

## THIRD DIVISION

[ G.R. NOS. 167335 & 167337, July 10, 2007 ]

**DR. ULYSSES A. BRITO, (IN HIS CAPACITY AS OIC-REGIONAL DIRECTOR OF THE NCIP REGION IV), PETITIONER, VS. OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, SANDY P. PADILLA AND MONICO A. DINGAL, JR., RESPONDENTS.**

[G.R. NO. 173152]

**DR. ULYSSES A. BRITO, (IN HIS CAPACITY AS OIC-REGIONAL DIRECTOR OF THE NCIP REGION IV), PETITIONER, VS. COURT OF APPEALS, OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, SANDY P. PADILLA AND MONICO A. DINGAL, JR., RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For the Court's consideration are two consolidated petitions: (1) G.R. Nos. 167335 & 167337, a Petition for *Certiorari* under Rule 65 of the Rules of Court, seeking to nullify and set aside the Joint Order<sup>[1]</sup> dated 7 December 2004 of the Deputy Ombudsman for Luzon which resolved the criminal aspect of the charges against private respondents Sandy P. Padilla and Monico A. Dingal, Jr. in their favor; and (2) G.R. No. 173152, a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals' Resolution<sup>[2]</sup> dated 18 October 2005 denying petitioner's Motion for Reconsideration of the Court of Appeals' Resolution dated 27 April 2005 which dismissed the special civil action for *certiorari* filed by petitioner against the Deputy Ombudsman for Luzon on the ground that it was not the proper remedy to assail the joint order of the Ombudsman. Said special civil action questioned the Joint Order of the Deputy Ombudsman for Luzon dated 7 December 2004 insofar as it disposed of the administrative aspect of the charges against private respondents by finding them not guilty of Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest. It merely found them liable under Section 4(a) of Republic Act No. 6713<sup>[3]</sup> and imposed upon them the penalty of reprimand.

These are the facts of the instant consolidated petitions.

Private respondents Sandy Padilla, Engineer II, and Monico Dingal, Jr., Community Affairs Officer II, are employees of the National Commission on Indigenous Peoples-Region IV (NCIP-Region IV). NCIP is the primary agency of the government tasked to implement Republic Act No. 8371,<sup>[4]</sup> otherwise known as "The Indigenous Peoples Rights Act of 1997." It is the agency authorized by the said law to issue a Certification Precondition in favor of any entity which desires to undertake operations within the ancestral domains of the indigenous peoples or whose

proposed projects will affect the ancestral domains.<sup>[5]</sup>

Private respondents were assigned as members of a Field-Based Investigation (FBI) team. This team conducts investigations on the impact of a project on any community of indigenous peoples, to determine whether the required Certification Precondition may be properly issued to applicant companies.

In relation to the conduct of investigations by the FBI team, NCIP Administrative Order No. 3, Series of 1998, provides that the cost of actual expenses arising from investigations shall be shouldered by the applicant company, to wit:

Section 4: x x x

- a. Requests for NCIP Certification Precondition shall be filed with the concerned NCIP Regional Office. The cost of actual expenses in the conduct of the required field-based investigation, to be undertaken by the concerned NCIP Regional Office, shall be borne by the applicant. x x x.

In the year 2001, on three separate occasions, private respondents conducted field-based investigations on proposed projects of the following companies on the following dates:

Name of Company	Location	Date of FBI
1. Kumakata Mining Dev. Corp. (Kumakata)	Tagcawayan, Maguibway, Quezon	July 18-20, 2001
2. La Concepcion Dev. Corp. (La Concepcion)	Bagong Nayon, Antipolo, Rizal	December 5, 2001
3. Rio Tuba Nickel Corp (Rio Tuba)	Rio Tuba, Bataraza, Palawan	December 17-20, 2001 <sup>[6]</sup>

Following the termination of the investigations, private respondent Sandy Padilla, in a short handwritten note to petitioner Dr. Ulysses Brito, OIC-Regional Director of the NCIP Region IV, claimed reimbursement for his and private respondent Dingal's per diems and taxi fares for the said investigations. The handwritten note reads:

Sir,

We are claiming for the per diem and taxi fare only. These companies did not provide us our per diem since they are anticipating that guidelines might require them.

Thanks.

Sandy Padilla<sup>[7]</sup>

Petitioner approved the request for reimbursement by respondents for per diem and taxi fares. Thus, on 21 December 2001, the total amount of P3,240.00 was granted

to each of the private respondents, broken down as follows:

<u>Name of Company</u>	<u>Amount Paid</u>
Kumakata	1,340.00/each
La Concepcion	500.00/each
Rio Tuba	<u>1,400.00/each</u>
TOTAL	P3,240.00/each <sup>[8]</sup>

Later on, however, the three above-mentioned companies issued their respective certifications claiming that they had already made payments in favor of the private respondents, thus:

Name of Company	Date of Certification	Date of FBI	Amount Paid Each
Kumakata	October 09, 2001	July 18-20, 2001	P 900.00
La Concepcion	Sept. 20, 2002	Dec. 05, 2001	P1,500.00
Rio Tuba	Aug. 21, 2002	Dec. 17-20, 2001	P1,500.00
		Total:	P3,900.00 /each <sup>[9]</sup>

Rio Tuba and La Concepcion, in their respective affidavits executed by their respective officers, however, explicated that the allowances given to private respondents did not include per diems and taxi fares.

On 12 May 2003, convinced that private respondents' acts of claiming per diems and taxi fares from their agency constitute penal and administrative violations, the petitioner filed a complaint-affidavit charging private respondents of the Complex Crime of Estafa thru Falsification under Article 171(4) of the Revised Penal Code and violation of Section 3(e) of Republic Act No. 3019 which were docketed as OMB-L-C-03-0581-E and OMB-L-C-03-1374-K. From the same set of facts, private respondents were also charged with an administrative case for Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest, docketed as OMB-L-A-03-1059-K.

In their Joint-Counter Affidavit<sup>[10]</sup> filed on 8 August 2003, private respondents admitted that each of them received the amount of P3,900.00 from the three companies. But they asserted that the said amount they received from the companies did not include per diems and taxi fares.

In a Joint Resolution dated 16 July 2004, the Deputy Ombudsman for Luzon Victor C. Fernandez recommended the dismissal of both the criminal and administrative cases hurled against private respondents on the ground that the said charges were premature. He opined that the controversy could have been settled had petitioner opted to exhaust administrative remedies. He also said that the complaint was done with apparent haste as no previous demand for refund was made by petitioner to private respondents as required by the Manual on the New Government Accounting System for National Government Agencies. Lastly, it was pointed out that the

subject disbursements were not referred to the Commission on Audit (COA) for appropriate examination and action. The dispositive portion of the resolution reads:

WHEREFORE, in view of the foregoing, it is respectfully recommended that [the] present criminal and administrative cases lodged against respondents SANDY PADILLA and MONICO DINGAL, JR. be DISMISSED for being premature. The dismissal of the present cases, however, is without prejudice to whatever results of any audit investigation that might later on be conducted by the Commission on Audit (COA) on the matter.<sup>[11]</sup>

Petitioner filed a motion for reconsideration. He insisted that as the one in-charge of the NCIP Region IV, he can, independent of the COA, institute the said charges. The criminal and the civil charges against respondents were *malum prohibitum*, thus these charges should not be made to depend on the findings of the COA, which will have to separately decide on filing a case against private respondents should the latter be found to have violated COA rules and regulations.

In a Joint Order dated 7 December 2004, the Deputy Ombudsman for Luzon modified his earlier resolution. With respect to the administrative charge, the Deputy Ombudsman found private respondents liable under Section 4(a) of Republic Act No. 6713, but not of Gross Dishonesty, Grave Misconduct and Conduct Prejudicial to the Public Interest and imposed upon them the penalty of reprimand. However, with respect to the criminal indictments, the Deputy Ombudsman again dismissed the same, finding that the acts complained of were not criminal in nature. The joint order decreed:

WHEREFORE, PREMISES CONSIDERED, it is most respectfully recommended that the Joint Motion for Reconsideration dated 17 August 2004 be PARTIALLY GRANTED. Respondents Sandy P. Padilla and Monico A. Dingal, Jr. are hereby meted a penalty of REPRIMAND with a Stern Warning that a repetition of the same act in the future shall be dealt with more severely. On the other hand, the dismissal of the criminal cases are hereby affirmed.<sup>[12]</sup>

On 11 March 2005, petitioner filed directly before this Court a Petition for *Certiorari* under Rule 65 of the Rules of Court questioning the criminal aspect of the Joint Order dated 7 December 2004 of the Deputy Ombudsman for Luzon which dismissed the criminal cases filed against private respondents.<sup>[13]</sup> The petition was docketed as G.R. Nos. 167335 and 167337.

Believing that the Court of Appeals is vested with the appellate jurisdiction over decisions of the Ombudsman pertaining to administrative disciplinary cases,<sup>[14]</sup> petitioner elevated the administrative aspect of the Joint Order dated 7 December 2004 to the Court of Appeals via a Petition for Review on *Certiorari* under Rule 65 of the Rules of Court.

The Court of Appeals, in a Resolution dated 18 October 2005, dismissed said petition on the ground that petitioner availed himself of the wrong remedy by pursuing the administrative case before the Court of Appeals through Rule 65. The appellate court opined that appeals in administrative cases decided by the Office of the Ombudsman should be taken to the Court of Appeals under Rule 43 and not under Rule 65.

Undeterred, petitioner is now before the Court via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' Resolution dated 18 October 2005. This case was docketed as G.R. No. 173152.

On 7 March 2007, the Court resolved to consolidate G.R. No. 173152, G.R. No. 167335 and G.R. No. 167337 since these cases involve similar parties and issues.  
[15]

### **G.R. No. 173152**

Petitioner avers that the decision of the Ombudsman finding private respondents administratively guilty and imposing upon them the penalty of reprimand is final and unappealable. Inasmuch as the penalty of reprimand is final and unappealable under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and Section 27 of Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989," then the only legal recourse available to him is a special civil action for *certiorari* under Rule 65. Petitioner, likewise, insists that the Deputy Ombudsman for Luzon committed grave abuse of discretion when he concluded that the complained acts of private respondents did not constitute gross dishonesty, grave misconduct and conduct prejudicial to the interest of the public service.

In the Comment filed by the Deputy Ombudsman for Luzon, through the Office of the Solicitor General, it was contended that the Court of Appeals correctly dismissed the special civil action filed by petitioner since decisions, orders and resolutions of the Ombudsman in administrative disciplinary cases are to be appealed to the Court of Appeals under Rule 43 of the Rules of Court. It was, likewise, asserted that Section 27 of Republic Act No. 6770 and Section 7, Rule III of the Rules of Procedures of the Office of the Ombudsman, cannot be invoked by petitioner as said provisions were declared unconstitutional in *Fabian v. Desierto*.<sup>[16]</sup>

Petitioner is correct in arguing that the decision of the Ombudsman imposing on private respondents the penalty of reprimand is final and unappealable. Ironically, though, this is the same argument that struck the death knell to his posturings.

Section 27 of Republic Act No. 6770 partly states:

*Sec. 27. Effectivity and Finality of Decisions.* — All provisional orders of the Office of the Ombudsman are immediately effective and executory.

x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.