

MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA AND ERNESTO H. NARCISO, JR., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, NATIONAL TRANSMISSION COMMISSION (TRANSCO), ALI...

G.R. Nos. 170500 & 170510-11. June 01, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr., pray in their present petition for certiorari that the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions[1] of the Court of Appeals (CA) in CA-G.R. SP No. 90280-82 be set aside supposedly for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. Petitioners raise the sole issue of whether administrative decisions of the Office of the Ombudsman imposing the penalties of dismissal and one-year suspension from office are immediately executory pending appeal.

The facts are as follows.

On September 30, 2002, the Office of the Ombudsman promulgated its Decisions[2] in OMB-L-A-02-0068-B (involving the charge of dishonesty and misconduct), OMB-L-A-02-0069-B (involving the charge of dishonesty and acts inimical to public service), and OMB-L-A-02-0070-B (likewise involving the charge of dishonesty and acts inimical to public service). In OMB-L-A-02-0068-B and OMB-L-A-02-0070-B, the Ombudsman found petitioners Ganaden, Bautista and Narciso liable for dishonesty and imposed upon them the penalty of one-year suspension while in OMB-L-A-02-0069-B, the Ombudsman found petitioners Ganaden and Mina liable for dishonesty and imposed on them the penalty of one-year suspension.

Petitioners filed motions for reconsideration, but the Office of the Ombudsman, in three Orders[3] all dated April 8, 2005, not only denied their motions for reconsideration, but it also modified the penalties imposed in OMB-L-A-02-0069-B and OMB-L-A-02-0070-B. Instead of the penalty of one-year suspension it originally imposed, the Ombudsman increased the penalty to dismissal from the service as to petitioner Ganaden in OMB-L-A-02-0069-B and as to petitioners Ganaden, Bautista and Narciso in OMB-L-A-02-0070-B. The penalty of one-year suspension as to petitioner Mina was, however, maintained.

Aggrieved, petitioners filed separate petitions for review before the CA to question the three Decisions, as well as the Orders denying their motions for reconsideration. On September 8, 2005, the CA ordered the consolidation of all three petitions.[4]

Meanwhile, on February 28, 2003 petitioners availed of the early retirement program from the NPC. At the time the three Decisions and three orders of the Ombudsman came to their attention, they were already employed at the National Transmission Commission (TRANSCO).

Hence, on September 19, 2005, the Office of the Ombudsman issued a 1[st] Indorsement[5] referring to

respondent Alan T. Ortiz, President and Chief Executive Officer of TRANSCO, the three Decisions dated September 30, 2002 as well as the three Orders dated April 8, 2005. In the 1st Indorsement, the Office of the Ombudsman requested from TRANSCO the issuance of Orders for Dismissal from the service of petitioners Ganaden, Bautista and Narciso and the issuance of an Order of Suspension from Service for one-year against petitioner Mina.

In compliance with the aforesaid 1st Indorsement, respondent Ortiz issued Orders of Dismissal^[6] against petitioners Ganaden, Bautista, and Narciso, and an Order of Suspension^[7] for one-year against petitioner Mina on October 12, 2005.

Aggrieved again, petitioners filed with the CA a verified petition^[8] to cite respondent Ortiz in contempt for issuing the orders of dismissal and suspension. Petitioners claimed that by virtue of their appeal to the CA and a Resolution^[9] of the CA granting their verified motion to amend their petition to include TRANSCO as public respondent, the execution of the three Decisions, as modified by the three Orders of the Ombudsman, was automatically stayed even without a restraining order. Thus, respondent Ortiz's issuance of orders of dismissal and suspension was an outright violation of the authority of the CA amounting to contempt.

On October 28, 2005, the CA issued a Resolution^[10] denying petitioners' motion to cite respondent Ortiz in contempt of court. The CA clarified that the October 11, 2005 Resolution allowing the inclusion of TRANSCO as public respondent did not carry with it the relief of automatic stay of execution. The petitioners filed a motion for reconsideration, but their motion was denied by the CA in a Resolution dated November 23, 2005.^[11]

Thus, petitioners now come to this Court via a petition for certiorari to annul the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions of the CA and to enjoin the enforcement of the 1st Indorsement of the Office of the Ombudsman. According to them, jurisprudence provides that the execution of a decision of the Office of the Ombudsman is automatically stayed upon filing of an appeal and is stayed throughout the pendency of the appeal.

We dismiss the petition for utter lack of merit.

Petitioners rely heavily on the cases of *Lopez v. Court of Appeals*^[12] and *Lapid v. Court of Appeals*^[13] where the Court held, in essence, that a decision of the Office of the Ombudsman in administrative cases is stayed as a matter of right during the pendency of an appeal. The *Lapid* and *Lopez* cases, however, were decided in 2000 and 2002 respectively. Since then, there have been amendments to the Rules of Procedure of the Office of the Ombudsman. At present, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, dated September 15, 2003, 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.

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. (Emphasis supplied.)

Under this provision, a respondent who is found administratively liable by the Office of the Ombudsman and is slapped with a penalty of suspension of more than one month from service has the right to file an appeal with the CA under Rule 43 of the 1997 Rules of Civil Procedure, as amended. But although a respondent is given the right to appeal, the act of filing an appeal does not stay the execution of the decision of the Office of the Ombudsman. Such has been the consistent ruling of this Court since our decision in *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*[14] which overturned the rulings in the *Lopez* and *Lapid* cases.

In the recent case of *Office of the Ombudsman v. Court of Appeals and Barriga*,[15] a January 2011 case, the Court reiterated the rule as follows:

The provision in the Rules of Procedure of the Office of the Ombudsman is clear that an appeal by a public official from a decision meted out by the Ombudsman shall not stop the decision from being executory. In *Office of the Ombudsman v. Court of Appeals and Macabulos*,[16] we held that decisions of the Ombudsman are immediately executory even pending appeal in the CA. As explained by this Court in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,[17] this provision in the rules of the Ombudsman is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. (Emphasis supplied.)

In fine, the execution of the April 8, 2005 Orders of the Ombudsman finding petitioners administratively liable and imposing the penalty of dismissal from service against petitioners Ganaden, Bautista, and Narciso, and suspension for one year on petitioner Mina were not stayed by the filing of an appeal with the CA. Accordingly, the Resolutions of the CA dated October 11, 2005, October 28, 2005 and November 23, 2005 were all in order.

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[18] The subject Resolutions having been issued in accordance with law and existing jurisprudence, no grave abuse of discretion could be ascribed to the appellate court.

WHEREFORE, the petition for certiorari is **DISMISSED**. The October 11, 2005, October 28, 2005, and November 23, 2005 Resolutions of the Court of Appeals in CA-G.R. SP Nos. 90280-82 are **AFFIRMED**.

The Temporary Restraining Order issued by this Court on December 14, 2005 is hereby **LIFTED** and **SET ASIDE**.

With costs against petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 36-37, 39-40 and 42-43. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe concurring.

[2] Id. at 44-53, 69-77, 92-101.

[3] Id. at 54-68, 78-91, 102-116.

[4] Id. at 323-324.

[5] Id. at 388-389.

[6] Id. at 346-348.

[7] Id. at 349.

[8] Id. at 350-364.

[9] Id. at 36-37.

[10] Id. at 39-40.

[11] Id. at 42-43.

[12] G.R. No. 144573, September 24, 2002, 389 SCRA 570.

[13] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

[14] G.R. No. 150274, August 4, 2006, 497 SCRA 626.

[15] G.R. No. 172224, January 26, 2011, pp. 7-8.

[16] G.R. No. 159395, May 7, 2008, 554 SCRA 75.

[17] Supra note 14.

[18] De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 515, citing *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

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