

## EN BANC

[ G.R. No. 196231, January 28, 2014 ]

**EMILIO A. GONZALES III, PETITIONER, VS. OFFICE OF THE PRESIDENT OF THE PHILIPPINES, ACTING THROUGH AND REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SENIOR DEPUTY EXECUTIVE SECRETARY JOSE AMOR M. AMORANDO, OFFICER-IN-CHARGE – OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, ATTY. RONALDO A. GERON, DIR. ROWENA TURINGAN-SANCHEZ, AND ATTY. CARLITO D. CATAYONG, RESPONDENTS.**

[G.R. No. 196232]

**WENDELL BARRERAS-SULIT PETITIONER, VS. ATTY. PAQUITO N. OCHOA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT, ATTY. DENNIS F. ORTIZ, ATTY. CARLO D. SULAY AND ATTY. FROILAN D. MONTALBAN, JR., IN THEIR CAPACITIES AS CHAIRMAN AND MEMBERS OF OFFICE OF MALACAÑANG LEGAL AFFAIRS, RESPONDENTS.**

## D E C I S I O N

**BRION, J.:**

We resolve the Office of the President's (*OP's*) motion for reconsideration of our September 4, 2012 Decision<sup>[1]</sup> which ruled on the petitions filed by Deputy Ombudsman Emilio Gonzales III and Special Prosecutor Wendell Barreras-Sulit. Their petitions challenged the constitutionality of Section 8(2) of Republic Act (RA) No. 6770.<sup>[2]</sup>

In the challenged Decision, the Court **upheld** the constitutionality of Section 8(2) of RA No. 6770 and ruled that the President has disciplinary jurisdiction over a Deputy Ombudsman and a Special Prosecutor. The Court, however, **reversed** the OP ruling that: (i) found Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust; and (ii) imposed on him the penalty of dismissal.

Sulit, who had not then been dismissed and who simply sought to restrain the disciplinary proceedings against her, solely questioned the jurisdiction of the OP to subject her to disciplinary proceedings. The Court affirmed the continuation of the proceedings against her after upholding the constitutionality of Section 8(2) of RA No. 6770.

The *falla* of our assailed Decision reads:

WHEREFORE, in G.R. No. 196231, the decision of the Office of the President in OP Case No. 10-J-460 is REVERSED and SET ASIDE. Petitioner Emilio A. Gonzales III is ordered REINSTATED with payment of backwages corresponding to the period of suspension effective immediately, even as the Office of the Ombudsman is directed to proceed with the investigation in connection with the above case against petitioner. In G.R. No. 196232, We AFFIRM the continuation of OP-DC Case No. 11-B-003 against Special Prosecutor Wendell Barreras-Sulit for alleged acts and omissions tantamount to culpable violation of the Constitution and a betrayal of public trust, in accordance with Section 8(2) of the Ombudsman Act of 1989.<sup>[3]</sup>

In view of the Court's ruling, the OP filed the present motion for reconsideration through the Office of the Solicitor General (OSG).

We briefly narrate the facts that preceded the filing of the petitions and the present motion for reconsideration.

## **I. ANTECEDENTS**

### **A. Gonzales' petition (G.R. No. 196231)**

#### **a. Factual antecedents**

On May 26, 2008, Christian Kalaw filed separate charges with the Philippine National Police Internal Affairs Service (*PNP-IAS*) and with the Manila City Prosecutor's Office against Manila Police District Senior Inspector Rolando Mendoza and four others (*Mendoza, et al.*) for robbery, grave threat, robbery extortion and physical injury.<sup>[4]</sup>

On May 29, 2008, Police Senior Superintendent Atty. Clarence Guinto filed an administrative charge for grave misconduct with the National Police Commission (*NAPOLCOM*) PNP-NCRPO against Mendoza, *et al.* based on the same allegations made by Kalaw before the PNP-IAS.<sup>[5]</sup>

On July 2, 2008, Gonzales, Deputy Ombudsman for Military and Other Law Enforcement Officers (*MOLEO*), directed the NAPOLCOM to turn over the records of Mendoza's case to his office. The Office of the Regional Director of the NAPOLCOM duly complied on July 24, 2008.<sup>[6]</sup> Mendoza, *et al.* filed their position papers with Gonzales, in compliance with his Order. <sup>[7]</sup>

Pending Gonzales' action on Mendoza, *et al.*'s case (on August 26, 2008), the Office of the City Prosecutor of Manila City dismissed Kalaw's complaint against Mendoza, *et al.* for his failure to substantiate his allegations.<sup>[8]</sup> Similarly, on October 17, 2008, the PNP-IAS recommended the dismissal without prejudice of the administrative case against Mendoza, *et al.* for Kalaw's failure to prosecute.<sup>[9]</sup>

On February 16, 2009, after preparing a draft decision on Mendoza, *et al.*'s case, Gonzales forwarded the entire records to the Office of then Ombudsman Merceditas Gutierrez for her review.<sup>[10]</sup> In his draft decision, Gonzales found Mendoza, *et al.*

guilty of grave misconduct and imposed on them the penalty of dismissal from the service.<sup>[11]</sup>

Mendoza, *et al.* received a copy of the Ombudsman's decision that approved Gonzales' recommendation on October 30, 2009. Mendoza, *et al.* filed a motion for reconsideration<sup>[12]</sup> on November 5, 2009, followed by a Supplement to the Motion for Reconsideration.<sup>[13]</sup>

On December 10, 2009, the MOLEO-Records Section forwarded Mendoza, *et al.*'s case records to the Criminal Investigation, Prosecution and Administrative Bureau-MOLEO. On **December 14, 2009**, the case was assigned to Graft Investigation and Prosecution Officer (*GIPO*) Dennis Garcia for review and recommendation.<sup>[14]</sup>

GIPO Garcia released a draft order<sup>[15]</sup> to his immediate superior, Director Eulogio S. Cecilio, for appropriate action on **April 5, 2010**. Dir. Cecilio signed and forwarded the draft order to Gonzales' office on **April 27, 2010**. Gonzales reviewed the draft and endorsed the order, together with the case records, on **May 6, 2010** for the final approval by the Ombudsman.<sup>[16]</sup>

On August 23, 2010, pending final action by the Ombudsman on Mendoza, *et al.*'s case, Mendoza hijacked a tourist bus and held the 21 foreign tourists and the four Filipino tour assistants on board as hostages. While the government exerted earnest attempts to peacefully resolve the hostage-taking, it ended tragically, resulting in the deaths of Mendoza and several others on board the hijacked bus.

In the aftermath, President Benigno C. Aquino III directed the Department of Justice and the Department of Interior and Local Government to conduct a joint thorough investigation of the incident. The two departments issued Joint Department Order No. 01-2010, creating an Incident Investigation and Review Committee (*IIRC*).

In its September 16, 2010 First Report, the IIRC found the Ombudsman and Gonzales accountable for their "gross negligence and grave misconduct in handling the case against Mendoza."<sup>[17]</sup> The IIRC stated that the Ombudsman and Gonzales' failure to promptly resolve Mendoza's motion for reconsideration, "without justification and despite repeated pleas" xxx "precipitated the desperate resort to hostage-taking."<sup>[18]</sup> The IIRC recommended the referral of its findings to the OP for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings.<sup>[19]</sup>

Accordingly, on October 15, 2010, Gonzales was formally charged before the OP for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty and for Misconduct in Office.<sup>[20]</sup>

## **b. The OP ruling**

On March 31, 2011, the OP found Gonzales guilty as charged and dismissed him from the service.<sup>[21]</sup> According to the OP, "the inordinate and unjustified delay in the resolution of [Mendoza's] Motion for Reconsideration [that spanned for nine (9) long months] xxx amounted to gross neglect of duty" and "constituted a flagrant

disregard of the Office of the Ombudsman's own Rules of Procedure.”<sup>[22]</sup>

### **c. The Petition**

Gonzales posited in his petition that the OP has no administrative disciplinary jurisdiction over a Deputy Ombudsman. Under Section 21 of RA No. 6770, it is the Ombudsman who exercises administrative disciplinary jurisdiction over the Deputy Ombudsman.

On the merits, Gonzales argued that his office received the draft order from GIPO Garcia on April 27, 2010. On May 6, 2010, he completed his review of the draft, approved it, and transmitted it to the Office of the Ombudsman for final approval. Since the draft order on Mendoza's motion for reconsideration had to undergo different levels of preparation, review and approval, the period it took to resolve the motion could not be unjustified, since he himself acted on the draft order only within nine (9) calendars days from his receipt of the order.<sup>[23]</sup>

### **B. Sulit's petition (G.R. No. 196232)**

In April 2005, the Office of the Ombudsman charged Major General Carlos F. Garcia and several others, before the Sandiganbayan, with plunder and money laundering. On May 7, 2007, Garcia filed an Urgent Petition for Bail which the prosecution opposed. The Sandiganbayan denied Garcia's urgent petition for bail on January 7, 2010, in view of the strength of the prosecution's evidence against Garcia.

On February 25, 2010, the Office of the Ombudsman, through Sulit and her prosecutorial staff, entered into a plea bargaining agreement (*Agreement*) with Garcia.<sup>[24]</sup> Garcia thereby agreed to: (i) withdraw his plea of not guilty to the charge of plunder and enter a plea of guilty to the lesser offense of indirect bribery; and (ii) withdraw his plea of not guilty to the charge of money laundering and enter a guilty plea to the lesser offense of facilitating money laundering. In exchange, he would convey to the government his ownership, rights and other interests over the real and personal properties enumerated in the Agreement and the bank deposits alleged in the information.<sup>[25]</sup>

The Sandiganbayan approved the Agreement on May 4, 2010<sup>[26]</sup> based on the parties' submitted Joint Motion for Approval.<sup>[27]</sup>

The apparent one-sidedness of the Agreement drew public outrage and prompted the Committee on Justice of the House of Representatives to conduct an investigation. After public hearings, the Committee found that Sulit, her deputies and assistants committed culpable violations of the Constitution and betrayal of public trust – grounds for removal under Section 8(2) of RA No. 6770.<sup>[28]</sup> The Committee recommended to the President the dismissal from the service of Sulit and the filing of appropriate charges against her deputies and assistants before the appropriate government office.

Accordingly, the OP initiated an administrative disciplinary proceeding against Sulit.<sup>[29]</sup> On March 24, 2011, Sulit filed her Written Explanation, *questioning the OP's jurisdiction*.<sup>[30]</sup> The question of jurisdiction notwithstanding, the OP set the case for

preliminary investigation on April 15, 2011, prompting Sulit to seek relief from this Court.

## **II. COURT'S RULING**

On motion for reconsideration and further reflection, the Court votes to grant Gonzales' petition and to declare Section 8(2) of RA No. 6770 unconstitutional with respect to the Office of the Ombudsman. (As the full explanation of the Court's vote describes below, this conclusion does not apply to Sulit as the grant of independence is solely with respect to the Office of the Ombudsman which does not include the Office of the Special Prosecutor under the Constitution. The prevailing ruling on this latter point is embodied in the Concurring and Dissenting Opinion of J. Marvic Mario Victor Leonen).

### **A. Preliminary considerations:**

#### ***a. Absence of motion for reconsideration on the part of the petitioners***

At the outset, the Court notes that Gonzales and Sulit did not file a motion for reconsideration of the Court's September 4, 2012 Decision; only the OP, through the OSG, moved for the reconsideration of our ruling reinstating Gonzales.

This omission, however, poses no obstacle for the Court's review of its ruling on the whole case since a serious constitutional question has been raised and is one of the underlying bases for the validity or invalidity of the presidential action. If the President does not have any constitutional authority to discipline a Deputy Ombudsman and/or a Special Prosecutor in the first place, then any ruling on the legal correctness of the OP's decision on the merits will be an empty one.

In other words, since the validity of the OP's decision on the merits of the dismissal is inextricably anchored on the final and correct ruling on the constitutional issue, the whole case – including the constitutional issue – remains alive for the Court's consideration on motion for reconsideration.

#### ***b. The justiciability of the constitutional issue raised in the petitions***

We clarify, too, that the issue of whether a Deputy Ombudsman may be subjected to the administrative disciplinary jurisdiction of the President (concurrently with that of the Ombudsman) is a justiciable – not a political – question. A justiciable question is one which is inherently susceptible of being decided on grounds recognized by law,<sup>[31]</sup> as where the court finds that there are constitutionally-imposed limits on the exercise of the powers conferred on a political branch of the government.<sup>[32]</sup>

In resolving the petitions, we do not inquire into the wisdom of the Congress' choice to grant concurrent disciplinary authority to the President. Our inquiry is limited to whether such statutory grant violates the Constitution, particularly whether Section 8(2) of RA No. 6770 violates the core constitutional principle of the independence of the Office of the Ombudsman as expressed in Section 5, Art. XI of the Constitution.