

SECOND DIVISION

[G.R. No. 205572, October 07, 2020]

**PATRICK U. GABUTINA, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, RESPONDENT.**

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the February 15, 2012^[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 04641-MIN which dismissed outright the Petition for Review filed by petitioner Patrick U. Gabutina (Gabutina) due to technical infirmities and considering that the assailed September 8, 2011^[3] and February 18, 2005^[4] Orders, and the October 29, 2004 Decision^[5] of the Office of the Ombudsman, in Administrative Case No. OMB-C-A-04-0072-B have already attained finality.

Said Orders and Decision found Gabutina guilty of Grave Misconduct and for receiving for personal use a fee, gift, or other valuable thing in the course of his official duties or in connection therewith, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment, in violation of Rule IV, Section 52, paragraph A, sub-paragraphs 3 and 9 of Memorandum Circular No. 19, s. 1999 or the Revised Uniform Rules on Administrative Cases in the Civil Service. Also assailed is the December 17, 2012 Resolution^[6] of the CA denying Gabutina's motion for reconsideration.

The Antecedents:

On January 21, 2004, John Kenneth T. Moreno (Moreno) filed an Affidavit-Complaint^[7] against Gabutina, Chief of Staff of Congressman Oscar S. Moreno (Congressman Moreno), and Metodio G. Baldivino, Jr., a.k.a. "Jun Balds" (Baldivino), Manager for Infrastructure Projects of Congressman Moreno, before the Office of the Ombudsman Preliminary Investigation and Administrative Adjudication Bureau-A. The Affidavit-Complaint charged both Gabutina and Baldivino with the following crimes: (1) Violation of Republic Act No. 6713 or the Code of Conduct of Ethical Standards for Public Officials and Employees; (2) Violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act; and (3) Swindling (Estafa) under Article 315, No.1 (b) of the Revised Penal Code.

The following are the facts, as summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

[O]n November 15, 2002, the Complainant [Moreno] received a phone call from Metodio G. Baldivino, Jr., who identified himself as the one in-charge of all the infrastructure projects of Congressman Oscar S. Moreno, Representative of the lone district of Misamis Oriental, Mindanao. During the said conversation, Respondent Baldivino, Jr., requested for an urgent

meeting with the Complainant regarding some projects to be [bid]. Thus, they agreed to meet on the following Monday at the New Lane Restaurant in Gingoog City. Therein, Respondent Baldivino allegedly demanded for Php 500,000.00 which, according to him, will be given to Congressman Moreno as an advance "SOP" so that they will cause the award of the Farm to Market Project to the Complainant. Allegedly, it was in the same meeting where Respondent Baldivino called the other Respondent Gabutina to confirm the amount demanded, to which the latter approved. A week later, the Complainant went personally to the Office of Respondent Gabutina at the Staff Office of Congressman Moreno, at the Batasan Complex, to confirm and verify the amount allegedly demanded as advance "SOP" for Congressman Moreno. Thereat, Respondent Gabutina confirmed later receiving part of the said amount and assured the Complainant that the project is forthcoming.

As a consequence thereof, the Complainant deposited the agreed amount in the AIM Account of Respondent Baldivino at the Landbank, Gingoog City on 29 November 2002 and 2 December 2002. Both amounts were withdrawn [by respondent Baldivino] on the same day that they were deposited.

On 28 February 2003, Respondent Baldivino allegedly asked for an additional amount of Php 150,000.00 for another 1.5 million pesos worth of project, and instructed the Complainant to deposit the same under the account of Respondent Gabutina at the Philippine National Bank (PNB), Batasan Branch, Quezon City. However, the Complainant opted to deliver it personally to Respondent Baldivino, in Gingoog City. On 21 April 2003, the herein Respondent gave again the assurance that the said projects will be [bid] out in May 2003 to the Complainant, and even texted to the latter the specific control identification number of the two (2) Farm to Market Road Projects, registered with the Pre-qualification, Bids and Awards Committee of the Department of Public Works and Highways (DPWH), Main Office, Port Area, Manila. Unfortunately, the aforesaid projects were [bid] out and given to another contractor based in Butuan City, and not to the Complainant as promised by the Respondents. Henceforth, the Complainant demanded for the return of the principal amount but the Respondents failed to make good their promise to return it despite repeated demands.^[8]

In his Counter-Affidavit,^[9] Gabutina denied Moreno's allegations and averred the following, as also summarized by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman:

[R]espondent Gabutina averred that he never asked for, negotiated or demanded money in consideration of or in exchange for the award of any project or projects funded from appropriation allotted to the Province of Misamis Oriental pertaining to the Congressional District of Hon. Congressman Oscar S. Moreno; that he denied using his position to commission or SOP money from contractors to enable them to get an assigned or preawarded contract projects before the bidding takes place; that pre and post qualifications of contractors for purposes of awarding projects of the government, whether funded from congressional allocation or otherwise, are determined and evaluated pursuant to the

rules, regulations, and guidelines that implement acts of Congress or Executive Orders of the President of the Philippines such as RA No. 7718 and Department Order No. 152, series of 2000, DPWH; that he had not lobbied, asked, demanded personally or thru Metodio G. Baldivino, from Mr. Kenneth T. Moreno any cut, commission, SOP money as consideration for, exchange, or for what not, of any award of contract for infrastructure project or projects, as to pre-arrange an award in his favor, because that cannot be done or negotiated under and pursuant to government rules on bidding and awarding of government projects; that it is not true that he maintains communications with Mr. Baldivino, Jr., as to pre-determine contractors to whom contracts for infrastructure projects may be [awarded], as there is no such thing as pre-determined/pre-arranged contractors of the congressman's choice; that he is not aware of any meeting between the Complainant and Jun Baldis, which the latter allegedly called him to confirm an SOP of Php 500,000.00 to get a project worth Php 5M; he likewise denied having met the Complainant, thus, he never received in whole or in part any SOP or grease money that the latter mentioned; and that the Complainant, as contractor, fully knows under government rules and regulations, that awards of contracts for infrastructure project[s] are always done thru public bidding to ensure competitiveness in the prosecution of project, and that in the pre and post qualifications of contracts there is a committee which evaluates the same; a contractor cannot just demand pre-arranged or pre-determined awarding of contracts because of an SOP money.^[10]

The Findings of the Office of the Ombudsman:

On October 29, 2004, the Office of the Ombudsman rendered a Decision^[11] finding Gabutina guilty as charged while dismissing the administrative case against Baldivino. The dispositive portion of the Decision reads:

WHEREFORE, Public Respondent Patrick U. Gabutina is hereby found GUILTY of Grave Misconduct and receiving for personal use of a fee, gift or other valuable things in the course of official duties or in connection therewith when such fee, gift or other valuable things is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws, pursuant to Section 52, paragraph a, subparagraphs 3 and 9, Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service (Memorandum Circular No. 19, Series of 1999). Accordingly, he is meted out the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, including perpetual disqualification from entering government service.

As regards Respondent Metodio G. Baldivino, Jr., the administrative case against him is hereby DISMISSED for lack of disciplinary jurisdiction over his person.

SO ORDERED.^[12]

In an Order^[13] dated February 18, 2005, the Office of the Ombudsman dismissed Gabutina's Motion for Reconsideration,^[14] viz.:

WHEREFORE, the Motion for Reconsideration dated 14 December 2004 of Movant-Respondent Patrick U. Gabutina is hereby DENIED. The Decision under date of 29 October 2004 of this Office is AFFIRMED in toto.

x x x x

SO ORDERED.^[15]

On March 17, 2005, Gabutina received the February 18, 2005 Order from the Office of the Ombudsman.^[16] On March 27, 2005, instead of filing an appeal under Rule 43 of the Rules of Court with the CA, Gabutina filed a Motion for Leave to File and Admit 2nd Motion for Reconsideration^[17] and a 2nd Motion for Reconsideration^[18] with the Office of the Ombudsman, on the belief that "a 2nd Motion for Reconsideration would still be the most preferable course of action or ground x x x in consonance with the administration and interest of justice and fair play."^[19]

While his 2nd Motion for Reconsideration was pending with the Office of the Ombudsman, Gabutina also filed on May 10, 2005 with the same Office a Petition for Review of the Decision dated 29 October 2004 approved by the Overall Deputy Ombudsman,^[20] assailing the aforesaid Decision. In his Petition for Review, Gabutina admitted that his Motion for Leave and a 2nd Motion for Reconsideration were still pending before the Office of the Ombudsman.

On May 6, 2008, the Office of the Ombudsman issued an Order^[21] treating Gabutina's Petition for Review dated May 10, 2005 as his third Motion for Reconsideration and denying the same. Citing Rule III, Section 8 of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of Ombudsman, it emphasized that only one motion for reconsideration may be filed before the Office of the Ombudsman, thus, Gabutina's second and third Motions must fail. Furthermore, these Motions shall not stop the Decision of the Office of the Ombudsman from attaining finality. In the end, the Office of the Ombudsman held:

WHEREFORE, the Petition for Review which is hereby treated as respondent's third (3rd) motion for reconsideration is DENIED. The October 29, 2004 Decision as well as the February 18, 2005 Order are hereby AFFIRMED in toto.

So ordered.^[22]

Despite the repeated denial of the Office of the Ombudsman of his motions, Gabutina filed yet again a Motion for Reinvestigation^[23] on June 21, 2011, raising the same issues and grounds as contained in his motions for reconsideration.

On September 8, 2011, the Office of the Ombudsman issued another Order,^[24] dismissing Gabutina's Motion for Reinvestigation. It reiterated that only one motion for reconsideration or reinvestigation is allowed by the Rules and that all the pleadings filed by Gabutina, though differently captioned, asked for the same thing: the reversal of the Decision dated October 29, 2004. The dispositive portion reads:

WHEREFORE, the motion for reinvestigation is hereby DENIED with finality. The 29 October 2004 Decision and all the subsequent Orders are deemed affirmed in toto.