

EN BANC

[G.R. No. 159883, March 31, 2008]

DR. PEDRO F. GOBENCIONG, PETITIONER, VS. HON. COURT OF APPEALS, DEPUTY OMBUDSMAN (VISAYAS), REGIONAL DIRECTOR OF THE DEPARTMENT OF HEALTH, REGION VIII, AND FLORA DELA PEÑA, RESPONDENTS.

[G.R. No. 168059]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. DR. PEDRO F. GOBENCIONG AND THE HON. COURT OF APPEALS (CEBU CITY), RESPONDENTS.

[G.R. No. 173212]

DR. PEDRO F. GOBENCIONG, PETITIONER, VS. DEPUTY OMBUDSMAN (VISAYAS), REGIONAL DIRECTOR OF THE DEPARTMENT OF HEALTH, REGION VIII, AND FLORA DELA PEÑA, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

The Petitions

Before the Court are these three petitions, two interposed under Rule 45 and one under Rule 65 of the Rules of Court. These petitions stemmed from OMB-VIS-ADM-97-0370 entitled *Dr. Flora de la Peña v. Dr. Rafael C. Omega, Chief of Hospital, Dr. Pedro F. Gobenciong, Administrative Officer IV, Crisologo R. Babula, Supply Officer IV, et al., all of Eastern Visayas Regional Medical Center, Tacloban City.*

The first, a Petition for Review on *Certiorari* under Rule 45, docketed as **G.R. No. 159883**, seeks to nullify the Decision^[1] and Resolution^[2] dated November 26, 2002 and August 27, 2003, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 49585, denying petitioner Gobenciong's petition for *certiorari* under Rule 65 and, thus, effectively affirming the assailed Order^[3] dated August 24, 1998 of the Deputy Ombudsman-Visayas, preventively suspending him from office.

In the second, a Petition for *Certiorari* under Rule 65 and docketed as **G.R. No. 168059**, the Office of the Ombudsman assails, as tainted with grave abuse of discretion, the Decision^[4] dated April 29, 2005 of the CA in CA-G.R. SP No. 61687, which set aside the Ombudsman's Decision^[5] of March 21, 2000 and Order of August 10, 2000 Order^[6] in OMB-VIS-ADM-97-0370 but only insofar as it imposed a penalty of one-year suspension on Gobenciong.

The third, a Petition for Review on *Certiorari* under Rule 45, docketed as **G.R. No. 173212**, seeks to set aside the Decision and Resolution^[7] dated April 29, 2005 and May 29, 2006, respectively, of the CA in CA-G.R. SP No. 61687, which sustained the aforesaid March 21, 2000 and August 10, 2000 rulings in OMB-VIS-ADM-97-0370.

On January 17, 2006, the Court ordered the consolidation of **G.R. No. 159883** with **G.R. No. 168059**, both to be considered as en banc cases.^[8] The consolidation of **G.R. No. 173212** with the first two cases later followed.^[9]

The Facts

During the period material, Gobenciong held the position of Administrative Officer IV in Eastern Visayas Regional Medical Center (EVRMC), a public hospital in Tacloban City. On December 3, 1996, the appropriate EVRMC office issued Requisition and Issue Voucher No. (RIV) EO-1-96 for one unit hemoanalyzer (also called particle counter), among other items. On its face, RIV EO-1-96 carried, for the hemoanalyzer, the specifications "electric 220V, 50 feed shelves capacity" with a handwritten unit price quotation of PhP 1,195,998.

After public bidding where Alvez Commercial, Inc. (Alvez) emerged as the best bidder, Purchase Order No. (PO) EO-5-96 dated December 9, 1996 was issued covering two units of nebulizer and one unit particle counter with specifications "23 Parameters, Genius, Italy, electric 220V, fully automated" at the unit price as aforesated.

As hospital documents would show, the nebulizers and the hemoanalyzer appeared to have been delivered on December 20, 1996 and accepted by Engr. Jose M. Jocano, Jr. and Supply Officer III Crisologo R. Babula, per Certification of Acceptance they signed to attest having accepted all the articles delivered by Alvez per Sales Invoice No. 0786. Similarly, Babula signed Sales Invoice No. 0786 to acknowledge receipt in good condition of the articles covered thereby. In addition, it was made to appear in a Commission on Audit (COA) Inspection Report that Jocano and Gobenciong had certified as correct the finding/recommendation that the two nebulizers and the hemoanalyzer had been inspected as to quality and quantity as per Sales Invoice No. 0786.

On December 26, 1996, Disbursement Voucher No. (DV) 101-9612-1986, for PhP 1,161,817.35, net of creditable VAT, was prepared. Gobenciong, among others, signed the voucher to attest that the expense covered thereby was necessary, lawful, and incurred under his direct supervision. Appended to DV 101-9612-1986 were documents adverted to earlier, such as Sales Invoice No. 0786, the Certification of Acceptance, the COA Inspection Report, PO EO-5-96, and RIV EO-1-96.

The issuance on December 27, 1996 of Landbank Check No. 456359 in the amount of PhP 1,161,817.35 in favor of Alvez, which then purportedly issued Receipt No. 0815, followed.

On March 31, 1997, or little over three months after the supposed delivery of the hemoanalyzer, Alvez addressed a letter to EVRMC to assure the hospital that it

would be replacing the yet to-be-delivered slightly defective hemoanalyzer with another unit. On April 1, 1997, Alvez actually delivered the promised replacement-- a Genius particle counter with Serial No. 36162. It was installed on April 2, 1997 and inspected the following day by Jocano and Gobenciong.

The instant case started when Dr. Flora dela Peña, Head of the EVRMC Laboratory Unit, filed, on June 20, 1997, an administrative complaint before the Office of the Ombudsman-Visayas, charging Gobenciong, Jocano, Babula, and three other EVRMC officers with Falsification of Public Documents and Misconduct. The complaint was docketed as OMB-VIS-ADM-97-0370.

In a related move, dela Peña also filed a complaint with the Department of Health (DOH) which forthwith formed a committee to look likewise into the alleged anomalous purchase of the expensive hemoanalyzer. The investigation culminated in the filing by the DOH Secretary of a Formal Charge^[10] dated October 29, 1997 *for Grave Misconduct, Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service* against Gobenciong and three others.

Ombudsman Ordered Preventive Suspension

On August 24, 1998, the Deputy Ombudsman-Visayas, upon dela Peña's motion, issued an Order, placing all, except one, of the respondents in OMB-VIS-ADM-97-0370 under preventive suspension and directed the proper DOH officer to immediately implement the Order.^[11]

Following his receipt on November 9, 1998 of a copy of the said order, Gobenciong wrote Dr. Lilia O. Arteche, DOH Regional Director for Region VIII, requesting the deferment of the implementation of the preventive suspension until after his to-be-filed motion for reconsideration shall have been resolved.

Conformably with the Ombudsman's directive,^[12] Arteche, via a Memorandum^[13] dated November 11, 1998, informed the affected respondents in OMB-VIS-ADM-97-0370 that their six-month preventive suspension shall take effect immediately upon their receipt of the memorandum.

On November 12, 1998, Gobenciong sought reconsideration of the August 24, 1998 preventive suspension order. But due to the virtual denial of his plea for the deferment of his preventive suspension, Gobenciong, without awaiting the Office of the Ombudsman's action on his motion for reconsideration, went to the CA on a petition for *certiorari*, with a plea for the issuance of temporary restraining order (TRO). The petition was docketed as CA-G.R. SP No. 49585.

On November 19, 1998, the CA issued a TRO enjoining then Deputy Ombudsman-Visayas Arturo Mojica and Arteche from implementing the order of preventive suspension in OMB-VIS-ADM-97-0370.^[14]

As later developments would show, the TRO, while duly served, evidently went unheeded, for Gobenciong failed to get back to his work or get his salary until after the lapse of the suspension period in May 1999. This turn of events impelled Gobenciong to move that Arteche and Mojica be cited in contempt. The CA, however,

did not act on the motion.

The Ruling of the Ombudsman in OMB-VIS-ADM-97-0370

Before the CA could resolve CA-G.R. SP No. 49585, the Ombudsman rendered on March 21, 2000 a Decision, finding Gobenciong and several others guilty in OMB-VIS-ADM-97-0370. The decretal portion of the Ombudsman's Decision partly reads:

WHEREFORE, finding substantial evidence to hold respondents RAFAEL C. OMEGA, **PEDRO F. GOBENCIONG**, CRISOLOGO R. BABULA, and JOSE M. JOCANO of Conduct Grossly Prejudicial to the Best Interest of the Service, it is respectfully recommended that they **be meted the penalty of SUSPENSION FROM THE SERVICE FOR ONE (1) YEAR** WITHOUT PAY.^[15] (Emphasis added.)

The above guilty verdict was mainly predicated on the finding that the Certification of Acceptance and the COA Inspection Report, among other documents, were falsified, there being no actual delivery on December 20, 1996 of the covered hemoanalyzer. There was thus no legal basis for the issuance of DV 101-9612-1986 and the corresponding Landbank check for PhP 1,161,817.35.

Subsequently, Gobenciong, et al. moved for reconsideration, but the Ombudsman, by an Order of August 10, 2000, denied their motion.

In due time, Gobenciong appealed from the above decision and order to the appellate court, the appeal docketed as CA-G.R. SP No. 61687.

On November 16, 2000, the Office of the Ombudsman-Visayas, through Director Virginia P. Santiago, by an Order,^[16] directed the DOH Regional Office No. VIII to immediately implement its Decision and impose the penalties decreed therein, which, in the case of Gobenciong, was one-year suspension from office without pay.

On December 11, 2000, Gobenciong moved that Santiago be cited in contempt of court^[17] for issuing the November 16, 2000 Order despite being notified of his appeal in CA-G.R. SP No. 61687. Like his earlier similar motion, this motion was neither denied nor granted by the CA.

The Ruling of the Court of Appeals in CA-G.R. SP No. 49585

Long after the issuance of the Decision dated March 21, 2000 in OMB-VIS-ADM-97-0370, the CA, on November 26, 2002, rendered a Decision in CA-G.R. SP No. 49585, denying Gobenciong's petition for *certiorari* assailing the directive, and the implementation thereof, for the immediate execution of his preventive suspension. Dispositively, the CA wrote:

WHEREFORE, the foregoing premises considered, the petition for *certiorari* is DENIED DUE COURSE and hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.^[18]

The CA dismissed Gobenciong's petition on the strength of Section 24 in relation to Sec. 27 of Republic Act No. (RA) 6770, otherwise known as the *Ombudsman Act of 1989*. The interplay of both sections expressly empowers the Ombudsman, under defined conditions, to preventively suspend, for a maximum period of six months, all but three categories of public officials and employees under investigation by his office and to direct the immediate implementation of the corresponding suspension order.

Gobenciong's motion for reconsideration of the above decision was rejected by the appellate court on August 27, 2003.

Hence, the Petition for Review on *Certiorari* in **G.R. No. 159883**.

The Ruling of the Court of Appeals in CA-G.R. SP No. 61687

On April 29, 2005, the CA, on the postulate that the disciplinary authority of the Office of the Ombudsman is merely recommendatory, rendered its Decision in CA-G.R. SP No. 61687, partially granting due course to Gobenciong's appeal and effectively modifying the Decision dated March 21, 2000 of the Ombudsman. The decretal portion of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case and SETTING ASIDE the Decision dated March 21, 2000 and the Order dated August 10, 2000 rendered and issued by the Office of the Ombudsman in OMB-VIS-ADM-97-0370 insofar as said office directly imposes upon the petitioner the penalty of suspension from the service for one (1) year without pay.^[19]

Invoked as part of the *ratio decidendi* of the CA Decision was *Tapiador v. Office of the Ombudsman*,^[20] which the appellate court viewed as declaring that the disciplinary power of the Ombudsman in administrative cases is limited only to recommending to the disciplining authority the appropriate penalty to be meted out. In the concrete, as gleaned from the CA Decision, this means that the Ombudsman cannot compel the DOH to impose the penalty recommended in its underlying Decision of March 21, 2000.

Therefrom, the parties availed themselves of different remedies to contest before this Court the above decision of the CA.

The Office of the Ombudsman, ascribing grave abuse of discretion on the part of the appellate court, assailed the above decision through a Petition for *Certiorari* under Rule 65, docketed as **G.R. No. 168059**.^[21]

On the other hand, Gobenciong filed his Motion for Partial Reconsideration of the Decision dated April 29, 2005,^[22] which the CA denied via its Resolution dated May 29, 2006. Thus, the instant Petition for Review on *Certiorari* filed by Gobenciong, now docketed as **G.R. No. 173212**.

In the meantime, on January 16, 2005, Gobenciong retired from the service.

The Issues