

OFFICE OF THE OMBUDSMAN AND FIELD INVESTIGATION OFFICE (FIO), PETITIONERS, VS. ALDO BADANA ESMEÑA, RESPONDENT.

G.R. No. 219936. September 02, 2020

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

This Petition for Review on Certiorari[1] (Petition), filed by petitioners Office of the Ombudsman (OMB) and Field Investigation Office (FIO) (collectively, petitioners), seeks the nullification of the Decision[2] dated 30 April 2013 and Resolution[3] dated 27 July 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 121638. Petitioners also pray for the recall of the Entry of Judgment[4] in the same case.

Respondent Aldo Badana Esmeña (respondent) filed a petition for review before the CA to assail petitioners' Decision[5] in the administrative case docketed as OMB-C-A-08-0609-K and the Resolution[6] in the criminal case docketed as OMB-C-C-08-0575-K.

In the administrative case, the OMB found respondent guilty of Simple Dishonesty and imposed the penalty of suspension from government service for six (6) months.[7] Meanwhile, in its resolution in the criminal case, the OMB recommended the filing of an Information against respondent for Making Untruthful Statements in a Narration of Facts, penalized under Article 171, paragraph (par.) 4 of the Revised Penal Code (RPC).[8]

Antecedents

Respondent was the former Officer-in-Charge of the Bureau of Internal Revenue (BIR) Regional District Office (RDO) No. 22 in Baler, Aurora.[9] In an anonymous letter[10] dated 06 January 2007, the OMB was informed of respondent's habitual absence from work. Acting thereon, the OMB sent two (2) graft investigators to RDO No. 22 on 07 June 2007 but respondent failed to show up the whole day.[11] The OMB then subpoenaed respondent's records and discovered that his Daily Time Record (DTR) falsely reflected that he went to work on the said date – he reported for work at 7:09 a.m., took his lunch break at 12:00 noon, returned to the office at 12:47 p.m., and left the office at 5:13 p.m.[12]

Consequently, the FIO filed a Complaint[13] against respondent for violation of:

(1)

Article 171, par. 4[14] of the RPC;

(2)

Section 46 (b),[15] Chapter 7, Title I, Book V of Executive Order No. 292 or the Administrative Code of 1987; and

(3)

Section 4 (A) (a)[16] of Republic Act No. (RA) 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.[17]

Thereafter, the OMB sent an order directing respondent to file his counter-affidavit, through registered mail, to his former office in Baler, Aurora. When the order was returned unserved, the OMB sent another one to respondent's former office in the City of San Fernando, Pampanga.[18] Respondent, however, failed to receive both orders, as he had already transferred to the BIR central office on 08 January 2010.[19]

Ruling of the Ombudsman

Notwithstanding respondent's failure to participate in the proceedings, the OMB issued a Decision[20] dated 16 March 2011, finding respondent guilty of Simple Dishonesty for falsifying his DTR, thus:

WHEREFORE, judgment is hereby rendered finding respondent Former ore ALDO BADANA ESMEÑA of RDO No. 22, presently assigned at the Office of the Regional Director, Revenue Region No. 4, City of San Fernando, Pampanga, guilty of Simple Dishonesty.

Respondent Aldo Badana Esmeña is hereby meted the penalty of Suspension for SIX (6) MONTHS in the Government Service pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.

The Honorable Secretary of the Department of Finance, Secretary Cesar Purisima, is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006 dated 11 April 2006 and to promptly inform this Office of the action taken hereon.

SO DECIDED.[21]

On the same day, the OMB issued a Resolution,[22] finding the existence of probable cause to charge respondent with Making Untruthful Statements in a Narration of Facts, punishable under Article 171, par. 4 of the RPC, to wit:

WHEREFORE, premises considered, it is respectfully recommended that an Information for violation of Article 171, par. 4, of the Revised Penal Code, be accordingly FILED in the proper court against respondent Former ore ALDO BADANA ESMEÑA of RDO No.22, presently assigned at the Office of the Regional Director, Revenue Region No. 4, City of San Fernando, Pampanga.

SO RESOLVED.[23]

On 12 August 2011, respondent filed an Omnibus Motion,[24] seeking reconsideration of the OMB decision in the administrative case on the ground of lack of due process. He argued that he was not validly served with the notices directing him to file his counter-affidavit. Likewise, he only received a copy of the decision on 11 August 2011.[25]

Without waiting for the resolution of his omnibus motion, however, respondent filed a Petition for Review[26] with the CA, assailing both the decision in the administrative case and the resolution in the criminal case. He maintained that his right to due process was violated when the case against him was resolved without notice and hearing.[27]

Ruling of the CA

In its Decision[28] dated 30 April 2013, the CA reversed and set aside the assailed decision and resolution of the OMB. It found that respondent was indeed denied due process because he was not afforded a chance to present

evidence on his behalf.[29]

Petitioners subsequently filed a Manifestation and Motion (in lieu of Motion for Reconsideration on the Decision dated 30 April 2013),[30] (Manifestation and Motion) alleging that before the issuance of the CA decision, the Office of the Deputy Ombudsman for Luzon (OMB-Luzon) issued an Order[31] granting respondent's Omnibus Motion to set aside the OMB decision in the administrative case. Thus, petitioners prayed that the case before the CA be considered closed and terminated.

Respondent, for his part, insisted on the issuance of an entry of judgment, considering that the CA Decision had already attained finality since petitioners did not file a motion for reconsideration.[32]

In its Resolution[33] dated 12 February 2014, the CA merely noted petitioners' Manifestation and Motion, and pointed out that if it had been furnished a copy of the aforesaid Order granting respondent's Omnibus Motion, respondent's petition for review would have been rendered moot and academic. Also, considering that the OMB did not file any motion for reconsideration of the Decision dated 30 April 2013, the same had become final and executory. Thus, respondent's prayer was granted and Entry of Judgment was made two days later.[34]

Petitioners subsequently filed an Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment,[35] arguing that the CA had no appellate jurisdiction over the resolution of the OMB in the criminal case. On 27 July 2015, the CA issued its Resolution, the dispositive portion of which states:

ACCORDINGLY, the Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment is hereby DENIED.

SO ORDERED.[36]

The CA explained that its Decision became final and executory on 01 June 2013 since petitioners opted to file a Manifestation and Motion instead of a motion for reconsideration. The CA said that upon the lapse of the period to file a motion for reconsideration, the final judgment begins to carry the effect of *res judicata*. Hence, the CA had lost jurisdiction over the case, except for purposes of execution.[37]

Hence, petitioners filed the instant petition before the Court.

Initially, the Court denied the petition for failure of petitioners to show any reversible error in the assailed judgment. However, the Court granted petitioners' Motion for Reconsideration and reinstated the petition in a Resolution[38] dated 20 April 2016.

Issues

Petitioners now claim that:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN ISSUING ITS DECISION DATED 30 APRIL 2013 AND IN HOLDING THAT THE OMBUDSMAN'S RESOLUTION DATED 16 MARCH 2011 IN CRIMINAL CASE (OMB-C-C-08-0575-K) IS NULL AND VOID.

II

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ENTERTAINED THE APPEAL DESPITE THE PENDENCY OF RESPONDENT'S OMNIBUS MOTION FOR RECONSIDERATION WITH THE OFFICE OF THE OMBUDSMAN FOR LUZON.

III

THE CA DECISION WHICH SET ASIDE THE OMBUDSMAN'S RESOLUTION DATED 16 MARCH 2011 IS NULL AND VOID, HENCE HAS NOT ATTAINED FINALITY.[39]

Ruling of the Court

Petitioners argue that the CA erred in entertaining respondent's petition for review when it had no jurisdiction over the criminal case. Furthermore, respondent's omnibus motion was still pending with the OMB- Luzon when the petition was filed with the CA. Consequently, the CA ruling is void and cannot attain finality.

The petition is partly meritorious.

Indisputably, respondent prematurely filed a petition for review with the CA instead of awaiting the resolution of his omnibus motion.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

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. (Emphasis supplied)

Clearly, only after receipt of the order denying the motion for reconsideration may a petition for review under Rule 43 be filed in the CA.

Notably, however, the OMB-Luzon eventually granted respondent's omnibus motion. The OMB-Luzon found that respondent's re-assignment to different revenue offices of the BIR made it impossible for him to receive the orders and file the required counter-affidavit. Recognizing respondent's plight, the OMB-Luzon gave him another chance to answer the administrative charge against him. Hence, the propriety of the OMB's Decision in the administrative case (OMB-C-A-08-0609-K) is already moot.

Be that as it may, the CA could not be faulted for giving due course to respondent's petition, although it should have confined itself to reviewing the Decision in the administrative case.

The Court has, in the past, relaxed the application of technical rules when a rigid application of the same will result in a manifest failure or miscarriage of justice. In respondent's case, it was patently clear that he was not accorded due process in the OMB proceedings. The OMB conducted the proceedings without proper notice to respondent, depriving him of the opportunity to defend himself. Likewise, respondent did not immediately receive a copy of the OMB's Decision and Resolution. Furthermore, despite the pendency of respondent's Omnibus Motion, the OMB insisted on implementing its Decision and Resolution.[40]

The CA, then, was well within its authority to review the case. The right to appeal should not be invalidated through a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal.[41] Thus, no reversible error can be attributed to the CA for giving due course to, and thereafter, resolving the administrative Decision of the OMB.

Further, the Court notes that the OMB was not faultless. Despite the OMB's issuance of the Resolution setting aside its Decision in OMB-C-A-08-0609-K as early as 2011, or two years before the assailed CA Decision, it did not bother to inform the CA of said development. Neither did the OMB file a motion for reconsideration of the CA's Decision dated 30 April 2013. Irrefutably, the CA's ruling as to the administrative charges against respondent had been rendered moot and academic.

On the other hand, the CA indeed erred in setting aside the OMB's Resolution in the criminal case. The CA went

beyond its jurisdiction when it also took cognizance of the OMB's Resolution in OMB-C-C-08-0575-K finding probable cause to charge respondent in the criminal case for violating Article 171, par. 4 of the RPC (Making Untruthful Statements in a Narration of Facts).

Pursuant to *Fabian v. Desierto*,^[42] appeals from the decisions of the OMB in administrative disciplinary cases should be taken to the CA via petition for review under Rule 43 of the Rules of Court.

However, in *Duyon v. Court of Appeals*^[43] and *Golangco vs. Fung*,^[44] the Court stressed that the CA's jurisdiction over appeals from orders, directives and decisions of the OMB extends to administrative disciplinary cases only. The CA cannot review the orders, directives or decisions of the Office of the OMB in criminal or non-administrative cases.

In *Gatchalian v. Office of the Ombudsman*,^[45] the Court further clarified that the OMB's orders or resolutions finding probable cause in criminal cases can only be reviewed by this Court via a special civil action for certiorari under Rule 65.

Consequently, the CA's order reversing the OMB's Resolution finding probable cause against respondent was void and, therefore, cannot be considered final,^[46] the entry of judgment notwithstanding. A void judgment never becomes final. As the court had previously held:^[47]

The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments."^[48] (Emphasis supplied)

In any event, the Court emphasizes that the criminal Information against respondent had already been filed in court, docketed as Criminal Case No. 4643 and entitled, "*People of the Philippines v. Aldo Badana Esmena*."^[49] Apparently, respondent filed a motion to dismiss dated 10 July 2013 before Branch 90, Regional Trial Court of Baler, Aurora, where the case is currently pending, on the ground that the CA issued the assailed decision dated 30 April 2013. The trial court, however, deferred resolution on the motion to dismiss pending the CA's ruling on the Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment. Based on the records, however, and despite the CA's denial of the said Omnibus Motion, the trial court has yet to resolve respondent's motion to dismiss. Neither party endeavored to appraise the Court on any development in the said case. In any event, it is undeniable that once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court.^[50] Thus, the trial court is ordered to proceed with dispatch in resolving respondent's motion to dismiss.

WHEREFORE, the foregoing premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated 30 April 2013 of the Court of Appeals in CA-G.R. SP No. 121638 is **AFFIRMED** with **MODIFICATION** that the portion reversing the Office of the Ombudsman's Resolution dated 16 March 2011 in OMB-C-C-08-0575-K, is **REVERSED** and **SET ASIDE**. The Resolution of the Office of the Ombudsman dated 16 March 2011 in OMB-C-C-08-0575-K is **VACATED** and **SET ASIDE**.

Accordingly, Resolution dated 27 July 2015 is **REVERSED** and **SET ASIDE**. The Entry of Judgment issued on 14 February 2014 by the Court of Appeals in CA-G.R. SP No. 121638 is **RECALLED**. Branch 90, Regional Trial Court of Baler, Aurora, is **ORDERED** to proceed with the motion to dismiss in Criminal Case No. 4643, entitled, *People of the Philippines v. Aldo Badana Esmena*," with dispatch.

SO ORDERED.

Leonen, (Chairperson), Gesmundo, Carandang, and Gaerlan, JJ., concur.

[1] Rollo, pp. 12-31.

[2] Id. at 33-41; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of 12th Division, Court of Appeals, Manila.

[3] Id. at 43-47; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (now a Member of this Court) and Eduardo B. Peralta, Jr. of the Special Former 12th Division, Court of Appeals, Manila.

[4] Id. at 44.

[5] Id. at 89-98; penned by Graft Investigation and Prosecution Officer II Robert V Marcelo on 16 March 2011 and recommended for approval by Acting Director Rolando B. Zoleta on 08 April 2011.

[6] Id. at 99-107; penned by Graft Investigation and Prosecution Officer II Robert V. Marcelo on 16 March 2011, recommended for approval by Acting Director Rolando B. Zoleta on 08 April 2011, and approved by Acting Ombudsman Orlando C. Casimiro on 23 May 2011.

[7] Id. at 96.

[8] Id. at 104, 106-107.

[9] Id. at 35.

[10] Id. at 87-88.

[11] Id. at 17.

[12] Id. at 35-36.

[13] Id. at 81-86.

[14] ARTICLE 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of imprisonment mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

X x x

4. Making untruthful statements in a narration of facts;

[15] SECTION 46. Discipline: General Provisions. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty;

x x x x

(4) Misconduct;

x x x

(13) Falsification of official document;

x x x

(27) Conduct prejudicial to the best interest of the service;

x x x

[16] 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:

(a) Commitment to public interest. — Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

[17] Id.

[18] Rollo, pp. 90-91.

[19] Id. at 114 and 121.

[20] Id. at 89-98.

[21] Id. at 96-97.

[22] Id. at 99-107.

[23] Id. at 106-107.

[24] Id. at 108-120.

[25] Id. at 109 and 129.

[26] Id. at 128-137.

[27] Id. at 132.

[28] Id. at 33-41.

[29] Id. at 40.

[30] Id. at 53-59.

[31] Id. at 60-64.

[32] Id. at 44.

[33] Id. at 66-67.

[34] Id. at 44.

[35] Id. at 68-80.

[36] Id. at 46-47.

[37] Id. at 45-46.

[38] Id. at 183.

[39] Id. at 19-20.

[40] Id. at 40.

[41] See *B.E. San Diego, Inc. v. Bernardo*, G.R. No. 233135, 05 December 2018, citing *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610-637 (2011); G.R. No. 168973, 24 August 2011.

[42] G.R. No. 129742, 16 September 1998; 356 Phil. 787 (1998) cited in *Crebello v. Office of the Ombudsman*, G.R. No. 232325, 10 April 2019.

[43] 748 Phil. 375-391 (2014); G.R. No. 172218, 26 November 2014.

[44] 535 Phil. 331-345 (2006), G.R. No. 147640 & 147762, 16 October 2006.

[45] G.R. No. 229288, 01 August 2018.

[46] See *Lanto v. Commission on Audit*, 808 Phil. 1025-1041 (2017); G.R. No. 217189, 18 April 2017.

[47] *Imperial v. Armes*, 804 Phil. 439-477 (2017); G.R. Nos. 178842 & 195509, 30 January 2017.

[48] *Gonzales v. Solid Cement Corporation*, 697 Phil. 619-643 (2012); G.R. No. 198423, 23 October 2012, cited in *Imperial v Armes*, Phil. 439-477 (2017); G.R. Nos. 178842 & 195509, 30 January 2017.

[49] *Rollo*, pp. 179-181.

[50] *De Lima v. Reyes*, 776 Phil. 623-653 (2016); G.R. No. 209330, 11 January 2016.

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