

EN BANC

[G.R. NO. 168718, November 24, 2006]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. FARIDA T. LUCERO AND COURT OF APPEALS (CEBU CITY), RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 83356 reversing the decision of the Ombudsman in OMB V-A-02-0254-F, which ordered respondent Farida T. Lucero dismissed from the service for dishonesty.

As culled by the CA from the records of the case, the antecedents are as follows:

Petitioner Farida T. Lucero was appointed on November 18, 1999 as Clerk II of the Land Transportation Office, Regional Office No. VII, and was assigned at the Chief Finance Division in order to augment the personnel complement thereat. In a Memorandum dated November 18, 1999 which was issued by Regional Director Isabelo K. Apor, she was likewise directed to assist the Regional Cashier in collecting and receiving miscellaneous fees/revenues.

On September 29, 2000, then OIC-Regional Director Porferio I. Mendoza of the LTO, Regional Office No. VII, Cebu City requested COA to conduct an audit in the Cash Section of the Operations Division of their office in order to determine the extent of malversation of funds just discovered covering the period from November 18, 1999 up to September 30, 2000.

Acting on the said request, on October 2, 2000, an audit was conducted by State Auditor Nora B. Tiu, at the Cash Section of the Operations Division of LTO Regional Office No. VII where the Petitioner was assigned.

After conducting her audit, State Auditor Nora B. Tiu prepared an Audit Observation Memorandum revealing Petitioner to have issued sixty-nine (69) altered miscellaneous receipts. The aforesaid Audit Observation Memorandum states, in part, the following:

" x x x wherein the duplicate copies of said miscellaneous receipts on file with the processor/computer did not tally with the copies of the miscellaneous receipts on file with the auditor. The miscellaneous receipts attached to the supporting documents on file at the office of the Regional Director reflected lesser amounts, thereby abstracting the difference totaling P46,400.00."

As a consequence thereof, a Notice of Charge, NC No. 00-001-101 (00) dated November 14, 2000, was issued by the COA, LTO Region No. VII, receipt of which was acknowledged by the former Regional Directors Isabelo K. Apor and Porferio I. Mendoza of the Land Transportation Office.

Thereafter, an administrative case for dishonesty was filed against the Petitioner in the Office of the Ombudsman (Visayas).

On July 18, 2002, Petitioner filed her Counter-Affidavit denying the charges. She claimed the absence of legal authority on her part to receive cash collections in behalf of the agency or to issue official receipts for miscellaneous fees/revenues of the LTO. She alleged that she was not given any official designation to assist the cashier in the collection and receipt of the miscellaneous incomes/fees. Petitioner further averred that the issuance of the Memorandum, dated November 18, 1999, purportedly assigning her to assist the cashier was a mere afterthought and said Memorandum was antedated to jibe with the postulation that she was authorized to receive the collections in behalf of the LTO from the start of her assumption into office on November 18, 1999.

On July 20, 2003, the Office of the Ombudsman (Visayas) rendered its Decision finding the Petitioner guilty of dishonesty. The dispositive portion of the said Decision reads as follows:

WHEREFORE, premises considered, respondent had clearly committed DISHONESTY upon which a penalty of DISMISSAL from the service with the accessory penalties of FORFEITURE OF ALL BENEFITS and DISQUALIFICATION TO HOLD PUBLIC OFFICE IS HEREBY IMPOSED.

Petitioner sought reconsideration of the aforequoted Decision, but the Office of the Ombudsman (Visayas) denied it on January 26, 2004.

Aggrieved with the aforesaid Decision and Order of the Respondent Office of the Ombudsman (Visayas), the Petitioner filed in this Court a Petition for Review thereof.

The grounds set forth by the Petitioner in her petition are as follows:

I

THERE IS NO SUFFICIENT EVIDENCE TO ESTABLISH THAT SHE IS GUILTY OF DISHONESTY.

II

THE RESPONDENT OFFICE OF THE OMBUDSMAN (VISAYAS) HAS NO POWER TO DIRECTLY DISMISS HER FROM THE SERVICE.^[2]

In its Decision^[3] dated June 15, 2005, the appellate court upheld the finding of the Ombudsman and found petitioner guilty of dishonesty. However, the CA declared

that the Ombudsman had no authority to order petitioner's dismissal from the service in accordance with the ruling in *Tapiador v. Office of the Ombudsman*.^[4]

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us SETTING ASIDE the Decision dated July 20, 2003 and the Order dated January 26, 2004 rendered and issued by the Respondent Office of the Ombudsman (Visayas) in OMB-VIS-A-02-0254-F but only insofar as said office directly imposes upon the Petitioner the penalty of dismissal from the service. The said office may recommend such penalty to the proper disciplining authority.

SO ORDERED.^[5]

The Ombudsman filed a motion for partial reconsideration, which the CA denied.

Thus, petitioner Republic of the Philippines filed the instant petition for and in behalf of the Ombudsman seeking the reversal of the CA ruling. It argues that:

I

THE OFFICE OF THE OMBUDSMAN HAS FULL ADMINISTRATIVE DISCIPLINARY JURISDICTION OVER PUBLIC OFFICIALS AND EMPLOYEES UNDER ITS AUTHORITY, INCLUDING THE LESSER POWER TO ENFORCE THE SANCTIONS IMPOSED ON ERRING FUNCTIONARIES.

II

THE RELIANCE BY THE HONORABLE COURT OF APPEALS ON THE *OBITER DICTUM* IN *TAPIADOR VS. OFFICE OF THE OMBUDSMAN*, 379 SCRA 322 (2002) DISPOSSESSING THE OMBUDSMAN OF ITS DISCIPLINARY AUTHORITY, CONSTITUTES A GRAVE AND PALPABLE ERROR OF LAW CONSIDERING THAT:

A. SUCH A PASSING STATEMENT MUST BE INTERPRETED TO MEAN THAT THE OMBUDSMAN CANNOT "DIRECTLY" IMPLEMENT ITS ADMINISTRATIVE DECISIONS;

B. SUCH STATEMENT IS AND HAS REMAINED AN *OBITER DICTUM* WHICH DOES NOT HAVE THE STATUS OF A LEGAL DOCTRINE AND

C. THE POWER OF THE OMBUDSMAN TO IMPLEMENT ITS JUDGMENTS HAS BEEN AFFIRMED IN *LEDESMA VS. COURT OF APPEALS*, G.R. NO. 161629, 29 JULY 2005.^[6]

Petitioner maintains that the appellate court erred in relying on the *obiter dictum* of this Court in *Tapiador*. Petitioner asserts that under Section 13, Article XI of the Constitution, and Sections 13, 15(3), 16, 19, 21 and 25 of Republic Act No. 6770, the Ombudsman is empowered to order the dismissal of appointive government employees in administrative cases. Petitioner further asserts that it behooved the CA

to rely on the definitive ruling of this Court in *Ledesma v. Court of Appeals*.^[7]

In her Comment on the petition, respondent counters that, under the Constitution, the Ombudsman can only recommend the removal of a public officer or employee found to be at fault. She insists further that there is no substantial basis for declaring her liable for dishonesty.

The threshold issues for resolution are as follows: (1) whether the Ombudsman is empowered to order the removal of public officials or employees in administrative cases; and (2) whether there is sufficient evidence to hold respondent liable for dishonesty.

On the first issue, we agree with petitioner's contention that the appellate court erred in relying on the *obiter dictum* of the Court in *Tapiador*.^[8] As the Court had the occasion to state in *Ledesma v. Court of Appeals*:^[9]

For their part, the Solicitor General and the Office of the Ombudsman argue that the word "*recommend*" must be taken in conjunction with the phrase "*and ensure compliance therewith*." The proper interpretation of the Court's statement in *Tapiador* should be that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and direct and compel the head of the office or agency concerned to implement the penalty imposed. In other words, it merely concerns the *procedural* aspect of the Ombudsman's functions and not its *jurisdiction*.

We agree with the ratiocination of public respondents. Several reasons militate against a literal interpretation of the subject constitutional provision. Firstly, a cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an *obiter dictum* and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.

The issue raised in this Court has already been resolved in *Office of the Ombudsman v. Court of Appeals*.^[10] In that case, the Court declared that in the exercise of its administrative disciplinary authority under Section 12, Article XI of the 1987 Constitution and Republic Act No. 6770, the Office of the Ombudsman is empowered not merely to recommend, but to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The Court stated that this was the manifest intent of the legislature:

All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman *full* administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive

suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.

The explanation of Senator Edgardo Angara, one of the sponsors of Senate Bill No. 534 which, as consolidated with House Bill No. 13646, became RA 6770, is instructive:

Senator Laurel. Because, Mr. President, in the light of another section of the bill, with respect to Section 13, disciplinary authority, first, the Ombudsman here is granted the power of disciplining public officers and employees, while other bodies may not be so authorized; second, the Constitution itself empowers the Office of the Ombudsman merely to investigate and review; but the bill here authorizes the Ombudsman, and grants the power of disciplining public officers and employees. It goes beyond the constitutional provision.

Senator Angara. Well, if the Gentleman is through with his statement ...

Senator Laurel. Well, yes.

Senator Angara. I do not agree that this bill is going beyond what the Constitution has prescribed for the Ombudsman; because, as I understand it, *the constitutional provision was construed in the proceedings of the Constitutional Commission and in fact, left it to the Legislature to determine the powers and functions to be allocated to the Ombudsman. It did not say or it did not prohibit the Legislature from granting disciplinary power that we are now granting to the Ombudsman.* But over and beyond that interpretation, Mr. President, is the question that one must always ask, if he wants this institution of the Ombudsman to be effective, rather than simply be like the other watchdogs the past administrations created. Then we believe, the Committee believes, that *we must give the Ombudsman the necessary teeth in order to implement its own decision.* We believe that this is fully in accord with the Filipino custom and tradition, and based on our historical experience. *Short of not giving the Ombudsman the disciplining authority, I think we might as well kiss the system goodbye, because it will be like the same watchdogs created in the past-toothless and inutile.*

Senator Angara, by way of reply to the queries of Senator Neptali Gonzales, further explained:

Senator Gonzales. All right. There are certain admissions and, however reluctantly given, at least, let us go further because the Gentleman is invoking the whole of Section 13. I might really be wrong, and I want to be corrected his early.