DR. ULYSSES A. BRITO, (IN HIS CAPACITY AS OIC-REGIONAL DIRECTOR OF THE NCIP REGION IV), PETITIONER, VS. OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, SANDY P. PADILLA AND MONICO A. ...

G.R. NOS. 167335 & 167337. July 10, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For the Court's consideration are two consolidated petitions: (1) G.R. Nos. 167335 & 167337, a Petition for Certiorari under Rule 65 of the Rules of Court, seeking to nullify and set aside the Joint Order[1] dated 7 December 2004 of the Deputy Ombudsman for Luzon which resolved the criminal aspect of the charges against private respondents Sandy P. Padilla and Monico A. Dingal, Jr. in their favor; and (2) G.R. No. 173152, a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals' Resolution[2] dated 18 October 2005 denying petitioner's Motion for Reconsideration of the Court of Appeals' Resolution dated 27 April 2005 which dismissed the special civil action for certiorari filed by petitioner against the Deputy Ombudsman for Luzon on the ground that it was not the proper remedy to assail the joint order of the Ombudsman. Said special civil action questioned the Joint Order of the Deputy Ombudsman for Luzon dated 7 December 2004 insofar as it disposed of the administrative aspect of the charges against private respondents by finding them not guilty of Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest. It merely found them liable under Section 4(a) of Republic Act No. 6713[3] and imposed upon them the penalty of reprimand.

These are the facts of the instant consolidated petitions.

Private respondents Sandy Padilla, Engineer II, and Monico Dingal, Jr., Community Affairs Officer II, are employees of the National Commission on Indigenous Peoples-Region IV (NCIP-Region IV). NCIP is the primary agency of the government tasked to implement Republic Act No. 8371,[4] otherwise known as "The Indigenous Peoples Rights Act of 1997." It is the agency authorized by the said law to issue a Certification Precondition in favor of any entity which desires to undertake operations within the ancestral domains of the indigenous peoples or whose proposed projects will affect the ancestral domains.[5]

Private respondents were assigned as members of a Field-Based Investigation (FBI) team. This team conducts investigations on the impact of a project on any community of indigenous peoples, to determine whether the required Certification Precondition may be properly issued to applicant companies.

In relation to the conduct of investigations by the FBI team, NCIP Administrative Order No. 3, Series of 1998, provides that the cost of actual expenses arising from investigations shall be shouldered by the applicant company, to wit:

> Section 4: x x x

> - Requests for NCIP Certification Precondition shall be filed with the concerned NCIP Regional Office. The cost of actual expenses in the conduct of the required field-based investigation, to be undertaken by the concerned NCIP Regional Office, shall be borne by the applicant. x x x.

In the year 2001, on three separate occasions, private respondents conducted field-based investigations on proposed projects of the following companies on the following dates:

Name of Company Location Date of FBI

1. Kumakata Mining Dev. Corp. (Kumakata) Tagcawayan, Maguibway, Quezon July 18-20, 2001

2. La Concepcion Dev. Corp. (La Concepcion) Bagong Nayon, Antipolo, Rizal December 5, 2001

3. Rio Tuba Nickel Corp (Rio Tuba) Rio Tuba, Bataraza, Palawan December 17-20, 2001[6]

Following the termination of the investigations, private respondent Sandy Padilla, in a short handwritten note to petitioner Dr. Ulysses Brito, OIC-Regional Director of the NCIP Region IV, claimed reimbursement for his and private respondent Dingal's per diems and taxi fares for the said investigations. The handwritten note reads:

> Sir,
>
> We are claiming for the per diem and taxi fare only. These companies did not provide us our per diem since they are anticipating that guidelines might require them.
>
> Thanks.
>
> Sandy Padilla[7]

Petitioner approved the request for reimbursement by respondents for per diem and taxi fares. Thus, on 21 December 2001, the total amount of P3,240.00 was granted to each of the private respondents, broken down as follows:

Name of Company Amount Paid

Kumakata 1,340.00/each

La Concepcion 500.00/each

Rio Tuba 1,400.00/each

TOTAL

P3,240.00/each[8]

Later on, however, the three above-mentioned companies issued their respective certifications claiming that they had already made payments in favor of the private respondents, thus:

Name of Company Date of Certification Date of FBI Amount Paid Each

Kumakata October 09, 2001 July 18-20, 2001 P 900.00

La Concepcion Sept. 20, 2002 Dec. 05, 2001 P1,500.00

Rio Tuba Aug. 21, 2002 Dec. 17-20, 2001 P1,500.00

Total: P3,900.00 /each[9]

Rio Tuba and La Concepcion, in their respective affidavits executed by their respective officers, however,

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explicated that the allowances given to private respondents did not include per diems and taxi fares.

On 12 May 2003, convinced that private respondents' acts of claiming per diems and taxi fares from their agency constitute penal and administrative violations, the petitioner filed a complaint-affidavit charging private respondents of the Complex Crime of Estafa thru Falsification under Article 171(4) of the Revised Penal Code and violation of Section 3(e) of Republic Act No. 3019 which were docketed as OMB-L-C-03-0581-E and OMB-L-C-03-1374-K. From the same set of facts, private respondents were also charged with an administrative case for Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest, docketed as OMB-L-A-03-1059-K.

In their Joint-Counter Affidavit[10] filed on 8 August 2003, private respondents admitted that each of them received the amount of P3,900.00 from the three companies. But they asserted that the said amount they received from the companies did not include per diems and taxi fares.

In a Joint Resolution dated 16 July 2004, the Deputy Ombudsman for Luzon Victor C. Fernandez recommended the dismissal of both the criminal and administrative cases hurled against private respondents on the ground that the said charges were premature. He opined that the controversy could have been settled had petitioner opted to exhaust administrative remedies. He also said that the complaint was done with apparent haste as no previous demand for refund was made by petitioner to private respondents as required by the Manual on the New Government Accounting System for National Government Agencies. Lastly, it was pointed out that the subject disbursements were not referred to the Commission on Audit (COA) for appropriate examination and action. The dispositive portion of the resolution reads:

> WHEREFORE, in view of the foregoing, it is respectfully recommended that [the] present criminal and administrative cases lodged against respondents SANDY PADILLA and MONICO DINGAL, JR. be DISMISSED for being premature. The dismissal of the present cases, however, is without prejudice to whatever results of any audit investigation that might later on be conducted by the Commission on Audit (COA) on the matter.[11]

Petitioner filed a motion for reconsideration. He insisted that as the one in-charge of the NCIP Region IV, he can, independent of the COA, institute the said charges. The criminal and the civil charges against respondents were malum prohibitum, thus these charges should not be made to depend on the findings of the COA, which will have to separately decide on filing a case against private respondents should the latter be found to have violated COA rules and regulations.

In a Joint Order dated 7 December 2004, the Deputy Ombudsman for Luzon modified his earlier resolution. With respect to the administrative charge, the Deputy Ombudsman found private respondents liable under Section 4(a) of Republic Act No. 6713, but not of Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest and imposed upon them the penalty of reprimand. However, with respect to the criminal indictments, the Deputy Ombudsman again dismissed the same, finding that the acts complained of were not criminal in nature. The joint order decreed:

> WHEREFORE, PREMISES CONSIDERED, it is most respectfully recommended that the Joint Motion for Reconsideration dated 17 August 2004 be PARTIALLY GRANTED. Respondents Sandy P. Padilla and Monico A. Dingal, Jr. are hereby meted a penalty of REPRIMAND with a Stern Warning that a repetition of the same act in the future shall be dealt with more severely. On the other hand, the dismissal of the criminal cases are hereby affirmed.[12]

On 11 March 2005, petitioner filed directly before this Court a Petition for Certiorari under Rule 65 of the Rules of Court questioning the criminal aspect of the Joint Order dated 7 December 2004 of the Deputy Ombudsman for

Luzon which dismissed the criminal cases filed against private respondents.[13] The petition was docketed as G.R. Nos. 167335 and 167337.

Believing that the Court of Appeals is vested with the appellate jurisdiction over decisions of the Ombudsman pertaining to administrative disciplinary cases,[14] petitioner elevated the administrative aspect of the Joint Order dated 7 December 2004 to the Court of Appeals via a Petition for Review on Certiorari under Rule 65 of the Rules of Court.

The Court of Appeals, in a Resolution dated 18 October 2005, dismissed said petition on the ground that petitioner availed himself of the wrong remedy by pursuing the administrative case before the Court of Appeals through Rule 65. The appellate court opined that appeals in administrative cases decided by the Office of the Ombudsman should be taken to the Court of Appeals under Rule 43 and not under Rule 65.

Undeterred, petitioner is now before the Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals' Resolution dated 18 October 2005. This case was docketed as G.R. No. 173152.

On 7 March 2007, the Court resolved to consolidate G.R. No. 173152, G.R. No. 167335 and G.R. No. 167337 since these cases involve similar parties and issues.[15]
G.R. No. 173152

Petitioner avers that the decision of the Ombudsman finding private respondents administratively guilty and imposing upon them the penalty of reprimand is final and unappealable. Inasmuch as the penalty of reprimand is final and unappealable under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and Section 27 of Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989," then the only legal recourse available to him is a special civil action for certiorari under Rule 65. Petitioner, likewise, insists that the Deputy Ombudsman for Luzon committed grave abuse of discretion when he concluded that the complained acts of private respondents did not constitute gross dishonesty, grave misconduct and conduct prejudicial to the interest of the public service.

In the Comment filed by the Deputy Ombudsman for Luzon, through the Office of the Solicitor General, it was contended that the Court of Appeals correctly dismissed the special civil action filed by petitioner since decisions, orders and resolutions of the Ombudsman in administrative disciplinary cases are to be appealed to the Court of Appeals under Rule 43 of the Rules of Court. It was, likewise, asserted that Section 27 of Republic Act No. 6770 and Section 7, Rule III of the Rules of Procedures of the Office of the Ombudsman, cannot be invoked by petitioner as said provisions were declared unconstitutional in Fabian v. Desierto.[16]

Petitioner is correct in arguing that the decision of the Ombudsman imposing on private respondents the penalty of reprimand is final and unappealable. Ironically, though, this is the same argument that struck the death knell to his posturings.

Section 27 of Republic Act No. 6770 partly states:

> Sec. 27. Effectivity and Finality of Decisions. — All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> x x x x
>
> Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

> In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

To implement Section 27 of Republic Act No. 6770 and pursuant to its power to promulgate its rules of procedure, the Office of the Ombudsman came up with Section 7, Rule III of the Administrative Order No. 7, which provides:

> 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 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.

The language of Section 27 of Republic Act No. 6770 is explicit and categorical when it states that "any order, directive or decision [of the Office of the Ombudsman] imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable."

Contrary to the Deputy Ombudsman's stance, not all items in Section 27 of Republic Act No. 6770 are rendered void by the Fabian v. Desierto ruling. The only provision affected by the Fabian ruling is the last paragraph in Section 27 which provides that "in all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court." This portion of Section 27 was rendered invalid because it violated Section 30, Article VI of the Constitution proscribing the enactment of a statute which increases the appellate jurisdiction of the Court without its advice and concurrence. Hence, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases, which are not final and unappealable, should be brought to the Court of Appeals under the provision of Rule 43.

In other words, the only effect of the Fabian ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 as the proper mode of appeal. All other matters in Section 27 of Republic Act No. 6770 remain binding, such as the provision which deals with the finality of the Ombudsman's decision when the penalty imposed are censure, reprimand, suspension of not more than one month, or a fine equivalent to one-month salary. As held in Lapid v. Court of Appeals[17]:

> Our ruling in the case of Fabian vs. Desierto invalidated Section 27 of Republic Act No. 6770 and Section 7, Rule III of Administrative Order No. 07 and any other provision of law implementing the aforesaid Act only insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. The only provision affected by the Fabian ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the Rules of Court as the proper mode of appeal. All other matters included in said section 27, including the finality or non-finality of decisions, are not affected and still stand.

Also, in Republic v. Francisco,[18] it was stressed:

> We agree with petitioner's contention that the decision of the Ombudsman finding respondents guilty of simple misconduct and ordering their suspension for one (1) month without pay is final and unappealable as provided in Section 27 of R.A. No. 6770 and Administrative Order No. 07, Section 7, Rule III of the Office of the Ombudsman implementing Section 27 of R.A. No. 6770. x x x.
>
> x x x x
>
> x x x In the instant case, since the penalty imposed upon respondents was "one month suspension without pay"

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> only, as a matter of law, the decision of the Ombudsman is final and unappealable. x x x.
>
> x x x x
>
> Since the decision of the Ombudsman suspending respondents for one (1) month is final and unappealable, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same. x x x.

In the instant case, since private respondents, through the Joint Order issued by the Deputy Ombudsman for Luzon, were sanctioned to suffer the penalty of reprimand, such order cannot be elevated to the Court of Appeals under Rule 43 since said order is final and unappealable. This must not be taken to mean that a party, aggrieved by any decision or order of the Office of the Ombudsman rendered in excess of jurisdiction or with grave abuse of discretion, has no legal recourse. In such a case, the same party may file a Petition for Certiorari with this Court. Thus, this Court once held:

> This is not to say that decisions of the Ombudsman cannot be questioned. Decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.[19]

From the foregoing disquisition, it is quite evident that petitioner employed the wrong remedy. Instead of filing his special civil action for certiorari with the Court of Appeals, petitioner should have filed the same directly with this Court. On this score alone, this petition warrants an outright dismissal.

Even if this Court treats the petition filed with the Court of Appeals as one for certiorari under Rule 65, petitioner, nonetheless, failed to adduce evidence that the Deputy Ombudsman for Luzon committed grave abuse of discretion amounting to lack or excess of jurisdiction in his joint order.

In certiorari proceedings under Rule 65 of the Rules of Court, the inquiry is limited essentially to whether or not the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.

A tribunal, board or officer acts without jurisdiction if it/he does not have the legal power to determine the case. There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the tribunal, board or officer acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction.

In the instant case, the Deputy Ombudsman for Luzon, after weighing all the evidence presented by the parties, concluded that private respondents were not guilty of the administrative case for gross dishonesty, grave misconduct and conduct prejudicial to the public interest. Certainly, private respondents did not declare any falsity as alleged by petitioner when they claimed reimbursements from NCIP of their per diems and taxi fares. That private respondents did not make untruthful statements when they asserted that the amount they received from these two companies did not include per diems and taxi fares was substantiated by the fact that La Concepcion Construction and Rio Tuba Mining Company, through their respective employees, issued affidavits consonant to the declarations of private respondents. Indeed, private respondents were of the belief that the allowances given to them did not include their per diems and taxi fares. Thus, the Deputy Ombudsman for Luzon correctly concluded that private respondents could not have been liable for the charge of gross dishonesty, grave misconduct and conduct prejudicial to the public interest. Rather, they can only be liable for failing to observe the

injunction under Section 4(a) of Republic Act No. 6713 which exhorts: "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 resources." This Court cites with approval the Deputy Ombudsman for Luzon's conclusion:

> Thus, we are inclined to rule and so hold that the respondents fell short of the conduct expected of them as public officers as mandated under Section 4(a) of R.A. 6713 which states that: "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 resources."
>
> x x x Respondents Sandy P. Padilla and Monico A. Dingal, Jr. are hereby meted a penalty of REPRIMAND with a Stern Warning that a repetition of the same act in the future shall be dealt with more severely. x x x.[20]

Contrary to the postulation of petitioner, the Deputy Ombudsman for Luzon's joint order was based on substantial evidence. There is therefore no reason for this Court to render the same void.
G.R. Nos. 167335 and 167337

In the instant special civil action for certiorari, petitioner insists that the Deputy Ombudsman for Luzon committed grave abuse of discretion in not finding probable cause against private respondents for violating the complex crime of Estafa through Falsification under Article 171(4) of the Revised Penal Code and Section 3(e) of Republic Act No. 3019. According to petitioner, had the Deputy Ombudsman for Luzon made a careful study of the evidence presented by him and had he meticulously weighed the evidence, he would have found out that probable cause exists to indict private respondents.

It is readily clear from petitioner's assertions that he is questioning the correctness of the Deputy Ombudsman for Luzon's appreciation of facts.

The function of determining what is sufficient evidence to establish probable cause is the job of the Office of the Ombudsman.[21] Except in cases when there is grave abuse of discretion in the exercise of its discretion, which is absent in the instant case, this Court has adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers on this matter.[22]

Indeed, this Court is not a trier of facts; the Ombudsman is.[23] This 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.[24] Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts will be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[25] Petitioner presents an issue which touches on factual findings of the Ombudsman. Such issue is not reviewable by this Court via certiorari.[26]

IN LIGHT OF ALL THE FOREGOING, the Petitions are DISMISSED. The assailed Joint Order of the Deputy Ombudsman for Luzon dated 7 December 2004 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.
Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.
Nachura, J., no part. Filed pleadings as Sol Gen.

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[1] Rollo (G.R. Nos. 167335 &167337), pp. 20-26.

[2] Rollo (G.R. No. 173152), pp. 29-31.

[3] Sec.4(a) of Republic Act No. 6713 states: " 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."

[4]SEC. 38. National Commission on Indigenous Cultural Communities/Indigenous People (NCIP). — To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

[5] Section 44 (m) of Republic Act No. 8371.

[6] Rollo (G.R. Nos. 167335 & 167337), pp. 28-29.

[7] Id. at 56.

[8] Id. at 29.

[9] Id. at 30.

[10] Id. at 115-120.

[11] Id. at 35.

[12] Id. at 25.

[13] In Estrada v. Desierto, G.R. No. 156160, 9 December 2004 (445 SCRA 655, 665), it was held that "the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court and not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, x x x, there is likewise the remedy of certiorari under Rule 65 to be filed with this Court and not with the Court of Appeals.

[14] In Fabian v. Desierto (356 Phil. 787, 799), it was ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

[15] Rollo (G.R. No. 173152), p. 172.

[16] Supra note 14.

[17] 390 Phil. 236, 248 (2000).

[18] G.R. No. 163089, 6 December 2006.

[19] Id.

[20] Rollo (G.R. No. 167335 & 167337), pp. 24-25.

[21] Pontejos v. Office of the Ombudsman, G.R. No. 158613-14, 22 February 2006, 483 SCRA 83, 92-93.

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[22] Villanueva v. Ople, G.R. No. 165125, 18 November 2005, 475 SCRA 539, 554.

[23] Chan v. Court of Appeals, G.R. No. 159922, 28 April 2005, 457 SCRA 502, 512.

[24] Dir. Domondon v. Sandiganbayan, 384 Phil. 848, 857 (2000).

[25] Id.

[26] Basuel v. Fact-Finding & Intelligence Bureau (FFIB), G.R. No. 143664, 30 June 2006, 494 SCRA 118, 126.

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