

## THIRD DIVISION

[ G.R. No. 179677, August 15, 2012 ]

**ROMEO M. MONTALLANA, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND THE HON. COURT OF APPEALS (FIFTEENTH DIVISION), RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari* assailing the Decision<sup>[1]</sup> dated May 28, 2007 of the Court of Appeals in CA-G.R. SP No. 93898 denying the petition filed by petitioner Romeo M. Montallana and the Resolution<sup>[2]</sup> dated September 17, 2007 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

In the early hours of August 18, 2001, fire struck and engulfed the Manor Hotel in Kamias Road, Quezon City, claiming the lives of seventy-four people and seriously injuring several others.

To determine the officials and persons responsible for this tragedy, an investigation was conducted by the Fact-Finding & Intelligence Bureau (FFIB) of the Office of the Ombudsman (OMB). The FFIB found that the fire that consumed the Manor Hotel was attributable to the hotel's faulty electrical wiring systems. It concluded that, had it not been for the gross negligence of the public officials of the local government of Quezon City, who were in charge in the licensing operations of the Manor Hotel, the incident would not have happened.

Consequently, a formal complaint was filed against petitioner, with several other public officials, before the Administrative Adjudication Bureau of the OMB, for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Sendee and Gross Negligence docketed as OMB-ADM-0-01-0376 (OMB-0-01-0659) and for Violation of Section 4, Republic Act (R.A.) No. 6713, docketed as OMB-ADM-O-Oi-0390 (OMB-0-01-0679).

The complaint alleged, among other things, that:

1. From 1995 up to 2000, the Electrical Division, Engineering Department did not conduct an annual inspection of the electrical systems of Manor Hotel.
2. The Electrical Division does not even have a copy of the electrical plans and specifications of Manor Hotel as required under Rule II,

### 3.2.2.4 of the Rules Implementing the Building Code.

3. There was an unreadable Certificate of Inspection No. 90-11814 which was made as an attachment to the application of Manor Hotel for business/mayor's permit for 2001.
4. The Annual Notice of Electrical Inspection dated February 15, 2001 conducted by Gerardo R. Villasenor, Electrical Inspector, concurred by Engr. Rodel A. Mesa and petitioner, shows that Manor Hotel has only 89 air-conditioning units at the time of inspection disclosing a great disparity as to the true electrical load of the Manor Hotel at the time of the incident.
5. The Electrical Division likewise negligently or deliberately failed to indicate in its report that as of September 25, 2000, four (4) electrical meters of the Manor Hotel were disconnected by MERALCO due to jumper connections.<sup>[3]</sup>

Pending investigation, petitioner and his co-respondents were preventively suspended. On September 24, 2001, petitioner filed his Counter-Affidavit.<sup>[4]</sup> On February 20, 2002, petitioner filed his Consolidated Memorandum.<sup>[5]</sup>

For his part, petitioner raised the following defenses:

1. [D]uring his incumbency as Chief of the Electrical Division, the mandatory electrical inspections were regularly conducted and made annually by the assigned inspector(s) in all business establishments within the jurisdiction of Quezon City, including the Manor Hotel.
2. For year 2000, Electrical Inspector Villasenor inspected the electrical systems of Manor Hotel and submitted to him the Notice of Annual Inspection dated February 15, 2001 with No. 01-00896, with a Certification by Edgardo M. Merida, a licensed electrical contractor, to the effect that the electrical installations and equipments at the hotel were inspected and tested by the latter and found to be in safe condition. He (Montallana) signed and approved the same based on the facts set forth therein, relying in good faith on the correctness of the entries made by his inspectors.
3. The requested official records which could prove that mandatory annual electrical inspection were conducted at the Manor Hotel from 1995 to 2000 cannot be produced as these could have been lost due to frequent transfers of office and lack of storage rooms or were among those damaged by the fire that razed the Quezon City Hall main building sometime in August 1998.
4. Assuming there was misrepresentation as to the true electrical status of the Manor Hotel on the latest inspection conducted six (6) months prior to the subject fire incident, as a superior officer, he

cannot be held liable for the acts of his subordinates as he only based his approval on their reports.<sup>[6]</sup>

On June 17, 2003, the Investigating Panel of the OMB rendered a Decision<sup>[7]</sup> finding petitioner liable for Conduct Prejudicial to the Best Interest of the Service and Gross Neglect of Duty and meted upon him the penalty of dismissal from the service with all its accessory penalties, the decretal portion on which reads:

**WHEREFORE**, premises considered, we rule and so hold as follows:

1). **OMB-ADM-0-01-0376:**

a). x x x x

b). x x x x

c). Respondents x x x **ROMEO M. MONTALLANA** x x x, are hereby found **GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND GROSS NEGLIGENCE OF DUTY**, and for which they are hereby meted the penalty of **DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES**.

x x x x

The Honorable Mayor of Quezon City, and the Honorable

Secretary of the Department of Interior and Local Government are hereby directed to implement this **DECISION** upon finality thereof and in accordance with law.

**SO ORDERED.**<sup>[8]</sup>

On July 26, 2004, the Office of the Special Prosecutor of the OMB issued a Memorandum<sup>[9]</sup> which modified the Joint Decision insofar as petitioner and the other respondents are concerned. In the said Memorandum, petitioner was also found guilty of gross negligence and conduct prejudicial to the best interest of the service. It was also stated therein that since petitioner was already separated from the service due to his retirement, the benefits he received by virtue thereof must be returned to the government as declared in the Affidavit of Undertaking which he executed before his retirement. The said Memorandum was approved by then Ombudsman Simeon V. Marcelo on November 26, 2004.

Aggrieved, petitioner filed a Motion for Reconsideration.<sup>[10]</sup> On March 2, 2006, the Office of the Special Prosecutor issued a Memorandum<sup>[11]</sup> denying the motion. The said Memorandum was approved by then Ombudsman Ma. Merceditas Navarro-Gutierrez on March 13, 2006,<sup>[12]</sup> the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, there having been no cogent and convincing arguments and pieces of evidence to set aside the assailed Memorandum, the undersigned prosecution officers respectfully recommend that the motions for reconsideration filed by herein accused be DENIED for utter lack of merit. It is further recommended that findings and recommendation contained in the Memorandum dated 26 July 2004 be AFFIRMED *in toto*.<sup>[13]</sup>

Not satisfied, petitioner sought recourse before the CA, docketed as CA-G.R. SP No. 93898. On May 28, 2007, the CA rendered a Decision<sup>[14]</sup> denying the petition, the decretal portion of which reads:

In light of the foregoing, the instant petition is hereby DENIED. The Joint Decision dated June 17, 2003 and Memorandum dated July 26, 2004 of the Office of Ombudsman, in so far as herein petitioner is concerned, is AFFIRMED.

SO ORDERED.<sup>[15]</sup>

In ruling against petitioner, the CA ratiocinated that between petitioner's unsubstantiated denials of the irregularities made in the electrical inspection of the Manor Hotel and the categorical findings of the investigators, there is no room for a contrary conclusion that petitioner is indeed administratively liable for his negligence. The CA held that petitioner cannot attribute the fault to his subordinates. As head of office and the final approving authority of the Electrical Division, it behooves petitioner to see to it that his subordinate engineers and inspectors are performing their respective duties effectively. Petitioner should have made appropriate measures that can verify the veracity of their reports.

Petitioner filed a Motion for Reconsideration,<sup>[16]</sup> but it was denied in the Resolution<sup>[17]</sup> dated September 17, 2007.

Hence, the petition assigning the following errors:

THE COURT OF APPEALS GRAVELY ERRED IN DENYING PETITIONER'S PETITION AND IN AFFIRMING [THE] OMBUDSMAN'S DECISION DISMISSING PETITIONER FROM THE SERVICE, IT APPEARING THAT THE QUESTIONED DECISION IS NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THIS HONORABLE COURT CONSIDERING THAT:

- A. PUBLIC OFFICERS ARE IMMUNE FROM LIABILITY FOR THE ACTS AND OMISSIONS OF THEIR SUBORDINATES.
- B. THE FINDINGS OF RESPONDENTS OMBUDSMAN AND COURT OF APPEALS ON THE ADMINISTRATIVE LIABILITY OF PETITIONER ARE BASED ON ASSUMPTION AND SPECULATION.<sup>[18]</sup>

Petitioner maintains that prior to the incident at the Manor Hotel, the Electrical Division, Engineering Department of Quezon City conducted an electrical inspection on the electrical systems and load of the said hotel. The inspection was conducted by Electrical Inspectors Gerardo Villasenor and Edgardo Merida, which caused the issuance of the Notice of Annual Inspection<sup>[19]</sup> dated February 15, 2001 to the owner of Manor Hotel. The notice bore the signature of the two inspectors, who both certified that the electrical installations and equipment at the Manor Hotel were inspected and tested by them and found to be in safe condition. Petitioner then affixed his signature thereon signifying his approval of the reports made by his subordinates.

Petitioner insists that he signed the Notice of Annual Inspection in good faith. His act of signing the notice is incidental to his function as Acting Chief of the Electrical Division. By affixing his signature on the notice, petitioner relied in good faith on the correctness of the entries made therein by his subordinates. Petitioner contends that his reliance on the veracity of the report and entries made in the said notice is not constitutive of gross negligence.

Petitioner also posits that the Ombudsman and CA erred in concluding that no annual electrical inspections were conducted on the Manor Hotel prior to 2001. Petitioner submits that his failure to present copies of prior notice of inspection reports made on the Manor Hotel was due to the fact that the hotel was constructed and completed prior to the creation of the Electrical Division; it was only in 1996 that he became the Officer-in-Charge of the Electrical Division; that most of the records of the Electrical Division were lost or destroyed when a fire razed the 5<sup>th</sup> floor of the Quezon City Hall and when the Office of the Electrical Division was transferred several times to different parts of the Quezon City Hall.

Based on the foregoing, petitioner argues that he could not be held administratively liable based on the principle of command responsibility.

On its part, respondent maintains that the evidence presented before the Ombudsman showed that petitioner failed to live up to the exacting demands of public office. Petitioner was unmindful and indifferent of his duties and responsibilities. The negligent acts of petitioner clearly show that he failed to perform his official duties with the highest degree of responsibility and integrity, which eventually contributed to the tragic incident.

The petition is bereft of merit.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.<sup>[20]</sup>

True, this Court has held in several cases that in the absence of substantial evidence of gross negligence of the petitioner, administrative liability could not be based on