

FIRST DIVISION

[G.R. NO. 148600, July 07, 2009]

ATTY. EMMANUEL PONTEJOS, PETITIONER, VS. HON. ANIANO A DESIERTO AND RESTITUTO AQUINO, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner seeks to set aside and annul the Decision^[1] dated August 21, 2000 as well as the Resolution^[2] dated June 15, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 54474.

The CA decision dismissed the petition filed by herein petitioner assailing the decision^[3] of Aniano Desierto in his capacity as Ombudsman which found petitioner guilty of grave misconduct and imposed upon him the penalty of dismissal.

The factual antecedents of the case are summarized by the CA thus:

On August 26, 1998, the Housing and Land Regulatory Board (HLURB, for brevity) received a Notice of Appeal filed by Rasemco, Inc., represented by its president Restituto Aquino, in a case captioned as "Rasemco Construction Corp. vs. Hammercon, Inc." docketed as HLURB Case No. 9817 decided by Arbiter Emmanuel Pontejos, petitioner herein. In said Notice of Appeal, Rasemco, through Aquino, asked for the nullification of all the proceedings conducted before Arbiter Pontejos for alleged extortion, bribery and graft and corruption committed by Pontejos in conspiracy with Director Wilfredo Imperial and Ms. Carmen Atos, both of HLURB and one Roderick Ngo, officer of Hammercon, Inc. Attached to the Notice of Appeal were a photocopy of Aquino's letter to President Joseph Estrada dated August 12, 1998 and his complaint-affidavit. The complaint-affidavit imputed to the named officer and employee of HLURB the following acts, viz:

1. Demanding and receiving monetary consideration in exchange for offers of assistance in securing a favorable decision in a pending case;
2. Inaction of Director Imperial of complainant's opposition to the issuance of license to sell in favor of Rasemco, Inc., and subsequently, his issuance of said license despite his supposed knowledge about the existence of legal defect or impediment in applicant's title;

3. Arbiter Pontejos' preparing and/or editing pleadings such as draft petition for review as well as other legal documents such as affidavits and contracts for Rasemco; and
4. Aquino and his lawyer, Atty. Venturanza, outside of office premises.

The gravity of the allegations contained in the complaint prompted the HLURB to conduct an investigation despite the absence of a formal administrative complaint. On August 28, 1998, Commissioner Francisco L. Dagñalan of the Legal and Administrative Affairs of HLURB directed Dir. Imperial, Atty. Pontejos and Ms. Atos to submit their comments to Mr. Aquino's affidavit complaint within five (5) days from receipt of the memorandum dated August 28, 1998. On September 2, 1998, petitioner and Ms. Atos submitted separate explanations denying the allegations in the complaint and giving their own version of the events. Meanwhile, Dir. Imperial submitted a Manifesto written in Filipino, dated August 31, 1998, as his answer to the complaint.

On September 8, 1998, HLURB Chief Executive Officer (CEO) and Commissioner Romulo Q. Fabul issued HLURB Special Order No. 55 creating a fact-finding committee to investigate the background and circumstances of Mr. Aquino's complaint against Dir. Imperial, Arbiter Pontejos and Carmen Atos and determine the remedial and preventive management measures that HLURB must undertake, if any. Commissioner Francisco Dagñalan was named chairman of the fact-finding committee and Commissioners Roque Arrieta Magno and Teresita A. Desierto as members.

While the fact-finding committee of the HLURB was conducting their investigation, Mr. Aquino filed an administrative complaint with the Office of the Ombudsman against the same persons on alleged conspiracy to extort money from him under a promise that a favorable decision will be rendered in a case pending before HLURB. Attached to the complaint are the sworn statements of Ruth Adel and Atty. Thaddeus E. Venturanza, Resemco's finance officer and legal counsel, respectively, and a photocopy of the check allegedly received by Arbiter Pontejos through Ms. Atos. The Evaluation and Preliminary Investigation Bureau (EPIB, for brevity) of the Office of the Ombudsman conducted a preliminary investigation and directed the respondents to file their counter-affidavits and other supporting evidence. On September 25, 1998, respondent Atos filed her counter-affidavit denying the material allegations of the complaint and raised the defense that the check given by Ruth Adel was in payment of a personal transaction between them. The counter-affidavit of respondent Pontejos submitted on December 4, 1998, also denied the material allegations of the complaint and dismissed the complaint as "nothing more than a disgruntled losing party seeking to gain leverage." Respondent Imperial also denied the allegations linking him to the alleged extortion perpetrated by Atty. Pontejos and Ms. Atos and in the receipt of his alleged share in the bribe.

Meanwhile, the fact-finding committee of the HLURB proceeded with their own investigation, limiting their inquiry into the administrative aspect of the complaint. On January 29, 1999, the committee submitted its report on the investigation proposing among others to indorse the report to the Office for the Ombudsman for its consideration.

On February 18, 1999, public respondent Ombudsman Aniano A. Desierto issued an order placing petitioner Pontejos under preventive suspension for a period of six (6) months without pay and further directing him and Dir. Imperial to file their counter-affidavits and other controverting evidence to the complaint. Thereafter or on February 19, 1999, the EPIB of the Office of the Ombudsman issued a joint resolution recommending that: 1) an Information for Estafa (one count) be filed against respondent Atty. EMMANUEL T. PONTEJOS before the Regional Trial Court of Quezon City; 2) an Information for Direct Bribery be filed against respondent Atty. EMMANUEL T. PONTEJOS before the Regional Trial Court of Quezon City; 3) an Information for Unauthorized Practice of Profession in violation of R.A. 6713 to be filed against Atty. EMMANUEL T. PONTEJOS before the Metropolitan Trial Court of Quezon City; 4) the complaint against Director WILFREDO I. IMPERIAL and RODERICK NGO be dismissed for insufficiency of evidence; and 5) respondent CARMENCITA ATOS y. RUIZ be extended immunity from criminal prosecution in accordance with Section 17 of R.A.A 6770 and be utilized as a state witness. Respondent Pontejos (petitioner, herein) moved to reconsider the Order of the Office of the Ombudsman dated February 18, 1999 which motion was denied in an Order dated March 5, 1999. In accordance with the recommendation of the EPIB, the Office of the Ombudsman filed criminal informations for bribery and estafa against respondent Atty. Emmanuel T. Pontejos. Meanwhile, in a Resolution dated June 21, 1999, the Office of the Ombudsman granted Carmencita Atos immunity from criminal prosecution for bribery and estafa filed with the Regional Trial Court of Quezon City and in the Metropolitan Trial Court of Quezon City.

On June 29, 1999, the Office of the Ombudsman disposed of the administrative complaint as follows:

"WHEREFORE, in view of the foregoing premises, we hereby declare respondent Emmanuel Pontejos guilty of Grave Misconduct, and as such, the penalty of dismissal from the service is hereby meted on him.

We hereby absolve respondent Wilfredo Imperial of the charges for lack of substantial evidence.

SO ORDERED."

Petitioner moved to reconsider the above decision but this was denied by the Ombudsman in an Order dated July 21, 1999. Thereafter, he filed a petition for review under Rule 43 of the Rules of Court in the CA. On August 21, 2000, the CA dismissed the petition and upheld the Ombudsman's decision finding petitioner guilty of grave misconduct. Petitioner moved for reconsideration but the CA denied

his motion.

Hence, this petition based on the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT PETITIONER WAS DENIED DUE PROCESS BY THE OFFICE OF THE OMBUDSMAN;
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE PROCEEDINGS BEFORE THE OFFICE OF OMBUDSMAN WAS TAINTED WITH ILL-MOTIVES;
3. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE GRANT OF IMMUNITY TO MS. CARMENCITA R. ATOS WAS IMPROPER;
4. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE OFFICE OF THE OMBUSMAN SINGLED OUT HEREIN PETITIONER FOR PREVENTIVE SUSPENSION
5. THE HONORABLE COURT OF APPEALS ERRED IN GIVING WEIGHT TO THE AFFIDAVIT DATED 18 FEBRUARY 1999 OF MS. ATOS;
6. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THERE WAS A FAILURE TO PROSECUTE ON THE PART OF PRIVATE RESPONDENT.

At the outset, it must be stated that petitioner had already raised the same issues and arguments before this Court in the case of *Pontejos v. Office of the Ombudsman*^[4] decided on February 22, 2006. That case involved exactly the same set of facts and issues as in this case, except that what was challenged therein was the February 19, 1999 Joint Resolution of the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman which found probable cause against petitioner for estafa, direct bribery and illegal practice of profession, whereas what is assailed in the instant case is the decision of the Ombudsman finding petitioner guilty of grave misconduct and dismissing him from service. We held in that case, penned by former Chief Justice Artemio V. Panganiban:

Petitioner theorizes that the OMB resolved the Complaint against him for reasons other than the merits of the case. He specifically charges HLURB Commissioner Teresita Desierto, the spouse of Ombudsman Desierto, as the "unseen hand" behind the filing of the criminal cases. Commissioner Desierto allegedly harbored resentment against him for signing a Manifesto issued by some lawyers in the HLURB. He also recalls Commissioner Desierto threatening him if he did not resign from the HLURB. Thus, he concludes that the proceedings before the OMB were tainted with ill motives.

We cannot accept petitioner's arguments. The Court observes that his arguments are merely conjectures bereft of any proof. He presented absolutely no evidence of any irregularity in the proceedings before the OMB. There was no showing that Commissioner Desierto interfered in any

manner in the proceedings before the OMB. Other than petitioner's bare assertions, there was also no proof that Commissioner Desierto bore a grudge against Pontejos.

x x x

The decision on whether to prosecute and whom to indict is executive in character. It is the prosecution that could essentially determine the strength of pursuing a case against an accused. The prosecutorial powers include the discretion of granting immunity to an accused in exchange for testimony against another. xxx

It is constitutionally permissible for Congress to vest the prosecutor with the power to determine who can qualify as a witness and be granted immunity from prosecution. Noteworthy, there are many laws that allow government investigators and prosecutors to grant immunity. In relation to this, the Court has previously upheld the discretion of the Department of Justice (DOJ), Commission on Elections (Comelec), and the Presidential Commission on Good Government (PCGG) to grant immunity from prosecution on the basis of the respective laws that vested them with such power.

The OMB was also vested with the power to grant immunity from prosecution, thus:

"SEC. 17. x x x.

"Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. x x x."

According to Pontejos, the OMB's authority to grant immunity is subject to the "pertinent provisions of the Rules of Court." He claims that the procedural rules allow the discharge of an accused as state witness only upon conformity of the trial court. An information against the accused must first be filed in court prior to the discharge. Moreover, the prosecution could only recommend and propose, but not grant immunity.

The pertinent provision of the Rules of Court reads:

"Sec. 17. Discharge of accused to be state witness. -When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state