

EN BANC

[G.R. No. 196231, September 04, 2012]

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.

[GR. 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 MONTALBAN, JR., IN THEIR CAPACITIES AS CHAIRMAN AND MEMBERS OF THE OFFICE OF MALACANANG LEGAL AFFAIRS, I RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

The Cases

These two petitions have been consolidated not because they stem from the same factual milieu but because they raise a common thread of issues relating to the President's exercise of the power to remove from office herein petitioners who claim the protective cloak of independence of the constitutionally-created office to which they belong — the Office of the Ombudsman.

The first case, docketed as **G.R. No. 196231**, is a Petition for Certiorari (with application for issuance of temporary restraining order or status quo order) which assails on jurisdictional grounds the Decision^[1] dated March 31, 2011 rendered by the Office of the President in OP Case No. 10-J-460 dismissing petitioner Emilio A. Gonzales III, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), upon a finding of guilt on the administrative charges of *Gross Neglect of Duty and Grave Misconduct* constituting a *Betrayal of Public Trust*. The petition primarily seeks to declare as unconstitutional **Section 8(2) of Republic Act (R.A.) No. 6770**, otherwise known as the Ombudsman Act of 1989, which gives the President the power to dismiss a Deputy Ombudsman of the Office of the Ombudsman.

The second case, docketed as **G.R. No. 196232**, is a Petition for Certiorari and Prohibition (with application for issuance of a temporary restraining order or status

quo order) seeking to annul, reverse and set aside (1) the undated Order^[2] requiring petitioner Wendell Barreras-Sulit to submit a written explanation with respect to alleged acts or omissions constituting serious/grave offenses in relation to the Plea Bargaining Agreement (PLEBARA) entered into with Major General Carlos F. Garcia; and (2) the April 7, 2011 Notice of Preliminary Investigation,^[3] both issued by the Office of the President in OP-DC-Case No. 11-B-003, the administrative case initiated against petitioner as a Special Prosecutor of the Office of the Ombudsman. The petition likewise seeks to declare as unconstitutional Section 8(2) of R.A. No. 6770 giving the President the power to dismiss a Special Prosecutor of the Office of the Ombudsman.

The facts from which these two cases separately took root are neither complicated nor unfamiliar.

In the morning of August 23, 2010, news media scampered for a minute-by-minute coverage of a hostage drama that had slowly unfolded right at the very heart of the City of Manila. While initial news accounts were fragmented it was not difficult to piece together the story on the hostage-taker, Police Senior Inspector Rolando Mendoza. He was a disgruntled former police officer attempting to secure his reinstatement in the police force and to restore the benefits of a life-long, and erstwhile bemedaled, service. The following day, broadsheets and tabloids were replete with stories not just of the deceased hostage-taker but also of the hostage victims, eight of whom died during the bungled police operation to rescue the hapless innocents. Their tragic deaths triggered word wars of foreign relation proportions. One newspaper headline ran the story in detail, as follows:

MANILA, Philippines - A dismissed policeman armed with an assault rifle hijacked a bus packed with tourists, and killed most of its passengers in a 10 hour-hostage drama shown live on national television until last night.

Former police senior inspector Rolando Mendoza was shot dead by a sniper at past 9 p.m.

Mendoza hijacked the bus and took 21 Chinese tourists hostage, demanding his reinstatement to the police force.

The hostage drama dragged on even after the driver of the bus managed to escape and told police that all the remaining passengers had been killed.

Late into the night assault forces surrounded the bus and tried to gain entry, but a pair of dead hostages handcuffed to the door made it difficult for them. Police said they fired at the wheels of the bus to immobilize it.

Police used hammers to smash windows, door and windshield but were met with intermittent fire from the hostage taker.

Police also used tear gas in an effort to confirm if the remaining hostages were all dead or alive. When the standoff ended at nearly 9 p.m., some four hostages were rescued alive while Mendoza was killed by a sniper.

Initial reports said some 30 policemen stormed the bus. Shots also rang out, sending bystanders scampering for safety.

It took the policemen almost two hours to assault the bus because gunfire reportedly rang out from inside the bus.

Mendoza hijacked the tourist bus in the morning and took the tourists hostage.

Mendoza, who claimed he was illegally dismissed from the police service, initially released nine of the hostages during the drama that began at 10 a.m. and played out live on national television.

Live television footage showed Mendoza asking for food for those remaining in the bus, which was delivered, and fuel to keep the air-conditioning going.

The disgruntled former police officer was reportedly armed with an M-16 rifle, a 9 mm pistol and two hand grenades.

Mendoza posted a handwritten note on the windows of the bus, saying "big deal will start after 3 p.m. today." Another sign stuck to another window said "3 p.m. today deadlock."

Stressing his demand, Mendoza stuck a piece of paper with a handwritten message: "Big mistake to correct a big wrong decision." A larger piece of paper on the front windshield was headed, "Release final decision," apparently referring to the case that led to his dismissal from the police force.

Negotiations dragged on even after Mendoza's self-imposed deadline.

Senior Police Officer 2 Gregorio Mendoza said his brother was upset over his dismissal from the police force. "His problem was he was unjustly removed from service. There was no due process, no hearing, no complaint," Gregorio said.

Last night, Gregorio was arrested by his colleagues on suspicions of being an accessory to his brother's action. Tensions rose as relatives tried to prevent lawmen from arresting Gregorio in front of national television. This triggered the crisis that eventually forced Mendoza to carry out his threat and kill the remaining hostages.

Negotiators led by Superintendent Orlando Yebra and Chief Inspector Romeo Salvador tried to talk Mendoza into surrendering and releasing the 21 hostages, mostly children and three Filipinos, including the driver, the tourist guide and a photographer. Yebra reportedly lent a cellphone to allow communications with Mendoza inside the bus, which was parked in front of the Quirino Grandstand.

Children could be seen peeking from the drawn curtains of the bus while police negotiators hovered near the scene.

Manila Police District (MPD) director Chief Superintendent Rodolfo Magtibay ordered the deployment of crack police teams and snipers near the scene. A crisis management committee had been activated with Manila Vice Mayor Isko Moreno coordinating the actions with the MPD.

Earlier last night, Ombudsman Merceditas Gutierrez had a meeting with Moreno to discuss Mendoza's case that led to his dismissal from the service. Ombudsman spokesman Jose de Jesus said Gutierrez gave a "sealed letter" to Moreno to be delivered to Mendoza. De Jesus did not elaborate on the contents of the letter but said Moreno was tasked to personally deliver the letter to Mendoza.

MPD spokesman Chief Inspector Edwin Margarejo said Mendoza was apparently distraught by the slow process of the Ombudsman in deciding his motion for reconsideration. He said the PNP-Internal Affairs Service and the Manila Regional Trial Court had already dismissed criminal cases against him.

The hostage drama began when Mendoza flagged down the Hong Thai Travel Tourist bus (TVU-799), pretending to hitch a ride. Margarejo said the bus had just left Fort Santiago in Intramuros when Mendoza asked the driver to let him get on and ride to Quirino Grandstand. Upon reaching the Quirino Grandstand, Mendoza announced to the passengers that they would be taken hostage. "Having worn his (police) uniform, of course there is no doubt that he already planned the hostage taking," Margarejo said. – Sandy Araneta, Nestor Etolle, Delon Porcalla, Amanda Fisher, Cecille Suerte Felipe, Christina Mendez, AP [Grandstand Carnage, The Philippine Star, Updated August 24, 2010 12:00 AM, Val Rodriguez].

[4]

In a completely separate incident much earlier in time, more particularly in December of 2003, 28-year-old Juan Paolo Garcia and 23 year-old Ian Carl Garcia were caught in the United States smuggling \$100,000 from Manila by concealing the cash in their luggage and making false statements to US Customs Officers. The Garcia brothers pleaded guilty to bulk cash smuggling and agreed to forfeit the amount in favor of the US Government in exchange for the dismissal of the rest of the charges against them and for being sentenced to time served. Inevitably, however, an investigation into the source of the smuggled currency conducted by US Federal Agents and the Philippine Government unraveled a scandal of military corruption and amassed wealth -- the boys' father, Retired Major General Carlos F. Garcia, former Chief Procurement Officer of the Armed Forces, had accumulated more than P300 Million during his active military service. Plunder and Anti-Money Laundering cases were eventually filed against Major General Garcia, his wife and their two sons before the Sandiganbayan.

G.R. No. 196231

Sometime in 2008, a formal charge^[5] for *Grave Misconduct* (robbery, grave threats, robbery extortion and physical injuries) was filed before the Philippine National Police-National Capital Region (PNP-NCR) against Manila Police District Senior

Inspector (P/S Insp.) Rolando Mendoza, and four others, namely, Police Inspector Nelson Lagasca, Senior Police Inspector I Nestor David, Police Officer III Wilson Gavino, and Police Officer II Roderick Lopena. A similar charge was filed by the private complainant, Christian M. Kalaw, before the Office of the City Prosecutor, Manila, docketed as I.S. No. 08E-09512.

On July 24, 2008, while said cases were still pending, the Office of the Regional Director of the National Police Commission (NPC) turned over, upon the request of petitioner Emilio A. Gonzales III, all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman for appropriate administrative adjudication.^[6] Subsequently, Case No. OMBP- A-08-0670-H for *Grave Misconduct* was lodged against P/S Insp. Rolando Mendoza and his fellow police officers, who filed their respective verified position papers as directed.

Meanwhile, on August 26, 2008, I.S. No. 08E-09512 was dismissed^[7] upon a finding that the material allegations made by the complainant had not been substantiated "by any evidence at all to warrant the indictment of respondents of the offenses charged." Similarly, the Internal Affairs Service of the PNP issued a Resolution^[8] dated October 17, 2008 recommending the dismissal without *prejudice* of the administrative case against the same police officers, for failure of the complainant to appear in three (3) consecutive hearings despite due notice.

However, on February 16, 2009, upon the recommendation of petitioner Emilio Gonzales III, a Decision^[9] in Case No. OMB-P-A-080670- H finding P/S Insp. Rolando Mendoza and his fellow police officers guilty of *Grave Misconduct* was approved by the Ombudsman. The dispositive portion of said Decision reads:

WHEREFORE, it is respectfully recommended that respondents **P/S Insp. ROLANDO DEL ROSARIO MENDOZA and PO3 WILSON MATIC GAVINO** of PRO-ARMM, Camp Brig. Gen. Salipada K. Pendatun, Parang, Shariff Kabunsuan; **P/INSP. NELSON URBANO LAGASCA, SPO1 NESTOR REYES DAVID and PO2RODERICK SALVA LOPEÑA** of Manila Police District, Headquarters, United Nations Avenue, Manila, be meted the penalty of **DISMISSAL** from the Service, pursuant to Section 52 (A), Rule IV, Uniform Rules on Administrative Cases in the Civil Service, with the accessory penalties of forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service pursuant to Section 58, Rule IV of the same Uniform Rules of Administrative Cases in the Civil Service, for having committed **GRAVE MISCONDUCT**.

On November 5, 2009, they filed a Motion for Reconsideration^[10] of the foregoing Decision, followed by a Supplement to the Motion for Reconsideration^[11] on November 19, 2009. On December 14, 2009, the pleadings mentioned and the records of the case were assigned for review and recommendation to Graft Investigation and Prosecutor Officer Dennis L. Garcia, who released a draft Order^[12] on April 5, 2010 for appropriate action by his immediate superior, Director Eulogio S. Cecilio, who, in turn, signed and forwarded said Order to petitioner Gonzalez's office on April 27, 2010. Not more than ten (10) days after, more particularly on May 6,