

## **EN BANC**

**[ G.R. No. 190681, June 21, 2010 ]**

**DR. EDILBERTO ESTAMPA, JR., PETITIONER, VS. LEONARDO-DE CASTRO, CITY GOVERNMENT OF DAVAO, RESPONDENT.**

### **D E C I S I O N**

**ABAD, J.:**

This case is about the failure of a city's medical health officer and disaster coordinator to respond to a catastrophic bombing incident upon the excuse that he needed to attend first to the needs of his family.

#### **The Facts and the Case**

On February 1, 2001 the City Government of Davao appointed petitioner Dr. Edilberto Estampa, Jr. as Medical Officer VI at its City Health Office. The position made him head of a Task Force Unit assigned to deal with any untoward event taking place in the city and Disaster Coordinator for the Davao City Health Office under the Davao City Disaster Coordinating Council.

On March 4, 2003, at around 6 p.m., a powerful bomb exploded at the passengers' terminal of the Davao International Airport, killing 22 persons and injuring 113 others. Dr. Estampa had just arrived home at that time and was taking care of his one-year-old daughter. He learned of the bombing incident between 7 to 8 p.m. His wife arrived at 9 p.m. from her work at the Davao Medical Center where most of the bombing victims were brought for treatment. She prevailed on Dr. Estampa to stay home and he did.

On March 6, 2003 Dr. Roberto V. Alcantara, Officer-in-Charge of the Davao City Health Office, required Dr. Estampa to explain in writing why he failed to respond to the bombing incident. Dr. Estampa submitted his explanation. Apparently satisfied with the explanation and believing that Dr. Estampa's presence in the aftermath of the bombing was not indispensable considering the presence of other medical practitioners, Dr. Alcantara considered the case closed. The latter did not, however, bother to endorse the case to a superior officer or to the City Legal Office with his recommendation.

About 10 months later or on January 26, 2004 Dr. Josephine J. Villafuerte, the Davao City Health Officer, queried the head of the City's Human Resource Management Office (HRMO) regarding the status of the case against Dr. Estampa for failing to respond to the bombing incident. Reacting to this, the HRMO endorsed the matter to the City Legal Office for verification and investigation. Subsequently, the Assistant City Legal Officer required Dr. Estampa to answer the charge against him. But he did not do so.

On March 19, 2004 the Assistant City Legal Officer submitted an Investigation Report, finding a *prima facie* case against Dr. Estampa for neglect of duty<sup>[1]</sup> and recommending the filing of a formal charge against him. The city mayor approved the report and signed the formal charge. On receiving the same, Dr. Estampa filed his answer and supporting documents.

At the pre-trial, Dr. Estampa waived his right to counsel. The parties agreed to dispense with a formal hearing and to just submit their position papers or memoranda. On November 12, 2004 the City Legal Officer found Dr. Estampa guilty of "grave" neglect of duty and recommended his dismissal. On February 8, 2005 the city mayor approved the recommendation and dismissed Dr. Estampa. The latter moved for reconsideration but this was denied, prompting him to appeal to the Civil Service Commission (CSC).

On June 2, 2006 the CSC denied Dr. Estampa's appeal, corrected the denomination of his offense to gross neglect of duty, and affirmed his dismissal. The CSC also denied Dr. Estampa's motion for reconsideration for lack of merit.

Dr. Estampa appealed to the Court of Appeals (CA) by petition for review under Rule 43. The CA denied his application for issuance of a TRO and writ of preliminary injunction and eventually rendered a decision on March 30, 2009, denying his petition and affirming the resolutions of the CSC. The CA also found no merit in his motion for reconsideration.

### **The Issue Presented**

The only issue presented in this case is whether or not the CA erred in affirming the rulings of the City Legal Officer and the CSC that found Dr. Estampa guilty of gross neglect of duty for failing to respond to the March 4, 2003 Davao City bombing.

### **The Ruling of the Court**

Dr. Estampa points out that his dismissal was void because: (1) neither a proper complaint nor a formal charge initiated the case against him; (2) the CA considered and appreciated evidence not presented at the hearing before the City Legal Officer; (3) the delay in the preliminary investigation of Dr. Estampa's case violated his rights to due process and speedy disposition of his case; (4) he could not be held liable for "gross" neglect of duty since the charge against him was only for simple neglect of duty; and (5) the evidence presented did not support the findings against him.

1. But, as the Davao City government pointed out, Executive Order (E.O.) 292 (the 1987 Administrative Code)<sup>[2]</sup> and the CSC Uniform Rules on Administrative Cases vest in heads of cities the power to investigate and decide disciplinary actions against their officers and employees.<sup>[3]</sup> E.O. 292 also allows the heads of local units, like the mayor, the authority to initiate administrative actions against subordinate officials or employees<sup>[4]</sup> even without the complaints being subscribed and sworn to.<sup>[5]</sup> In these proceedings, a person is considered formally charged a) upon charges initiated by the disciplining authority or b) upon the finding by such disciplining authority of a *prima facie* case against him based on a private person's complaint.<sup>[6]</sup>

The Davao City Health Officer's inquiry into the status of Dr. Estampa's case did not partake of a complaint under E.O. 292 as he suggests. That inquiry was a mere follow up of the fact-finding investigation that Dr. Alcantara began. Nor did the City Legal Officer's order during the preliminary investigation, which required Dr. Estampa to file his answer and supporting documents, constitute the "complaint" under the law. That order was merely an incident of the preliminary investigation.

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The real formal charge against Dr. Estampa was that which the city mayor signed, charging the doctor, in his capacity as Disaster Coordinator of the City Health Office, with neglect of duty for failing to respond to the March 4, 2003 bombing in Davao. That formal charge directed him to submit his answer, accompanied by the sworn statements of his witnesses, and to indicate if he preferred a formal trial or would rather waive it. He was thus properly charged.

2. Dr. Estampa claims that the CA considered and appreciated evidence that was not presented before the City Legal Officer, in particular referring to the letters of Dr. Villafuerte (to the HRMO inquiring about the status of the case against him), Mr. Escalada, HRMO head (endorsing the case to the City Legal Office), and the affidavit of Dr. Samuel G. Cruz, Assistant City Health Officer (that Dr. Estampa failed to answer phone calls to him after the bombing and that he ignored the driver who was sent to fetch him). Dr. Estampa was not furnished with copies of these documents which were mentioned for the first time only on appeal to the CSC in the City Government's Comment.

The letters of Dr. Villafuerte and Mr. Escalada are official communications and form part of the records of the case. They are public documents. As to the affidavit of Dr. Cruz, the City Government admits that it was not presented in evidence although it still formed part of the case records since it was officially endorsed to the City Legal Office by Dr. Cruz.

The decisions of the CSC and the CA are not based only on these documents. Dr. Estampa's guilt is evidenced by his own evidence and inaction, as will be shown later on. The letters of Dr. Villafuerte and Mr. Escalada merely show the process of investigation of the case. Dr. Cruz's affidavit is also merely corroborating at best and may even be dispensed with.

3. Dr. Estampa cannot complain that he was not heard on his defense. The record shows that, initially, his immediate superior asked him to explain why he did not respond to the bombing incident and he submitted his explanation. In the next instance, he was asked during the preliminary investigation to file his answer and submit evidence in his defense although he chose not to do so. After being formally charged, he was again asked to file his answer to the charge. And he filed one, accompanied by supporting documents. He also took part at the pre-trial and elected to have the case decided based on the parties' position paper or memorandum. Surely, Dr. Estampa has no reason to complain of denial of his right to due process.

Dr. Estampa laments that almost a year passed from the time his immediate superior asked him to submit a written explanation of the incident to the time when preliminary investigation of his case began. The delay, according to him, violated