives Electoral Tribunal*, G.R. No. 202202, March 19, 2013, 693 SCRA 574, 599-600.

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