495 Phil. 354

SECOND DIVISION

[G.R. NO. 134509, April 12, 2005]

VENANCIO R. NAVA, PETITIONER, VS. NATIONAL BUREAU OF INVESTIGATION, REGIONAL OFFICE NO. XI, DAVAO CITY, RESPONDENT.

D E C I S I O N

TINGA, J.:

In this *Petition*[1] filed pursuant to Section 27,[2] Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989," in relation to Rule 45 of the Revised Rules of Court, petitioner Venancio R. Nava (hereinafter, Nava) assails the disapproval[3] by the Ombudsman of the *Order*[4] of the Office of the Special Prosecutor recommending the dismissal of the case against him and his co-accused Aquilina Granada (hereinafter, Granada) for alleged Falsification Thru Reckless Imprudence in OMB Cases No. 3-93-3219 and No. 3-96-0462, in which the public respondent National Bureau of Investigation (NBI) was the complainant. The *Order* was issued to resolve the *Motion for Reinvestigation*[5] filed by Nava. The *Order* reads in part:

> Movant VENANCIO NAVA and AQUILINA GRANADA have to rely in good faith upon their subordinates. In the absence of any proof that they have knowledge of the irregularity committed by their subordinates they cannot be held criminally liable for having acted with reckless imprudence. In the instant case the accused could not have suspected any irregularity in the preparation of the PAL based on the ERF's (sic) as the said ERF's (sic) were certified as true copies by the responsible official in the Division Office therefore as noted by Superintendent Luceria de Leon.
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> In short, absence of any proof to the contrary, the accused enjoys the presumption of regularity in the performance of their official duty.
>
> **WHEREFORE**, premises considered, it is respectfully recommended that the Motion For Reinvestigation be **GRANTED** and that the case as against VENANCIO NAVA and AQUILINA GRANADA be **DISMISSED** for insufficiency of evidence.
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> Manila, Philippines, May 4, 1998.[6]

On 21 May 1998, the Ombudsman disapproved the recommendation of his subordinates with nary an explanation.

The case subject of this *Petition* emanated from anonymous letter-complaints[7] filed before the Office of the Ombudsman in Mindanao alleging that fake Equivalent Record Forms (ERFs) of several teachers of the Davao City National High School

were made the bases for the Plantilla Allocation List (PAL) for calendar year 1988 and for the teachers' corresponding promotion and salary upgrading.[8]

The Office of the Ombudsman in Mindanao referred the matter to the NBI in Region XI (NBI-XI) and directed it to conduct a fact-finding investigation.[9] The investigation by the NBI-XI disclosed, among others, the submission by a certain Myrna Rosales-Velez of a Service Record (DECS Form No. 93) containing fabricated facts and the handing in of fake ERFs by other teachers which were the bases of the PAL approved as correct by Nava who was then the Department of Education, Culture and Sports (DECS) Regional Director for Region XI.[10] The NBI recommended the filing of appropriate charges against the teachers and officials concerned.[11]

Acting on the findings of the NBI, the Office of the Ombudsman in Mindanao, in a *Joint Resolution*[12] dated 23 October 1996, recommended the indictment of Nava before the Sandiganbayan for Falsification of Official Documents thru Reckless Imprudence.[13] The pertinent portions of the *Joint Resolution* state:

> Likewise, this Office finds prima facie evidence to hold respondent DECS Regional Director Venancio Nava and Administrative Officer Aquilina Granada liable for Falsification of Official Documents thru Reckless Imprudence. Evidence on record would show that respondents Nava and Granada are liable for the charge of falsification for their act of approving and certifying as correct the Plantilla Allocation List (PAL) based on the approved Equivalent Record Forms (ERFs) of the subject teachers without verifying and scrutinizing the ERFs which turned out to be only certified copies of none-existing documents. Their defense that at their level of responsibility, it is not fair and right to expect them to be responsible for such verification as they relied and depended on the processing and verification of the subject documents to their subordinates, cannot be given credence. In fact, such admission all the more bolstered the evidence against the respondents for reckless imprudence in the performance of their official functions. Indeed respondents Nava and Granada who are holding sensitive positions, are liable for their failure to detect the falsity of the Equivalent Record Forms (ERFs) and even approved and certified correct the Plantilla Allocation List based on the fake or falsified Equivalent Record Forms. In fact, even their subordinates in the Regional Office have knowledge of the non-existence of the subject ERFs. On record is the list of DCHS teachers with approved ERFs as of 1988, submitted by Administrative Officer Rolando Suase (Records, pp. 47-48 in OMB-3-96-0462). In the said list, not one of the subject teachers appear. Moreover, a certification dated 15 January 1993, issued by Administrative Officer Edilberto Madria disclosed that based on the files of subject teachers, same do not have approved ERFs for the years 1987, 1988 and 1989 (Record, p. 61).[14]
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> . . . .
>
> It is also recommended that respondents Venancio Nava and Aquilina

> Granada, be indicted before the Sandiganbayan for Falsification of Official Documents thru Reckless Imprudence.[15]

The *Joint Resolution* was approved by Ombudsman Aniano A. Desierto on 15 November 1996.[16]

Thus, the filing of an *Information*[17] against Nava and his co-accused Granada before the Sandiganbayan on 20 November 1996. The *Information* was docketed as SB Criminal Case No. 23519, the accusatory portion of which reads as follows:

> That during the Calendar Year 1988 and sometime prior or subsequent thereto, at Davao City, Philippines and within the jurisdiction of this Honorable Court, the said accused, both public officers, Venancio R. Nava being the DECS-XI Regional Director with salary grade 28 and Aquilina B. Granada, being the Administrative Officer of the same office; while in the performance of their official duties, thus committing an offense in relation to their office, did then and there unlawfully and feloniously through gross inexcusable negligence, certified as correct and approved without verifying and scrutinizing the Plantilla Allocation List for the Calendar Year 1988 and earlier of the Davao City High School Teachers, based on the approved Equivalent Record Forms which turned out to be photocopies of none (sic) existing Equivalent Record Forms, thereby enabling the subject teachers to be upgraded in their salary grade from Teacher I to Teacher III with corresponding salary increase as in fact same teachers were able to collect salary differentials.
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> CONTRARY TO LAW.[18]

Nava filed before the Second Division of the Sandiganbayan a *Motion for Reinvestigation*[19] which was granted in a *Resolution* dated 22 September 1997.[20] On 4 May 1998, Special Prosecution Officer Manuel A. Corpuz (hereinafter, Special Prosecutor) recommended the dismissal of the charges against Nava and Granada for insufficiency of evidence. This recommendation was, however, disapproved by the Ombudsman.[21] Hence, the instant *Petition* in which Nava contends that the Ombudsman gravely erred or was "manifestly mistaken" in disapproving the recommendation of dismissal of the case against him, which disapproval, he further avers, is based on an erroneous conclusion drawn from "undisputed" facts which assumes the nature of a question of law reviewable by this Honorable Court. Petitioner cites the cases of *Arias v. Sandiganbayan*[22] and *Magsuci v. Sandiganbayan*[23] to support his stance that the case against him should have been ordered dismissed.[24]

In *Arias v. Sandiganbayan*,[25] the Court absolved the accused therein, who was an auditor in an engineering district, from the indictment that he conspired in the overpricing of land purchased by the government by approving the vouchers for its payment. The Court concluded, to wit:

> We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence-is suddenly swept into a conspiracy conviction simply because he did not personally

> examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority. [26]

It further held that:

> (H)eads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations . . . There has to be some added reason why he should examine each voucher in detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[27]

In *Magsuci v. Sandiganbayan*,[28] the Court acquitted the accused therein, a regional director, of the charges that he approved the payment of a work order based on a Certificate of Completion and Accomplishment Report which turned out to be falsities, allegedly in conspiracy with the contractor and the engineer who was tasked with the duty to accomplish said certificate and report. The Court ruled in this wise:

> In concluding petitioner's involvement in the conspiracy, the Sandiganbayan could only point to Magsuci's having (1) *noted* the Accomplishment Report and Certification submitted by Enriquez, (2) *signed* the disbursement voucher with the usual certification on the lawful incurrence of the expenses to be paid, and (3) *co-signed* four checks for the payment of P352,217.16 to Ancla. The Sandiganbayan concluded that the petitioner would not have thusly acted had he not been a party to the conspiracy.
>
> Fairly evident, however, is the fact that the action taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of the cohorts.[29]

In the *Comment*[30] filed by the Office of the Ombudsman on behalf of the NBI, through the Office of the Special Prosecutor,[31] it was put forward that as head of office and the final approving authority of the ERFs, it behooved Nava to see to it that the supporting documents were attached to the PAL. Nava should have taken the necessary measures to verify the contents of the ERFs. Yet he did nothing other than affix his signature signifying that the ERFs were in order. His contention then that he had acted in good faith crumbles since he had known that the ERFs of the teachers did not have the supporting documents to warrant their approval and the

eventual inclusion of the teachers' names in the PAL.[32]

Corollarily, the NBI asserted that the Ombudsman did not err in not applying the principles laid down by the Court in *Arias v. Sandiganbayan*[33] and *Magsuci v. Sandiganbayan*[34] as Nava's knowledge of the infirmity of the ERFs cannot controvert the truth that he had acted in bad faith when he approved the said ERFs and thereafter the PAL.[35]

Moreover, it is discretionary on the Ombudsman whether or not to rely on the findings of fact of the investigating prosecutor in making a review of the latter's report and recommendation, as he can very well make his own findings of fact. And citing the case of *Knecht, et al. v. Desierto et al.*,[36] the NBI further pleaded that it is beyond the Court's ambit to review the exercise of the Ombudsman in prosecuting or dismissing a complaint filed before it.[37]

In the *Comment*[38] filed by the Solicitor General also on its behalf, the NBI explained that for the ERFs to be processed and approved, they must be accompanied by the teachers' service records, performance ratings, special order of bachelor's degree, transcripts of records of undergraduate course or masteral units earned, if any, and a consolidated record of training seminars and workshops attended. Had Nava exercised ordinary prudence or reasonable care or caution, he would have noticed the absence of supporting documents accompanying the ERFs. Nava's sole reliance on the certification and initials of his subordinates is indicative of a wanton attitude and gross lack of precaution.[39]

The NBI also argued that the Ombudsman, in denying the recommendation of the Special Prosecutor, committed no error in fact and in law. He merely exercised his prosecuting powers based on the constitutional mandate.[40]

Further, the NBI pointed out that the instant *Petition* is one for review on certiorari pursuant to Section 27 of R.A. 6770 in relation to Rule 45 of the Rules of Court, which provision of law had already been declared unconstitutional in *Fabian v. Desierto*[41] and reiterated in *Namuhe v. Ombudsman*.[42] Pursuant to the Court's ruling, appeals from orders, directives or decisions of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the Rules of Court. In any event, as the instant case is not an administrative disciplinary case, the proper remedy should have been a petition for certiorari under Rule 65 of the Rules of Court. However, even assuming that this remedy was pursued, since there is nothing on record to even suggest that the Ombudsman committed grave abuse of discretion in refusing to have the case against Nava dismissed, the NBI insists that the Petition must fail.[43]

Nava in his *Consolidated Reply*[44] stressed that the instant *Petition* was filed on 3 September 1998 before the promulgation of the *Fabian* case on 16 September 1998; and maintained that it was then his honest position that Section 27 of R.A. 6770 was available as a remedy in non-administrative cases notwithstanding its silence on the matter. In this instance, however, he posited that the Court of Appeals may likewise not take cognizance of the *Petition* in light of the Court's ruling in *Tirol, Jr. v. Justice del Rosario*,[45] that the right to appeal to the Court of Appeals granted