

## THIRD DIVISION

[ G.R. No. 160596, March 20, 2009 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE OFFICE  
OF THE OMBUDSMAN, PETITIONER, VS. IGNACIO BAJAO,  
RESPONDENT. \*\***

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 22, 2003 Decision<sup>[1]</sup> of the Court of Appeals (CA) which reversed the September 27, 2001 Decision<sup>[2]</sup> of the Office of the Deputy Ombudsman for the Visayas (Ombudsman) in OMB-VIS-ADM-2000-0854, and the October 13, 2003 CA Resolution<sup>[3]</sup> which denied the Ombudsman's Motion for Reconsideration.

The relevant facts are as follows:

On the basis of a Complaint<sup>[4]</sup> filed by Candijay, Bohol Municipal Vice-Mayor Antonio L. Po and *Sangguniang Bayan* Members Deodoro G. Hinacay, Gaspar G. Amora, Philbert H. Bertumen, Leonardo A. Tutor, Peregrine Castrodos and Sergio G. Amora, Jr. (complainants) against Municipal Treasurer Ignacio Bajao (respondent) for Failure to Make Delivery of Public Funds punishable under Article 221 of the Revised Penal Code and Section 3(F) of Republic Act (R.A.) No. 3019, and for Grave Abuse of Authority in relation to respondent's withholding of complainants' uniform allowance for 1999, the Office of the Ombudsman (Visayas) issued a decision, the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, after finding respondent to be administratively liable for Simple MISCONDUCT a penalty of one (1) month suspension from office without pay is hereby imposed, with a warning that a repetition of the same act will be dealt with more severely.

SO ORDERED.<sup>[5]</sup>

The Ombudsman also issued an Order dated January 14, 2002, directing the immediate implementation of its decision pursuant to Administrative Order No. 14, dated July 30, 2000, amending Rule III of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) which provides that a penalty not exceeding one month suspension is final and unappealable.<sup>[6]</sup>

Respondent filed with the CA a Special Civil Action for *Certiorari* and an Amended Petition for Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court.

Respondent disputed the factual basis of the Ombudsman decision as well as its authority to directly impose a penalty of suspension, arguing that the Ombudsman may only recommend to the proper disciplining authority the implementation of such penalty.<sup>[7]</sup>

The Ombudsman itself, through the Solicitor General, filed a Comment<sup>[8]</sup> and Memorandum,<sup>[9]</sup> maintaining that its decision to suspend respondent is valid under the facts established.

The CA issued a Temporary Restraining Order against the implementation of the Ombudsman decision.<sup>[10]</sup> Thereafter, it rendered the May 22, 2003 Decision assailed herein, declaring that the Ombudsman exceeded its authority in penalizing respondent. According to the CA, the Constitution itself and R.A. No. 6770 or the Ombudsman Act of 1989, limit the authority of the Ombudsman in administrative cases to recommending the appropriate penalty to be imposed on an erring public official or employee, leaving the adoption and enforcement of the recommended penalty to the discretion of the immediate disciplining authority. The CA elaborated:

Paragraph 3, Section 13, Article XI of the Constitution dealing specifically on the power of the Ombudsman, provides:

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

In conjunction thereto, Section 12 of Article XI states:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

We must give Our assent to the stand of petitioner that the operative phrase in Paragraph 3, Section 13, Article XI, is "to recommend". The word "recommend" has been defined by Black's Law Dictionary as "an action which is advisory in nature rather than one having any binding effect."<sup>[11]</sup>

x x x x

Even under the Ombudsman Act of 1989, wherein the Legislature sought to put more teeth, so to speak, to the Office of the Ombudsman, it may be gleaned from the language of the law that punitive prerogatives have still be withheld from the Ombudsman in so far as the official complained against is concerned. Paragraph 3 of Section 15 of the said law reads:

Sec. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and

duties:

[x x x x]

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer; (Emphasis supplied)

x x x x

Thus, even Republic Act No. 6770 recognizes that the power of the Ombudsman to adjudicate penalty after investigation is merely recommendatory or suggestive, for otherwise, the law would not have to provide for the Ombudsman to first go to the disciplining authority and direct the latter to take appropriate action against the erring government functionary. This is as it should be. For to give it a contrary construction would be productive of nothing but mischief, such being at war with the explicit language of the Fundamental Law. As the spring cannot rise higher than its source, neither can a statute be at variance with the Constitution.

x x x x

Indeed, the Supreme Court in *Tapiador v. Office of the Ombudsman*, per Justice Sabino de Leon, stated, albeit in an obiter dictum, that "(b)esides, assuming that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only 'recommend' the removal or the public official or employee found to be at fault, to the public official concerned.

In fine, We find, and so hold, that the Office of the Ombudsman has only the power to investigate possible misconduct of a government official or employee in the performance of his functions, and thereafter recommend to the disciplining authority the appropriate penalty to be meted out, and that it is the disciplining authority that has the power or prerogative to impose such penalty.<sup>[12]</sup>

The CA further absolved respondent of the offense of simple misconduct in view of findings that respondent was justified in withholding complainants' uniform allowance for lack of authorization from the municipal mayor for the release of said funds as required under the Local Government Code and its implementing rules, as

well as Local Budget Circular No. 68 of the Department of Budget and Management.

[13] The dispositive portion of the CA Decision reads:

WHEREFORE, the Petition is hereby GRANTED. The impugned Order [sic] of the Office of the Ombudsman, having been issued without grave abuse of discretion amounting to excess of jurisdiction, hereby ANNULLED AND SET ASIDE.

SO ORDERED.[14]

The Ombudsman's motion for reconsideration was denied by the CA.[15]

On its own, the Ombudsman filed a Petition for Review on *Certiorari*[16] with the Court but the same was denied for having been filed out of time.[17]

Through the Solicitor General, the Ombudsman filed the present petition which the Court initially denied, also for having been filed out of time; but upon motion for reconsideration by the Ombudsman, the petition was eventually given due course per its Resolution dated April 12, 2004.[18]

The claim of respondent -- that the present petition is barred by the Ombudsman prior petition (G.R. No. 160501), which was dismissed -- is not plausible. Suffice it to state that the Court gave due course to the present petition, for it raises highly meritorious arguments, dealing with the undue diminution of the constitutionally mandated investigatory power of the Ombudsman, against which the Ombudsman must be accorded every opportunity to defend itself,[19] and that the assailed decision of the CA is blatantly erroneous.[20]

Exactly the same issues raised in the petition, to wit:

## I

Is the Office of the Ombudsman empowered to conduct administrative adjudication proceedings against public officers over whom it has jurisdiction?

## II

Are orders/decisions of the Office of the Ombudsman imposing the penalty of suspension of one month appealable?[21]

have long been resolved by the Court in *Office of the Ombudsman v. Court of Appeals and Armilla*, [22] *Office of the Ombudsman v. Court of Appeals and Santos*, [23] and *Herrera v. Bohol*. [24]

In *Office of the Ombudsman v. Court of Appeals and Armilla*, therein respondents Armilla, all employees of the Department of Environment and Natural Resources, were found by the Ombudsman administratively liable for simple misconduct and meted the penalty of suspension for one month. On petition for *certiorari* filed by Armilla, *et al.*, the CA held that the Ombudsman committed grave abuse of discretion in imposing the penalty of one-month suspension. Citing *Tapiador v.*