

## EN BANC

[ G. R. NO. 159314, June 26, 2006 ]

**EDGARDO V. ESTARIJA, PETITIONER, VS. EDWARD F. RANADA AND THE HONORABLE OMBUDSMAN ANIANO A. DESIERTO (NOW SUCCEEDED BY HON. SIMEON MARCELO), AND HIS DEPUTY OMBUDSMAN FOR MINDANAO, HON. ANTONIO E. VALENZUELA, RESPONDENTS.**

### DECISION

#### QUISUMBING, J.:

This petition for review on *certiorari* assails the February 12, 2003 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 62557 which affirmed the October 2, 2000 Decision<sup>[2]</sup> of the Office of the Ombudsman-Mindanao in OMB-MIN-ADM-98-183.

The facts are as follows:

On August 10, 1998, respondent Edward F. Ranada, a member of the Davao Pilots Association, Inc. (DPAI) and Davao Tugboat and Allied Services, Inc., (DTASI) filed an administrative complaint for Gross Misconduct before the Office of the Ombudsman-Mindanao, against petitioner Captain Edgardo V. Estarija, Harbor Master of the Philippine Ports Authority (PPA), Port of Davao, Sasa, Davao City.<sup>[3]</sup>

The complaint alleged that Estarija, who as Harbor Master issues the necessary berthing permit for all ships that dock in the Davao Port, had been demanding monies ranging from P200 to P2000 for the approval and issuance of berthing permits, and P5000 as monthly contribution from the DPAI. The complaint alleged that prior to August 6, 1998, in order to stop the mulcting and extortion activities of Estarija, the association reported Estarija's activities to the National Bureau of Investigation (NBI). On August 6, 1998, the NBI caught Estarija in possession of the P5,000 marked money used by the NBI to entrap Estarija.

Consequently, the Ombudsman ordered petitioner's preventive suspension<sup>[4]</sup> and directed him to answer the complaint. The Ombudsman filed a criminal case docketed as Criminal Case No. 41,464-98, against Estarija for violation of Republic Act No. 3019, *The Anti-Graft and Corrupt Practices Act*, before the Regional Trial Court of Davao City, Branch No. 8.<sup>[5]</sup>

In his counter-affidavit<sup>[6]</sup> and supplemental counter-affidavit,<sup>[7]</sup> petitioner vehemently denied demanding sums of money for the approval of berthing permits. He claimed that Adrian Cagata, an employee of the DPAI, called to inform him that the DPAI had payables to the PPA, and although he went to the association's office, he was hesitant to get the P5,000 from Cagata because the association had no pending transaction with the PPA. Estarija claimed that Cagata made him believe

that the money was a partial remittance to the PPA of the pilotage fee for July 1998 representing 10% of the monthly gross revenue of their association. Nonetheless, he received the money but assured Cagata that he would send an official receipt the following day. He claimed that the entrapment and the subsequent filing of the complaint were part of a conspiracy to exact personal vengeance against him on account of Ranada's business losses occasioned by the cancellation of the latter's sub-agency agreement with Asia Pacific Chartering Phil., Inc., which was eventually awarded to a shipping agency managed by Estarija's son.

On August 31, 2000, the Ombudsman rendered a decision<sup>[8]</sup> in the administrative case, finding Estarija guilty of dishonesty and grave misconduct. The dispositive portion reads:

WHEREFORE, premises considered, there being substantial evidence, respondent EDGARDO V. ESTARIJA is hereby found guilty of Dishonesty and Grave Misconduct and is hereby DISMISSED from the service with forfeiture of all leave credits and retirement benefits, pursuant to Section 23(a) and (c) of Rule XIV, Book V, in relation to Section 9 of Rule XIV both of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292). He is disqualified from re-employment in the national and local governments, as well as in any government instrumentality or agency, including government owned or controlled corporations. This decision is immediately executory after it attains finality. Let a copy of this decision be entered in the personal records of respondent EDGARDO V. ESTARIJA.

PPA Manager Manuel C. Albarracin is hereby directed to implement this Office Decision after it attains finality.

SO DECREED.<sup>[9]</sup>

Estarija seasonably filed a motion for reconsideration.<sup>[10]</sup> Estarija claimed that dismissal was unconstitutional since the Ombudsman did not have direct and immediate power to remove government officials, whether elective or appointive, who are not removable by impeachment. He maintains that under the 1987 Constitution, the Ombudsman's administrative authority is merely recommendatory, and that Republic Act No. 6770, otherwise known as "*The Ombudsman Act of 1989*", is unconstitutional because it gives the Office of the Ombudsman additional powers that are not provided for in the Constitution.

The Ombudsman denied the motion for reconsideration in an Order<sup>[11]</sup> dated October 31, 2000. Thus, Estarija filed a Petition for Review with urgent prayer for the issuance of a temporary restraining order and writ of preliminary prohibitory injunction before the Court of Appeals. The Court of Appeals, on February 12, 2003, dismissed the petition and affirmed the Ombudsman's decision.

The Court of Appeals held that the attack on the constitutionality of Rep. Act No. 6770 was procedurally and substantially flawed. First, the constitutionality issue was belatedly raised in the motion for reconsideration of the decision of the Ombudsman. Second, the petitioner was unable to prove the constitutional breach and failed to overcome the presumption of constitutionality in favor of the questioned statute.

The Court of Appeals affirmed the decision of the Ombudsman, holding that receiving extortion money constituted dishonesty and grave misconduct. According to the Court of Appeals, petitioner failed to refute the convincing evidence offered by the complainant. Petitioner presented affidavits executed by the high-ranking officials of various shipping agencies which were found by the Court of Appeals to be couched in general and loose terms, and according to the appellate court, could not be given more evidentiary weight than the sworn testimonies of complainant and other witnesses that were subjected to cross-examination.

Petitioner filed a motion for reconsideration but the Court of Appeals denied the same for lack of merit. Hence, the instant petition assigning the following errors:

- (A) That certain basic factual findings of the Court of Appeals as hereunder specified, are not borne by any substantial evidence, or are contrary to the evidence on record, or that the Court of Appeals has drawn a conclusion or inference which is manifestly mistaken or is based on a misappreciation of the facts as to call for a corrective review by this Honorable Supreme Court;**
- (B) That Republic Act No. 6770, otherwise known as the "Ombudsman's Act of 1989", is unconstitutional, or that the Honorable OMBUDSMAN does not have any constitutional direct and immediate power, authority or jurisdiction to remove, suspend, demote, fine or censure, herein Petitioner and all other government officials, elective or appointive, not removable by impeachment, consistent with Sec. 13, par. No. (3), Art XI, of the 1987 Philippine Constitution.**
- (C) That corollary to, or consistent with, the aforecited Second Reason, said REPUBLIC ACT No. 6770, as amended, is constitutionally impaired and invalid insofar as it is inconsistent with, or violative of, the aforecited constitutional provisions (Sec 13, No. 3, Art XI).**
- (D) That the issue of "jurisdiction" or constitutionality or validity of a law, statute, rule or regulation can be raised at any stage of the case, even by way of a motion for reconsideration after a decision has been rendered by the court or judicial arbiter concerned.**
- (E) That the DECISION of the Court of Appeals is contrary to jurisprudential law, specifically**

to the ruling of this Honorable SUPREME COURT in the case of "*Renato A. Tapiador, Petitioner versus Office of the Ombudsman and Atty. Ronaldo P. Ledesma, Respondents, G.R No. 129124*" decided on March 15, 2002.

- (F) That assuming arguendo that the Honorable OMBUDSMAN does have such direct constitutional power to remove, suspend, etc. government officials not removable by impeachment, the DECISION rendered in said case OMB-MIN-ADM-98-[183], finding Petitioner "guilty of Dishonesty and Grave Misconduct" and directing his "*dismissal from the service, with forfeiture of all leave credits and retirement benefits xxx*", is still contrary to law and the evidence on record, or, at the very least, the charge of "Dishonesty" is not included in RANADA's administrative complaint and absolutely no evidence was presented to prove "Dishonesty" and the complaint which was limited to "[Grave] Misconduct" only;
- (G) That further assuming arguendo that Petitioner is subject to direct administrative disciplinary authority by the Honorable OMBUDSMAN whether under the Constitution or RA 6770, and assuming that he is "guilty" of "Dishonesty and Grave Misconduct", the Court of Appeals violated Sec. 25 of R.A. 6770 for not considering and applying, several mitigating circumstances in favor of Petitioner and that the penalty (of dismissal with loss of benefits) imposed by OMBUDSMAN is violative of Sec. 25, of R.A. 6770 and is too harsh, inhumane, violative of his human dignity, human rights and his other constitutional right not to be deprived of his property and/or property rights without due process, is manifestly unproportionate to the offense for which Petitioner is being penalized, and, should, therefore, be substantially modified or reduced to make it fair, reasonable, just, humane and proportionate to the offense committed. (Emphasis supplied).<sup>[12]</sup>

Essentially, the issues for our resolution are: First, Is there substantial evidence to hold petitioner liable for dishonesty and grave misconduct? Second, Is the power of the Ombudsman to directly remove, suspend, demote, fine or censure erring officials unconstitutional?

On the first issue, petitioner claims that the factual findings of the Court of Appeals

are not supported by substantial evidence, and that the Court of Appeals misappreciated the facts of the case.

Petitioner contends that he cannot be liable for grave misconduct as he did not commit extortion. He insists that he was merely prodded by Adrian Cagata to receive the money. He claims that as a bonded official it was not wrong for him to receive the money and he had authority to assist the agency in the collection of money due to the agency, *e.g.* payment for berthing permits. Moreover, he argues that the signing of berthing permits is only ministerial on his part and he does not have influence on their approval, which is the function of the berthing committee. Consequently, he avers, it makes no sense why he would extort money in consideration of the issuance of berthing permits.

We note that indeed petitioner has no hand in the approval of berthing permits. But, it is undisputed that he does decide on the berthing space to be occupied by the vessels. The berthing committee likewise consults him on technical matters. We note, too, that he claims he was only instructed to receive the money from Cagata, yet he admits that there was no pending transaction between the PPA and the DPAI.

In his Comment, the Ombudsman, through the Solicitor General, counters that petitioner raised questions of facts which are not reviewable by this Court. He argued that contrary to the petitioner's claim, the judgment of guilt for dishonesty and grave misconduct was based on the evidence presented. Petitioner was caught red-handed in an entrapment operation by the NBI. According to the Ombudsman, the entrapment of the petitioner met the test for a valid entrapment *i.e.* the conduct of the law enforcement agent was not likely to induce a normally law-abiding person, other than one who is ready and willing to commit the offense. The presumption in entrapment is that a law abiding person would normally resist the temptation to commit a crime that is presented by the simple opportunity to act unlawfully. Entrapment is contingent on the accused's predisposition to commit the offense charged, his state of mind, and his inclination before his exposure to government agents. Thus, entrapment is not made ineffectual by the conduct of the entrapping officers. When Estarija went to the office of Adrian Cagata to pick up the money, his doing so was indicative of his willingness to commit the crime.

In an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[13]</sup> Further, precedents tell us that the factual findings of the Office of the Ombudsman when supported by substantial evidence are conclusive,<sup>[14]</sup> and such findings made by an administrative body which has acquired expertise are accorded not only respect but even finality.<sup>[15]</sup>

As shown on the records, Estarija called the office of the DPAI and demanded the payment of the monthly contribution from Captain Zamora. Captain Zamora conveyed the demand to Ranada who in turn reported the matter to the NBI. Thereafter, an entrapment operation was staged. Adrian Cagata called Estarija to confirm the payment, and that the money was already available at their office. Accordingly, Estarija went to the DPAI office and collected the P5,000 marked money. Upon departure of Estarija from the office, the NBI operatives frisked him