

THIRD DIVISION

[G.R. NOS. 168830-31, February 06, 2007]

ERNESTO M. DE CHAVEZ, PORFIRIO C. LIGAYA, ROLANDO L. LONTOK, SR., ROLANDO M. LONTOK, JR. AND GLORIA G. MENDOZA, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN AND NORA L. MAGNAYE, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari*^[1] under Rule 65 of the 1997 Rules of Civil Procedure which seeks the nullification of the Joint Resolution dated 14 February 2005^[2] and the Supplemental Resolution dated 12 July 2005^[3] in cases OMB-1-01-1036-K and OMB-1-01-1083-K, both issued by the public respondent Office of the Ombudsman. It also prays for the issuance of a Temporary Restraining Order commanding the public respondent to cease and desist from implementing the said Supplemental Resolution dated 12 July 2005 or from conducting further proceedings in cases OMB-1-01-1036-K and OMB-1-01-1083-K.

Culled from the records are the following facts:

On 7 November 2001, private respondent Nora L. Magnaye (Magnaye), Professor IV of the Batangas State University (BSU), filed with the public respondent an administrative complaint for Grave Misconduct, Oppression, Conduct Prejudicial to the Best Interests of the Service, Falsification of Official Documents, Dishonesty, Gross Neglect of Duty and Violation of Section 5(a) of Republic Act No. 6713 otherwise known as "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES" against petitioners Ernesto M. de Chavez (de Chavez), BSU President; Porfirio C. Ligaya (Ligaya), BSU Vice- President for Extension Campus Operations; Rolando L. Lontok, Sr. (Lontok, Sr.), BSU Vice-President for Academic Affairs; Rolando M. Lontok, Jr. (Lontok, Jr.), BSU Associate Dean of the College of Computer Science and Information Technology; Gloria G. Mendoza (Mendoza), BSU Dean of the College of Liberal Arts; and other BSU officials namely, Virginia Baes, BSU Executive Vice-President; Amador M. Lualhati (Lualhati), BSU University Secretary; Victoria A. Zaraspe (Zaraspe), BSU Vice-President for Finance and Administration; and Jessie A. Montalbo (Montalbo), BSU Vice-President and Dean of the College of Computer Science and Information Technology.^[4] The case was docketed as OMB-1-01-1036-K. The generative facts which gave rise to the filing of the complaint are summarized in the Comment dated 8 September 2005^[5] of the public respondent, to wit:

1. De Chavez, Lontok, Sr. and Mendoza caused to be collected, and received the proceeds of, graduation fees from the graduating class of SY 2000-2001 without issuing an official receipt and without

remitting the same to BSU.

2. De Chavez and Lontok, Sr., did not conduct any public bidding for the rental of caps and gowns which were used during the graduation for the SY 2000-2001 and gave the contract to rent caps and gowns to their relatives.
3. De Chavez and Lontok, Sr. required and received from the graduating class of SY 2000-2001 the amount of P200.00 from each student as payment for said students' comprehensive examination. Said collection was not authorized by the BSU Board of Regents.
4. Lontok, Jr. and Montalbo collected from BSU students internet fees without issuing an official receipt and despite the absence of internet facilities in BSU Lipa City Campus.
5. Ligaya collected from BSU students the amount P200.00 each as payment for Related Learning Experience Fee (RLEF) without issuing any official receipt.
6. De Chavez and Baes conspired in designating close relatives of De Chavez to key administrative positions in BSU.
7. De Chavez made appointments of faculty members and transmitted said appointments to the CSC [Civil Service Commission] without the approval of the BSU Board of Regents.
8. De Chavez prevented the elected President of the Federation of Supreme Student Assembly to sit as a member of the Board of Regents.
9. De Chavez issued a Memorandum increasing the rates of fees for records and other documents issued by BSU without any approval of the governing Board of the BSU.
10. De Chavez, Baes and Zaraspe designated and appointed faculty members to key positions in BSU without any authority under the law, rule or regulation.
11. De Chavez and Lontok, Sr. failed to respond to the letter of officials of the PTA-BSU Lipa Campus in violation of R.A. 6713.
12. De Chavez collected notarial fees from contractual employees without issuing official receipts.
13. De Chavez and Lontok, Sr. did not renew the contract of two faculty members.^[6]

Subsequently, on 13 November 2001, based on the above imputed acts plus an additional one,^[7] private respondent also filed with the public respondent another Complaint imputing criminal liability to the BSU officials above-named for Violation of Section 3(a) and (e) of Republic Act No. 3019, otherwise known as the "ANTI-

GRAFT AND CORRUPT PRACTICES ACT," Violation of Section 5(a) of Republic Act No. 6713, Falsification of Official Documents and Estafa.^[8] The criminal complaint was docketed as OMB-1-01-1083-K.

Petitioners denied the allegations of private respondent. In their Joint Counter-Affidavit dated 30 January 2002,^[9] which was summarized in the Joint Resolution dated 14 February 2005 of the public respondent, petitioners countered the following:

1. The BSU management did not collect graduation fees for the commencement exercises of SY 2000-2001 like in the previous years. It was claimed that the members of the graduating class, with the guidance of their advisers, were the ones who fixed, collected and disbursed the contributions/fees for the commencement exercises.
2. No public bidding was conducted for the rental of the caps and gowns because the BSU did not enter into contract with any supplier. The graduating students have the complete freedom to hire their caps and gowns from anyone. The receipts signed by Lontok, Sr. was merely in acknowledgment of the receipts of certain amounts from Magnaye which the latter requested to be given to Mr. Fralundio Sulit from whom the graduating class rented their caps and gowns.
3. Whenever a collection of the internet fee is made, a receipt was issued by the BSU using Accountable Form No. 51. Further no collection of internet fees was made at BSU Lipa City Campus.
4. The collection of the Related Learning Experience Fee was done by the Cashier's Office of the College. What was being collected in the past by the Office of Dr. Porfirio Ligaya was the Dual Training Fee for non-degree courses. However, effective the second week of December 2001, the collection of this fee was already turned over to the Cashier's Office of the BSU.
5. De Chavez relied on the authority of the Resolution issued by the Office of the President declaring that the designation of the relatives of De Chavez to certain positions in the BSU is not violative of the rule against nepotism. The subject designations were all duly confirmed by the Board of Regents.
6. The Board of Regents recognized the practice of De Chavez of submitting first the appointments he made to the CSC for attestation before submitting the same for confirmation of the Board. The appointments of professors/instructors which Magnaye claim is violative of existing law and rules has already been confirmed by the Board of Regents.
7. No one has been elected as President of the Federation of Student Assembly. Said position is still non-existent in view of the failure of

the student to draft and ratify their constitution and by-laws.

8. The increase in miscellaneous fees was duly approved by the Board of Trustees of PBMIT through Board Resolution No. 6 series of 1997.
9. The failure to respond to some letters query was brought about by the pre-occupation of petitioners to other pressing and more important matters.
10. The BSU neither collects nor shares in the notarial fees charged by the notary public.
11. The management can opt to renew or not to renew the contract for employment of some faculty members. They are not governed by the security of tenure as commonly enjoyed by the regular employees of the government.^[10]

In her Reply dated 8 March 2002,^[11] private respondent attached therewith a photocopy of the alleged Audit Report dated 7 February 2001 of State Auditor IV Milagros D. Masangkay, Office of the Auditor, Pablo Borbon Memorial Institute of Technology,^[12] containing a finding and recommendation on the graduation fees collected by BSU, thus:

4. FINDING

Graduation fees were not yet issued official receipts and were not taken up in the books of the College despite prior years' audit recommendations and in violation of the provisions of Sections 63 and 68 of Presidential Decree (P.D.) No. 1445, and Section 4(d) of Republic Act (R.A.) No. 8292 resulting to an aggregate understatement of Cash and Trust Liability accounts by about P3,342,550.00.

Section 63 of Presidential Decree (P.D.) No. 1445 requires all moneys and property officially received by a public officer in any capacity or upon any occasion to be accounted for as government funds and government property, while Section 68 of the same presidential decree provides that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.

Under Section 4(d) of Republic Act (R.A.) No. 8292, the higher Education Modernization Act of 1997, state universities and colleges are authorized to deposit in any authorized government depository bank and treat as Special Trust Fund, income from tuition fees and other necessary school charges such as matriculation fees, graduation fees, and laboratory fees.

The existing practice of not issuing official receipts and not taking up in the books of accounts graduation fees paid by graduating students has been an audit finding since 1997.

Based on the Annual Audit Report for calendar year 1999, the graduation fees from 1997-1999 totaled P2,057,600 with an expenses of

P921,529.00.

The graduation fees collected and the expenses paid out of these fees during the calendar year 2000 could not be determined due to failure of the employee concerned to furnish this Office with certified statement of collections of graduation fees and the related disbursements together with the supporting papers despite our request to the College President in a letter dated January 17, 2001.

Likewise, in response to our Memorandum dated October 11, 2000 requesting information as to the status of the implementation of the 1999 audit recommendations, the College President informed this Office and I quote "the holding of graduation rites is a tradition of the PBMIT [Pablo Borbon Memorial Institute of Technology] academic community but it is never compulsory. Graduating students may not join the ceremonies but if majority of them decided to hold one, it is their prerogative to plan, execute and evaluate their ceremony. In the process, and through the senior council and/or its advisers, they may agree among themselves to contribute certain amount voluntarily to finance the program. After the rites and if there are cash balances, the graduating class usually donate something to their Alma Mater as their remembrance or legacy. This office, with all due respect to the COA, may not be able to follow the recommendation. This office is not yet ready to break this hallowed tradition.

The continuous refusal of management to implement prior years' audit recommendations and the letter of the Honorable Chairman of the Commission on Audit relative to the handling of graduation fees was already communicated to the Commission on Audit thrice, the latest was last November 8, 2000 when the General Counsel of the Commission on Audit asked for status report.

Since graduation fee is one of the items to be recorded under Special Trust Fund per R.A. No. 8292, failure to record the same in the books of accounts of the Institute understated the cash and trust liability accounts.

Since there were no records submitted to this Office pertaining to graduation fees collected from graduating students, understatement of Cash and Trust Liability Accounts amounting to P1,284,950.00 (Annex G) was based on the number graduating students and the graduation fee per student last school year 1999-2000. The 1999 Annual Audit Report of the previous COA Auditor reported a total collections from 1997 to 1999 of P2,057,600.00. These amounts when added will yield an aggregate understatement of Cash and Trust Liability accounts by about P3,342,550.00.

RECOMMENDATION

Require the accountable officer to issue official receipts (Accountable Form 51) for graduation fees collected and deposit the collections in an authorized government depository bank. Enjoin the Accountant to record