

THIRD DIVISION

[G.R. NO. 168670, April 13, 2007]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. HEIDI M. ESTANDARTE AND THE COURT OF APPEALS, TWENTIETH DIVISION, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 85585 dated June 14, 2005 which set aside the decision of the Office of the Ombudsman (Visayas) finding respondent Heidi M. Estandarte guilty of grave misconduct.

The antecedents are as follows:

On August 17, 1998, People's Graftwatch, through its Chairman, Dr. Patricio Y. Tan, referred to the Office of the Ombudsman (Visayas), for immediate investigation, a complaint of the Faculty Club and Department Heads of the Ramon Torres National High School (hereinafter the Faculty Club) against Heidi Estandarte, the school principal. The complaint consisted of 33 allegations of improprieties ranging from illegal handling of school funds, irregular financial transactions, perjury, and abuse of authority.^[2] However, the complaint was not subscribed and sworn to by the complainant, and not supported by the sworn statements of witnesses. The complaint also lacked a statement of non-forum shopping as required under CSC Resolution No. 95-3099 dated May 9, 1995.^[3] The Ombudsman (Visayas) treated the matter as a request for assistance, and docketed the complaint as RAS-VIS 98-1030.

On August 31, 1998, the Ombudsman forwarded the complaint to the Department of Education, Culture and Sports Regional Office VI (DECS-Region VI) and the Commission on Audit (COA) for appropriate action pursuant to Section 15(2) of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989.^[4] On September 29, 1998, the DECS-Region VI found that the complaint did not comply with the formalities under Executive Order No. 292, otherwise known as The Administrative Code of 1987. Thus, it dismissed the complaint, without prejudice to the filing of an appropriate one.

Undaunted, the Faculty Club filed a formal complaint — sworn and subscribed to by the complainants — with DECS-Region VI on February 5, 1999.^[5] However, in a letter^[6] dated February 12, 1999, the said office dismissed the complaint outright for lack of verification and certification against forum shopping.

On March 22, 1999, the DECS-Region VI received the requisite verification and

certification.^[7] This case was entitled "Faculty and Department Heads of the Ramon Torres National High School, Bago City v. Heidi Estandarte."

On April 19, 1999, the DECS-Region VI required Estandarte to answer the charges in writing.^[8] Estandarte filed her answer to the complaint on June 7, 1999.^[9] Thereafter, a Special Investigating Committee was created to hear the case; DECS-Region VI approved the composition of the Committee in a 1st Indorsement dated July 26, 1999.^[10] The Committee issued a subpoena *duces tecum* addressed to the State Auditor assigned to the case, requiring him to produce the original copies of certain documents. The State Auditor, however, replied that he could not comply with the subpoena because the documents are being used by the Ombudsman (Visayas) in the criminal and administrative cases pending before it which concerned the same parties.^[11]

On September 17, 1999, the Committee held a pre-hearing conference.^[12] It issued a 1st Indorsement on December 6, 1999, recommending the dismissal of the case on the ground of forum shopping.

Meanwhile, the COA referred the complaint against Estandarte to the Provincial Auditor for the Province of Negros Occidental, Crispin A. Pinaga, Jr. Pursuant thereto, Pinaga conducted an investigation and submitted his report to the Ombudsman (Visayas). He found that Estandarte's actions in connection with 24 of the 33 allegations in the complaint were "within the bounds of propriety."^[13] The Provincial Auditor made the following findings:

Complaint No. 2 — The collections of miscellaneous fee of Ten Pesos (P10.00) (Annex II) per student upon enrolment which was not authorized by DECS.

As explained by the principal in her letter dated June 8, 1998, this practice had been going on when she assumed thereat and the same has the implied permission of the PTA (Annex III).

Finding:

The imposition of this miscellaneous fee of Ten Pesos (P10.00) is in violation of DECS Order No. 27 s. 1995 dated May 24, 1995 (Annex IV).

Complaint 19 & 24

The principal, Miss Heidi M. Estandarte bought the .38 Caliber Handgun and Shotgun which she registered under her name, which should not be done so because the money she used to purchase said firearm came from the student government fund.

Finding:

The firearms as alleged by the principal were intended for the use of the security guard of the school. However, the arm dealer had secured the licenses of the firearms in the name of the principal. These firearms had

been turned-over to the School Supply Officer (Annex V). Representations had been made for the transfer of the license to the school, Ramon Torres National High School (Annex VI-A).

Complaint 21 & 31

She sold, kept and disbursed the income of the old newspaper with no accounting by the COA since 1994.

Complaint 23 & 25

The principal Ms. Estandarte accepted cash and in kind donations without being properly channeled and accounted first by the property custodian and the cash without first [being] deposited in the Trust Fund.

Finding:

Cash donations as acknowledged by Ms. Heidi Estandarte are as follows:

<u>Source</u>	<u>Amount</u>
Mrs. Ma. Belen J. Elizalde (not Phil-Am Life) (Annex VI)	P 10,000.00
Coca Cola Bottlers (Annex VIII)	100,000.00
Mr. Kojima (Annex IX)	53,400.00
Sales - Old Newspaper (Annex X)	3,949.00
T o t a l	<u>P167,349.00</u>

The donations and the proceeds from the sale of old newspaper were personally received and disbursed by Ms. Estandarte. However, these amounts were not acknowledged through the issuance of official receipts. Hence the donations were not taken up in the book of accounts of the school. Further these amounts were disbursed personally by the principal Ms. Heidi Estandarte who acted as the procurement and disbursing officer at the same time and in violation of the applicable law which provides to wit:

Section 63, PD 1445

Accounting for Moneys and Property received by public officials — Except as may otherwise be specifically provided by law or competent authority all moneys and property officially received by a public office in any capacity or upon any occasion must be accounted for as government funds and government property. Government property should be taken up in the books of the agency concerned at acquisition cost or an appraised value.

Section 68 PD 1445

Issuance of Official Receipt — (1) No payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. The receipt may be in the form of

postage, internal revenue or documentary stamps and the like, or officially numbered receipts, subject to proper custody, accountability and audit.

Section 112 PD 1445

Recording of financial transactions — Each government agency shall record its financial transactions and operation conformably with generally accepted accounting principles and in accordance with pertinent laws and regulations.

In view of the foregoing findings of the Auditor, the Ombudsman (Visayas) issued the Memorandum dated October 8, 1999, with the following recommendation:

- 1.) This RAS be upgraded to criminal and administrative cases against Ms. Estandarte;
- 2.) Provincial Auditor Crispin Pinaga, Jr. be required to submit (his) Affidavit/s or sworn statement/s in order to substantiate his findings. The same is true with respect to the complaints;
- 3.) Upon receipt of the Affidavits of Provincial Auditor Pinaga, Jr. and the complainants, a preventive suspension order be issued against respondent Estandarte for a period as may be warranted under the circumstance, to be determined and recommended by the investigator to whom the administrative case may be assigned; and
- 4.) RAS-VIS-98-1030 be considered closed and terminated.^[14]

The Ombudsman (Visayas) decided to refer the administrative aspect of the case (OMB-VIS-ADM-99-0941, entitled "COA Region 6, Office of the Provincial Auditor v. Heidi Estandarte") to the DECS-Region VI for administrative adjudication pursuant to Section 23(2) of Rep. Act No. 6770. The complete records of the case were forwarded to the DECS-Region VI in a letter dated November 29, 1999.^[15]

It appeared, however, that the DECS-Region VI did not receive this referral because on December 7, 1999, it inquired on the status of RAS-VIS-98-1030 from the Ombudsman (Visayas).^[16] On March 9, 2000, the Ombudsman (Visayas) inquired about the progress of the case from the DECS-Region VI,^[17] and when it did not receive an answer, it sent another letter-inquiry on September 21, 2000.^[18] Finally, on November 22, 2000, the Ombudsman (Visayas) received a letter from the DECS-Region VI informing it that the latter did not receive any referral concerning the case.^[19] Hence, the Ombudsman (Visayas) again forwarded the records of the case to the DECS-Region VI, which received them on December 26, 2000.^[20]

The DECS-Region VI directed the consolidation of this case (COA Region 6, Office of the Provincial Auditor v. Heidi Estandarte) with the case pending before it (Faculty and Department Heads of the Ramon Torres National High School, Bago City v. Heidi Estandarte).^[21] Thereafter, the hearing of the case by the Special Investigating Committee resumed.

In view of the referral to DECS-Region VI, the Ombudsman (Visayas) considered OMB-VIS-ADM-99-0941 closed and terminated in its Memorandum of November 27, 2001.^[22]

In a letter^[23] dated April 29, 2002, the Faculty Club requested the Ombudsman (Visayas) to take over the case for speedier disposition. Ms. Lucia Jane Grecia, a member of the Faculty Club, also wrote a letter to the Ombudsman (Visayas) complaining that she was being oppressed by Estandarte. She likewise requested the Ombudsman (Visayas) to take over the case. Consequently, on July 5, 2002, the Ombudsman (Visayas) informed the DECS-Region VI that it would not object if the case is returned to it.^[24]

On August 16, 2002, DECS-Region VI turned over the records of the case to the Ombudsman (Visayas) for adjudication, stating that "[i]t is the impression of this Office that the complainants intend that their case be heard by the Office of the Ombudsman and that Office had also manifested its willingness to reassume jurisdiction of the same."^[25] The case was docketed as OMB-V-A-02-0572-J.

On November 6, 2002, the Ombudsman (Visayas) set the case for preliminary conference.^[26] In the meantime, Estandarte filed an Urgent Motion to Remand^[27] the case to the DECS-Region VI on the ground that jurisdiction is now exclusively vested on the latter. On December 17, 2002, the Ombudsman (Visayas) denied the motion ratiocinating that it was not barred from assuming jurisdiction over the complaint after the DECS-Region VI had relinquished its jurisdiction over the same.^[28] Estandarte filed a motion for reconsideration of said Order, which was later denied by the Ombudsman (Visayas).^[29]

The preliminary conference was set on May 21, 2003. On the said date, only the counsel of COA was present. The Ombudsman (Visayas), therefore, issued an Order stating that in view of Estandarte's failure to attend the scheduled hearing, she is deemed to have waived her right to a formal investigation unless she is able to justify her absence. In an Urgent Motion for Postponement,^[30] Estandarte's counsel explained that he was due to attend a hearing in another court on the scheduled day of the hearing. He manifested that they intended to challenge the Ombudsman's order denying the motion to remand the case to the DECS-Region VI through a petition for *certiorari*. In its Order^[31] dated July 24, 2003, the Ombudsman reset the preliminary conference to July 30, 2003.

On July 21, 2003, Estandarte filed a Motion to Suspend Proceedings on the ground that she filed a petition for review on *certiorari* with the CA assailing the order denying her motion to remand the case to the DECS-Region VI. The Ombudsman denied the motion.^[32]

On July 29, 2003 Estandarte filed an Urgent Motion for Postponement^[33] of the hearing scheduled the following day, and a Motion for Reconsideration with Motion for Voluntary Inhibition, assailing the denial of her motion to suspend the proceedings. However, due to her failure to furnish the complainants with a copy of the motion to postpone, the Ombudsman (Visayas) proceeded with the preliminary conference with only the complainants present. Thereafter, the case was submitted