

# FIRST DIVISION

[ G.R. No. 237129, December 09, 2020 ]

**OLIVER B. FELIX, PETITIONER, VS. JULITO D. VITRIOLO,  
RESPONDENT.**

## DECISION

**CARANDANG, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated August 17, 2017 and the Resolution<sup>[3]</sup> dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 149063 which modified the Joint Resolution of the Ombudsman and imposed upon Julito D. Vitriolo the penalty of suspension for a period of 30 days for violation of Section 5(a) of Republic Act No. (R.A.) 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

### Facts of the Case

Based on the records, in September 1996, Pamantasan ng Lungsod ng Maynila (PLM) and the National College of Physical Education (NCPE) entered into a Memorandum of Agreement (MOA) for the creation of a physical education program for undergraduate and graduate students.<sup>[4]</sup> However, on September 29, 2003, the Securities and Exchange Commission (SEC) revoked the registration of NCPE for non-compliance with reportorial requirements. Nevertheless, the MOA was renewed in September 2005. On September 28, 2007, then PLM President Adel Tamano, suspended the PLM NCPE MOA based on the Audit Observation Memorandum of the Commission on Audit (COA) stating that the program was prejudicial to the interests of PLM. The suspension of the MOA took effect in September 2008.<sup>[5]</sup>

On October 21, 2009, because of the suspension of the MOA and upon urging of his colleagues who were pursuing graduate studies in NCPE, Oliver Felix (Felix), former faculty member of the College of Physical Education at the PLM, inquired from the different offices of the Commission on Higher Education (CHED) whether NCPE was permitted to grant undergraduate and graduate degrees in physical education. He found out that NCPE is not included in the list of CHED-recognized higher education institutions.<sup>[6]</sup>

Because of his discovery of NCPE's status and fearing that there are other anomalies surrounding the programs offered by the PLM aside from the suspended PLM-NCPE MOA, Felix sent a letter dated May 21, 2010 to Atty. Julito D. Vitriolo (Vitriolo), Executive Director of CHED. Felix also requested from Vitriolo a certification that PLM is not authorized to implement the Expanded Tertiary Education Equivalency Accreditation Program (ETEEAP), among others. According to Felix, Vitriolo obstructed the issuance of non-deputation to implement the ETEEAP

notwithstanding that Dr. Felizardo Y. Francisco, Director of the CHED's Office of Programs and Standards (OPS), has already processed the same. Felix believed that the inaction of Vitriolo on his request was due to the deal that Vitriolo and PLM's Legal Counsel, Atty. Gladys France Palarca (Atty. Palarca), forged about the non-issuance of citation against PLM.<sup>[7]</sup>

Felix sent another letter on June 29, 2010 reiterating his allegations concerning the diploma-mill operations of PLM but Vitriolo did not allegedly act on these letters even with accompanying evidence in support of the assertions.<sup>[8]</sup>

Meanwhile, on June 1, 2010, a meeting was held between Vitriolo and Atty. Palarca, where the former allegedly "made verbal representations that Transcript of Records could be issued to the graduates under the PLM-NCPE MOA based on vested rights".<sup>[9]</sup>

Because of the inaction of Vitriolo, Felix filed the first Complaint-Affidavit (first complaint) on May 19, 2011 against the former. Felix claimed that the collusion between Vitriolo and PLM resulted in the continuation of the diploma-mill operations of PLM and the issuance of transcript of records and diplomas to students and graduates under the PLM-NCPE MOA.<sup>[10]</sup>

The Office of the Ombudsman treated the first complaint as one for mediation. At the mediation conference, Felix and Vitriolo's representative entered into an agreement whereby the CHED through Vitriolo, promised to act on the May 21, 2010 and June 29, 2010 letters of Felix within 30 days and issue the necessary citations and sanctions to PLM for it to cease and desist all illegal academic programs. It was also stated in the agreement that if Vitriolo fails to do the same, Felix will revive the complaint against him.<sup>[11]</sup>

A month later or on September 9, 2011, Felix expressed to Vitriolo his expectation that the latter and CHED would comply with the agreement. In a reply dated September 22, 2011, Vitriolo reported that after the mediation session, he directed the OPS and the Office of the State Universities and Colleges (SUCs) and Local Universities and Colleges (LUCs) Concerns to investigate and gather pertinent evidence regarding the concerns contained in Felix's letters.<sup>[12]</sup>

Three years after the first complaint was filed and frustrated of Vitriolo's failure to investigate his assertions about the diploma-mill operations of PLM and unwillingness to issue the necessary sanctions, Felix sent another letter dated June 30, 2014 stating that Vitriolo tolerated the illegal diploma-mill operations of PLM. Felix also warned Vitriolo that he will file another complaint against him. Vitriolo sent a reply dated July 17, 2014 reporting that the one assigned to investigate the programs of PLM retired without turning over his findings and he asked another official to provide updates on what has been accomplished concerning the alleged diploma-mill operations of PLM.<sup>[13]</sup>

Unsatisfied with the explanation of Vitriolo, Felix filed a second complaint-affidavit on June 30, 2015 for grave misconduct, gross neglect of duty, incompetence, inefficiency in the performance of official duties, and violation of Sections 5 (a), (c), and (d) of Republic Act (R.A) No. 6713.<sup>[14]</sup>

In his counter-affidavit, Vitriolo averred that he was not remiss in his duty to investigate the complaints of Felix. In fact, Vitriolo enumerated the following actions that were undertaken by his Office, to wit: (1) referral sheet dated July 12, 2010 forwarding to the Office of the SUCs and LUCs the complaint for review; (2) instruction dated September 3, 2010 to the Office of the SUCs and LUCs to provide COA the status of PLM-NCPE Program and the Open University Distance Learning Program; (3) follow up on August 15, 2011 with the Office of the SUCs and LUCs the request of complainant; and (4) the September 19, 2011 letters to Director Sinforoso Birung of the OPS, Director Lily Freida Macabangun-Milla of the Office of the SUCs and LUCs Concerns, and Director Catherine Castaneda of the CHED-NCR all concerning complainant's assertions.<sup>[15]</sup> Vitriolo added that after sending a reply dated July 11, 2014 to Felix's June 30, 2014 letter, he referred the matter to the OPS and on August 3, 2015, the OPS recommended to refer the matter to the CHED-NCR.<sup>[16]</sup>

Vitriolo argued that to be able to make him liable for grave offenses under the civil service rules, bad faith must attend the acts complained of because reliance on mere allegations, conjectures and oppositions is not enough. Vitriolo also denied having forged an illicit deal with Atty. Palarca.<sup>[17]</sup>

### **Ruling of the Ombudsman**

On December 29, 2016, the Ombudsman issued its Joint Resolution<sup>[18]</sup> finding Vitriolo liable for grave misconduct, gross neglect of duty, inefficiency, incompetence, and violation of Section 5(a), (c), and (d) of R.A. 6713 and meted upon him the penalty of dismissal from service, with the corresponding accessory penalties.<sup>[19]</sup>

The Ombudsman found that Vitriolo only responded to Felix's 2010 letters on July 11, 2014 or more than four years therefrom.<sup>[20]</sup> This is contrary to Section 5(a) of R.A. 6713 requiring government officials to respond to letters and telegrams sent by the public within 15 days from receipt. Even if Vitriolo acted on the concerns of Felix, he never made known his actions to the latter. The Ombudsman also concluded that Vitriolo cannot escape his liability under Section 5(c) and (d) of R.A. 6713 for failure to expeditiously process documents and papers in relation to the complaint filed by Felix and to act immediately on the public's personal transactions.<sup>[21]</sup>

The Ombudsman further noted that even after five years from the receipt of the letters or on August 3, 2015, Vitriolo was still making referrals to CHED officials for the investigation of Felix's concerns. Vitriolo was not able to explain such foot-dragging. According to the Ombudsman, the inaction of Vitriolo is not in accordance with Section 8(e) of R.A. 7722, otherwise known as the "Higher Education Act of 1994" vesting upon CHED the duty to "monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure."<sup>[22]</sup> As Executive Director of CHED, Vitriolo is tasked to act as a clearing house for all communications received from internal

and external sources as well as provide advice to and direct or assist CHED clients in addressing their various public service demands/needs.<sup>[23]</sup>

The Ombudsman is convinced that by Vitriolo's inattention to communications addressed to him, he showed not even slightest care regarding requests from and concerns of the public. The inaction of Vitriolo in investigating the alleged diploma-mill operations of PLM, coupled with his statement that PLM may release the transcript of records and diplomas of the graduates of the PLM-NCPE MOA based on vested rights, reeks of bad faith and tantamount to grave misconduct and gross neglect of duty.<sup>[24]</sup>

Vitriolo moved for reconsideration that was denied in an Order<sup>[25]</sup> dated March 29, 2017.

Aggrieved, Vitriolo filed a Petition for Review to the CA.

### **Ruling of the Court of Appeals**

In its Decision<sup>[26]</sup> dated August 17, 2017, the CA modified the decision of the Ombudsman and instead suspended Vitriolo for 30 days for violation of Section 5(a) of R.A. 6713.

The CA agreed that Vitriolo indeed failed to promptly act on the letters dated May 21, 2010 and June 29, 2010 of Felix. Such inaction is a violation of Section 5(a) of R.A. 6713.<sup>[27]</sup> However, the omission did not amount to gross neglect of duty that justifies the dismissal of Vitriolo from service.<sup>[28]</sup>

The CA is convinced that contrary to Felix's allegation, Vitriolo did not disregard the request for investigation and in fact referred the matter to the appropriate offices of CHED.<sup>[29]</sup> Hence, as observed by the CA, the only infraction committed by Vitriolo was his failure to reply to the letters and to communicate to Felix specific actions he has taken or to be taken by his office.<sup>[30]</sup>

The CA imposed the penalty of 30-day suspension on Vitriolo based on Rule 10, Section 46(F)(12) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) which penalizes light offenses including failure to act promptly on letters and requests within 15 days from receipt thereof. According to the said provision, a light offense is punishable by reprimand for the first offense; suspension of one day to 30 days for the second offense; and dismissal from service for the third offense. Considering that Vitriolo failed to respond to two letters dated May 21, 2010 and June 29, 2010 of Felix, then the penalty of 30 days suspension was imposed on him.<sup>[31]</sup>

On the issue of the supposed opinion of Vitriolo that transcripts of records may be issued to the graduates of PLM-NCPE based on vested rights, the CA found that this cannot be used as basis for Vitriolo's liability for gross negligence and grave misconduct as found by the Ombudsman. In fact, even the Ombudsman acknowledged that graduates of the program before its suspension are entitled to their diplomas.<sup>[32]</sup>