

THIRD DIVISION

[G.R. No. 174045, March 07, 2008]

OFFICE OF THE OMBUDSMAN, Petitioner, vs. LALINETH LISONDRA, TERESITA SERGIO, and THE HONORABLE COURT OF APPEALS (FORMER TWENTY-FIRST DIVISION), Cagayan de Oro City, Respondents.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for *Certiorari* under Rule 65^[1] of the Rules of Court filed by petitioner Office of the Ombudsman (OMB) seeking to set aside the Decision^[2] of the Court of Appeals dated 31 May 2005 and Resolution^[3] dated 30 May 2006 in CA-G.R. No. 79242. In the assailed Decision, the Court of Appeals declared that the OMB has no power to impose the penalty of dismissal from service of a public officer or employee, and its power is limited only to the recommendation of the said penalty if the public officer or employee concerned is found to be at fault.

The antecedent facts as narrated by petitioner are:

Administrative charges for dishonesty and grave misconduct were filed by complainant Renato S. Muñoz, Mayor of the Municipality of La Paz, Agusan del Sur, before the OMB against therein respondents Milagros A. Orlandez, Rey C. Torralba, and Tomas B. Gomez, docketed as OMB-M-A-02-215-H. Complainant alleged that on 5 December 2000, the Municipality of La Paz, Agusan del Sur, paid to Ronwood Construction Supply the amount of P300,000.00 as payment for the delivery of 2,400 bags of Portland cement intended to be used for the concreting of Morgadez Street (Poblacion-Hospital Road Section). However, complainant, upon investigation of why the said project remained unfinished and incomplete, discovered from Municipal Supply Officer (MSO) Teresita G. Sergio and Municipal Planning Development Officer (MPDO) Lalineth A. Lisondra that there was actually no delivery of 2,400 bags of Portland cement made by Ronwood Construction Supply to the Municipality.

To substantiate his complaint, complainant submitted to the OMB the sworn affidavits of MSO Sergio and MPDO Lisondra.

Acting on the foregoing complaint, the OMB, on 22 August 2002, issued an Order, directing Orlandez, Torralba, and Gomez to file their respective counter-affidavits within a period of 10 days reckoned from their receipt of said Order.

In her counter-affidavit,^[4] Orlandez asserted that the complaint against her is politically motivated. She averred that the determination of whether or not there was actual delivery is not within her duties and responsibilities as the Treasurer of the Municipality of La Paz, Agusan del Sur. She claimed that her duty is confined

solely to releasing appropriated amount for the intended use after being satisfied with the sufficiency and validity of the supporting documents. She further posited that it was MPDO Lisondra who issued and signed the Certificate of Inspection relative to the delivery of 2,400 bags of cement by Ronwood Construction Supply.

Gomez also filed his counter-affidavit and categorically declared that as a Storekeeper I under the Office of the Economic Enterprise, he never inspected nor was informed of any delivery of 2,400 bags of Portland cement from Ronwood Construction Supply.

Torralba, Clerk III of the said Municipality, maintained that he was present during the delivery of the 2,400 bags of Portland cement and, in fact, personally made the inspection together with MPDO Lisondra.

On the basis of the sworn statement of Orlandez, the OMB issued an Order dated 28 October 2002, impleading MPDO Lisondra as fourth respondent.

On the same day, the OMB issued *Subpoena Duces Tecum* for the production of the original or certified true copies of all documents relative to the subject matter of the case before it.

On 19 November 2002, the Commission on Audit submitted the pertinent documents, to wit:

1. Request for Obligation of Allotment
2. Unnumbered Disbursement Voucher
3. Photocopy of the LBP Check
4. Status of Appropriation dated 4 December 2000
5. Photocopy of Official Receipt with Serial No. 3299 issued by Ronwood Construction Supply
6. Photocopy of Sales Invoice with Serial No. 5281
7. Purchase Request dated 6 November 2000
8. Call of Quotations
9. Purchase Order
10. Certificate of Inspection

Upon perusal of the Certificate of Inspection, it appears that aside from MPDO Lisondra, Torralba, and Gomez, the other signatories therein are Melly B. Campos and Teresita G. Sergio. Thus, on 6 January 2003, the OMB issued an Order impleading as additional respondents Campos and Sergio and directing them to file their counter-affidavits.

In the meantime, on 17 December 2002, MPDO Lisondra filed with the OMB her

counter-affidavit wherein she admitted that she pre-signed the Certificate of Inspection regarding the delivery of 2,400 bags of Portland cement but proffered the following explanation:

It is our practice that because we travel to various areas in La Paz (hinterland) the delivering party may be in a hurry to secure the receipt/inspection certificate because they would be going home to Butuan City or elsewhere. At that time, it was difficult to reach La Paz. Thus, we PRE-SIGN leaving blank the items to be filled up LIKE THE DATE OF DELIVERY.^[5]

She declared in her counter-affidavit that receiving supplies was not part of her duties and functions but somehow her name was included in the Certificate of Inspection form as one of the signatories therein.

On 30 January 2003, Campos, the representative from the Municipal Treasury whose signature similarly appears on the Certificate of Inspection, filed her counter-affidavit and corroborated the earlier statement of her co-respondent Torralba that there was actual delivery of 2,400 bags of Portland cement at the Municipal gym of La Paz.

As to Sergio, she averred that when the Certificate of Inspection was presented to her by co-respondent Torralba on 11 December 2002, it was already signed by Torralba, as well as MPDO Lisondra and Gomez. She claimed that she was the last to sign the said document and that she signed the same upon the proddings of Torralba who intimated to her that the 2,400 bags of Portland cement could not be delivered unless and until the Certificate of Inspection is submitted. She further posited that she signed the Certificate of Inspection because she had noted that the voucher was already paid and the official receipt was already issued. She also confirmed the earlier statement of MPDO Lisondra that it had been their usual practice at the Municipality of La Paz, Agusan del Sur to pre-sign the Certificate of Inspection since the delivering party may be in a hurry to secure the said certificate because they would still be going back home to Butuan City, and could not wait for the signatories thereof, who frequently travel to various areas in the Municipality of La Paz, to return.

The OMB scheduled the case for a preliminary conference on 11 March 2003 but the respondents therein filed their manifestation waiving their right to a formal hearing. Hence, on even date, the OMB issued an Order submitting the case for Decision based on the evidence on record.

In a Decision dated 26 May 2003, the OMB held:

WHEREFORE, premises considered, respondents Tomas B. Gomez, Lalineth Lisondra, Rey Torralba, Melly B. Campos and Teresita Sergio are hereby found guilty of DISHONESTY and are hereby meted the supreme penalty of DISMISSAL FROM SERVICE with forfeiture of all benefits and with prejudice to re-employment in any branch, instrumentality or agency of the government, including government owned or controlled corporation. The herein case against respondent Milagros Orlandez is hereby dismissed.^[6]

Respondents filed a Motion for Reconsideration which the OMB denied in its Order dated 24 July 2003.

MPDO Lisondra and Sergio filed a Petition for Review on *Certiorari* before the Court of Appeals.^[7]

The appellate court, in a Decision dated 31 May 2005, ruled on their appeal in this wise:

WHEREFORE, the petition is DENIED in so far as it seeks to set aside the finding of the Ombudsman that Petitioners LALINETH A. LISONDRA and TERESITA SERGIO are administratively liable for dishonesty. The petition is GRANTED in so far as it seeks to nullify the penalty directly imposed by the OMBUDSMAN upon Petitioners. The OFFICE OF THE OMBUDSMAN is hereby DIRECTED TO TRANSMIT ITS FINDINGS AND RECOMMENDATIONS relative to this case to the incumbent Municipal Mayor or Chief Executive Officer of the Municipality of La Paz, Agusan del Sur pursuant to Section 13(3), Article XI of the 1987 Constitution and Section 15(3) of Republic Act No. 6770.^[8]

The OMB filed a Motion for Partial Reconsideration, which, in a Resolution dated 30 May 2006, the Court of Appeals resolved thus:

WHEREFORE, Public Respondent's motion for reconsideration and Petitioners' urgent motion for the issuance of a preliminary injunction are hereby DENIED.^[9]

The Court of Appeals found precedent in the following cases and explained:

In *Concerned Officials of the Metropolitan Waterworks and Sewerage System vs. Vasquez*, 240 SCRA 502 (1995), the Supreme Court declared:

The powers, functions and duties of the Ombudsman have been categorized into the following headings: Investigatory Power, Prosecutory Power, Public Assistance Functions, Authority to Inquire and Obtain Information, and Function to Adopt, Institute and Implement Preventive Measures.

The power to dismiss is not found in the above enumerations of the powers, functions and duties of the Ombudsman; neither can it be logically placed under any of the abovementioned categories.

In *Tapiador vs. OFFICE OF THE OMBUDSMAN and Atty. Ronaldo P. Ledesma*, G.R. No. 129124, March 15, 2002, the Supreme Court emphatically held that "[u]nder Section 13, subparagraph (3), of the Article XI of the 1987 Constitution, the Ombudsman can only 'RECOMMEND' THE REMOVAL OF THE PUBLIC OFFICIAL OR EMPLOYEE FOUND TO BE AT FAULT, TO THE PUBLIC OFFICIAL CONCERNED." (Emphasis Ours) Likewise, in *PNB-REPUBLIC BANK vs. COURT OF APPEALS and PLANTERS DEVELOPMENT BANK*, G.R. No. 127370, September 14, 1999, the Supreme Court declared, thus:

The power of the Ombudsman is only investigatory in character and its resolution cannot constitute a valid and final judgment because its duty, assuming it determines that there is an actionable criminal or non-criminal act or omission, is to file the appropriate case before the Sandiganbayan (*Italics supplied for emphasis.*).^[10]

To show its vigorous dissent, the OMB filed the instant Petition before us raising the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO EXCESS OR LACK OF JURISDICTION IN ISSUING THE 30 MAY 2006 RESOLUTION CONSIDERING THAT:

A. A. THE CONSTITUTION DOES NOT BAR THE OFFICE OF THE OMBUDSMAN FROM EXERCISING ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC OFFICIALS AND EMPLOYEES IN GENERAL.

B. B. CONGRESS CONSTITUTIONALLY CLOTHED THE OFFICE OF THE OMBUDSMAN WITH FULL ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC OFFICIALS AND EMPLOYEES IN GENERAL, COMPLETE WITH ALL THE REQUISITE COMPONENTS AS CONTAINED IN R.A. NO. 6770, CONSIDERING THAT:

i. i. THE 1987 CONSTITUTION EXPRESSLY AUTHORIZED CONGRESS TO GRANT THE OMBUDSMAN ADDITIONAL POWERS;

ii. ii. CONGRESS, BOTH PURSUANT TO ITS EXPRESS CONSTITUTIONAL AUTHORITY IN THE CASE OF THE OMBUDSMAN, AND IN THE EXERCISE OF ITS PLENARY LEGISLATIVE POWERS, ENACTED R.A. NO. 6770 PROVIDING THEREIN THE OMBUDSMAN'S FULL AND COMPLETE ADMINISTRATIVE DISCIPLINARY POWER AND DUTY;

iii. iii. THERE IS NOTHING IN THE SAID STATUTORY GRANT OF ADMINISTRATIVE DISCIPLINARY POWER WHICH CAN BE REMOTELY CONSIDERED INCONSISTENT WITH THE 1987 CONSTITUTION; AND

iv. iv. VESTING THE OMBUDSMAN WITH FULL DISCIPLINARY AUTHORITY IS ABSOLUTELY IN CONSONANCE WITH THE SOVEREIGN INTENT, AS EXPRESSED BY THE LETTER OF, AND IN THE DELIBERATIONS ON, THE 1987 CONSTITUTION, I.E., THE INTENT TO CREATE AN EFFECTIVE,