

COMMISSION ON AUDIT, PETITIONER, VS. TANODBAYAN AND LOLITA G. LEDESMA, RESPONDENTS.

G.R. No. 81476. July 26, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petition for certiorari assails the Resolution of the Office of the Tanodbayan in TBP Case No. 86-00357, entitled, "Commission on Audit v. Lolita G. Ledesma" which dismissed the complaint filed by the Commission on Audit through its Auditor I, Miss Helen G. Gaabucayan, and in effect discharged Lolita G. Ledesma from all liability.

From the facts, we learn that in an audit on October 31, 1985 by Helen D. Gaabucayan, of the period from April 27, 1985 to October 31, 1985, transactions involving receipts and disbursements of Trust Liability Account under Depository Account No. 345-8404963 were not recorded in any cashbook by the Cashier and not all were reported to the accounting section from April 17, 1981 to October 31, 1985.

Verifications and cross checking of documents and records yielded the following alleged significant findings:

1. Incurrence of cash shortage amounting to P413,859.35 as of October 31, 1985 consisting of P390.85 on unliquidated cash advance for uniform allowance and P413,468.50 representing unrecorded cash advances/disbursements under the name of Mrs. Lolita Ledesma taken from Trust Depository Account No. 345-8404963 covering the period April 17, 1981 to October 31, 1985. In connection herewith, a demand letter for the production to this effect was issued and copy furnished the MOH Regional Director;
2. Some accountable forms acquired since April 13, 1981 consisting of 2,020 pieces commercial checks were not presented for inspections; neither were recorded or reported in the monthly report of accountability of accountable forms by the Cashier, Demand Letter for the production of this unaccounted accountable forms was issued;
3. The Cashier did not prepare and maintain Bank Cashbook (General Form No. 104) for all financial transactions (receipts and disbursements/withdrawals) under the Trust Liability Checking Depository Account No. 345-8404963 since the start of its operations;
4. The withdrawal and transfer of funds were made by the Cashier without supporting documents. The transfer was made from the BTR-Funded Depository Account No. 345-8400198 to Trust Depository Account No. 345-8404963 under check no. 287052 and 287053 dated July 23, 1985 amounting to P100,000.00 and P83,079.70, respectively. This transaction was likewise not recorded and reported in the cashbook and in the accounting records of the agency;
5. Receipts of funds from the UNICEF, WHO and the MOH Central Office which were deposited in the Trust Depository Account No. 345-8404963 were not issued with the corresponding official receipts by the Cashier in the amount of P1,430,481.65;
6. Some collections/receipts and disbursements made out of this Trust Liability Account No. 345-8404963 in

addition to those mentioned in finding no. 1 were not reported and submitted by the Cashier to the accounting section for recording in the agency's books of accounts and for final submission to the Commission on Audit;

7. Returned checks and bank statements received by the Cashier from the PNB on Trust Depository Account No. 345-8404963 were held in the custody of the cashier's section and were not forwarded to the accounting section for purposes of bank reconciliation;

8. No bank reconciliation statements were prepared by the previous accountant under the finance division for the Trust Liability Depository Account No. 345-8404963 since the start of its operation;

9. The accountable officer did not reconcile her cashbook transactions and balance with the accounting records;

10. The official receipts issued by the Bukidnon General Hospital in acknowledgment of fund transfer from the MOH Regional Office did not reflect the actual date when payment was made.[1]

Because of the above findings, a complaint for Malversation of Public Funds[2] was filed against Ledesma.

The Tanodbayan dismissed the complaint on the ground that the evidence could not establish a prima facie presumption that respondent has put the alleged missing amounts to her personal use.

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Neither could she be said to have failed to render accounts because accordingly what she did not account for with the government was the UNICEF Funds which she had to liquidate directly with UNICEF Manila. Standing unrebutted sufficiently is respondents [sic] contention that "x x x previous COA Auditors did not post-audit the disbursements, because they told me that UNICEF auditors would do the auditing x x x." (Par. 8 counter- affidavit). Nor could she be held under Article 220 of the Revised Penal Code because the transfer of the BTR-Funded [Depository Account No. 345-8400198] amounting to P183,079.70 to Trust Depository Account [No. 345-8404963] does not appear illegal since it was authorized or sanctioned by her superior and there appears no specific showing that the BTR funded depository account is appropriated for any limited purpose only and could not be applied to other purpose of public service by the MOH (Ministry of Health). This is so notwithstanding the provisions of Section 106 of the State Audit Code of the Philippines, because in this law it is required that the payment, disposition or application must be illegal.[3]

On the basis of the foregoing, the petition for certiorari was filed:

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1. The Tanodbayan erred in admitting the certification issued by a Programme Officer of the UNICEF stating that the co-respondent is cleared of her accountabilities.

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2. It has also erred in ruling in the said Resolution that the co-respondent had in fact rendered liquidation of the UNICEF-Manila pursuant to the Guidelines for the Proposed Regionalization of Funding UNICEF Assisted Project.

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3. It has also erred in ruling in a sweeping manner that the voluminous vouchers and payrolls presented to the auditor during the Preliminary Investigation should be taken (for) granted.

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4. It has also erred in ruling that the transfer of P183,079.70 from the BTR-Funded Depository Account No.

345-8400198 to Trust Depository Account No. 345-8404963 is not illegal.[4]

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We rule for the dismissal of the petition.

It should be pointed out that the Tanodbayan's role in preliminary investigations is to determine the existence of a prima facie charge against a certain respondent.

Article 217 of the Revised Penal Code provides that any public officer who by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, shall be guilty of misappropriation or malversation of such funds or property.

In the present case, the respondent Ledesma was able to account for all funds received from the UNICEF including those allegedly missing.

The Summary of UNICEF Releases to Regional Health Office No. 10 for the period 1 April 1981 to 31 October 1985 dated 23 July 1986 by S.P. Santos, UNICEF Accountant (marked as Annex "X" for ready reference) showed the total amount of P888,852.41. Considering this amount which is bigger than the alleged unaccounted liability of P843,849.97 in relation to the UNICEF Certification dated 17 June 1986 (Annex "2") by Bituin Gonzales, Programme Officer to the effect that respondent Lolita G. Ledesma is cleared of her accountability of UNICEF funds for the period of 1975 to October 1985, it appears sound to conclude that respondent had in fact rendered liquidation of UNICEF Funds with UNICEF Manila office pursuant to the Guidelines for the Proposed Regionalization of Funding UNICEF Assisted Project (Annex "14").

It would likewise appear that the BTR-Funded Depository Account No. 345-8400198 transferred to Trust Depository Account No. 345-8404963 in the amount of P183,079.70 was allowed by respondent's superior "in order not to disrupt the then current projects" x x x. (Page 2, 3rd par. counter-affidavit of respondent). This amount is presumed by the Auditor to be within the total unaccounted liability of respondent. This is too sweeping unless the auditor would credit the voluminous vouchers and payrolls offered by respondent to be included in the audit but which were refused.[5]

The prima facie presumption under Article 217 of the Revised Penal Code arises only if the accuracy, correctness, and regularity of the audit findings and the fact that funds are missing are in issue.[6]

The general rule is that the resolutions of the Tanodbayan can not be brought to judicial review.

Pres. Decree No. 1630 provides that:

Sec. 19. Tanodbayan's Immuni-ties.

(a) No proceeding, opinion, or expression of the Tanodbayan or any member of his staff shall be reviewable in any court;[7]

The immunity is intended to boost the Tanodbayan in carrying out its functions without much delay and pressure, being a constitutional body tasked with seeing to it that public accountability of government employees is properly exercised.[8]

It is evident that the petitioner's arguments are anchored on the Tanodbayan's proper appreciation of the facts. Time and again we have held that the Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of certiorari where neither questions of fact nor even of law are entertained[9] but only questions of lack or excess of jurisdiction or grave abuse of discretion.[10]

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[11]

We find no grave abuse of discretion committed by the public respondent in this case.

WHEREFORE, premises considered, the petition for CERTIORARI is hereby DISMISSED.

SO ORDERED.

Fernan C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] Rollo, 5-6.

[2] REV. PENAL CODE, Art. 217.

[3] Resolution, COA v. Ledesma, TBP Case No. 86-00357, April 3, 1987.

[4] Rollo, 1-2; Petition for Certiorari filed by the Commission on Audit.

[5] Rollo, 10-11; Resolution, COA v. Ledesma, TBP Case No. 86-00357, supra, note 3 at 7-8.

[6] Tinga v. People, No. 57650, April 15, 1988, 160 SCRA 483; Quizon v Sandiganbayan, No. 77120, April 6, 1987, 149 SCRA 113.

[7] July 18, 1979.

[8] CONST., Art. XI, sec. 5-14; See Inting v. Tanodbayan, Nos. 52446-48, May 15, 1980, 97 SCRA 494-500.

[9] Sime Darby Pilipinas, Inc. v. Magsalin, G.R. No. 90426, December 15, 1989, 180 SCRA 182.

[10] REVISED RULES OF COURT, Rule 65, sec. 1.

[11] See Carson et al. v. Judge Pantanosas, Jr., G.R. No. 75934, December 15, 1989, 180 SCRA 155; Arguelles v. Yang, G.R. No. 59880, September 11, 1987, 153 SCRA 697, citing Tavera-Luna v. Nable, 67 Phil. 340.

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