

FIRST DIVISION

[G. R. NO. 175895, April 12, 2007]

EDMUNDO JOSE T. BUENCAMINO, PETITIONER, VS. HON. COURT OF APPEALS, OFFICE OF THE OMBUDSMAN, AND CONSTANTINO PASCUAL, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Edmundo Jose T. Buencamino, petitioner, is the incumbent mayor of San Miguel, Bulacan, while Constantino Pascual, private respondent, is the president of Rosemoor Mining and Development Corporation, a company engaged in the mining of marble blocks.

On August 27, 2004, private respondent filed with the Office of the Ombudsman, public respondent, an administrative complaint against petitioner for grave misconduct, abuse of authority, acts unbecoming of a public officer, and violation of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act). In his complaint, private respondent alleged, among others, that the act of petitioner in demanding payment (without official receipt) of a "pass way" fee or a regulatory fee of P1,000.00 for every delivery truck that passes the territorial jurisdiction of San Miguel, Bulacan is illegal.

In his answer, petitioner denied the allegations of the complaint, explaining that he imposed the payment of regulatory fees pursuant to *Kapasiyahan* Blg. 89A-055, an ordinance enacted by the *Sangguniang Bayan* of San Miguel, Bulacan.

However, according to private respondent, the municipal ordinance was disapproved by the *Sangguniang Panlalawigan* of Bulacan for being *ultra vires* because the Local Government Code of 1991 does not empower any municipality to impose tax on delivery trucks of mining companies passing through its territorial jurisdiction.

In a Decision dated January 23, 2006, the Office of the Ombudsman declared petitioner administratively liable for abuse of authority and suspended him from office for a period of six (6) months without pay.^[1]

Aggrieved, petitioner filed with the Court of Appeals, also impleaded as a public respondent, a petition for review with application for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction. Petitioner prayed that the Office of the Ombudsman be enjoined from implementing its Decision during the pendency of his appeal, docketed as CA-G.R. SP No. 95546. On August 17, 2006, the appellate court issued a TRO. Subsequently, in its Resolution dated October 17, 2006, petitioner's application for preliminary injunction was denied. He then filed a motion for reconsideration, but it was likewise denied in a Resolution dated December 29, 2006.

Hence, the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. Petitioner alleged therein that in denying his application for a preliminary injunction, the Court of Appeals gravely abused its discretion; that pursuant to Section 7, Rule III of Administrative Order No. 07,^[2] the Decision of the Office of the Ombudsman suspending him from office is not immediately executory; and that in enforcing its Decision suspending him from the service during the pendency of his appeal, the Office of the Ombudsman violated Section 27 of R.A. No. 6770 (Ombudsman Act of 1989) and the rulings of this Court in *Lapid v. Court of Appeals*,^[3] *Lopez v. Court of Appeals*,^[4] and *Ombudsman v. Laja*.^[5]

In its comment, the Office of the Ombudsman countered that the Court of Appeals did not gravely abuse its discretion in issuing the assailed Resolutions; and that the cases cited by petitioner are not applicable to this case, the same having been overturned by the ruling of this Court in "*In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPW*;"^[6] and that Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

x x x this Honorable Court emphatically declared that Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was already amended by Administrative Order No. 17 wherein the pertinent provision on the execution of the Ombudsman's decision pending appeal is now similar to Section 47 of the "Uniform Rules on Administrative Cases in the Civil Service" — that is, **decisions of the Ombudsman are immediately executory even pending appeal.**

We agree.

Section 7, Rule III of Administrative Order No. 07, relied upon by petitioner, provides:

Sec. 7. Finality 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 not equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in Section 27 of R.A. 6770.

In interpreting the above provision, this Court held in *Laja*,^[7] citing *Lopez*,^[8] that "only orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalties of public censure, reprimand or suspension of not more than one month or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or**