

## EN BANC

[ G.R. NO. 155088, August 31, 2006 ]

**DR. MUSSOLINI C. BARILLO, EDGARDO C. HINOGUIN, OTHERWISE KNOWN AS EDGAR C. HINOGUIN, JOSE REY S. ROJAS, RAYMUNDO PLAZA AND TERESITA ALLEGO, PETITIONERS, VS. HON. MARGARITO GERVACIO, IN HIS CAPACITY AS OIC OMBUDSMAN HON. PRIMO MIRO, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR THE VISAYAS, HON. VIRGINIA P. SANTIAGO, IN HER CAPACITY AS DIRECTOR, OFFICE OF THE OMBUDSMAN (VISAYAS) AND THE COMMISSION ON AUDIT, REGION VII, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This Petition<sup>[1]</sup> dated August 23, 2002 filed by Dr. Mussolini C. Barillo (Barillo), Edgardo Hinoguin (Hinoguin), Jose Rey S. Rojas (Rojas), Raymundo Plaza (Plaza) and Teresita S. Allego (Allego), assails the Decision<sup>[2]</sup> of the Court of Appeals dated July 31, 2002 which affirmed the resolution, memoranda and orders promulgated by the Office of the Ombudsman, Manila (Ombudsman) and the Office of the Deputy Ombudsman for the Visayas (Ombudsman-Visayas) in Administrative Case No. OMB-VIS-ADM 97-0243 entitled "Commission on Audit v. Dr. Mussolini C. Barillo, et al."

The facts are as follows:

In September 1994, Barillo, as President of Cebu State College of Science and Technology (Cebu State), which is a government-owned educational institution,<sup>[3]</sup> introduced a school-based entrepreneurship project known as the Printing Entrepreneurial Shop (PES), installing himself as the Chairman and Hinoguin, Rojas, Plaza and Allego as the Project Coordinator, Project-in-Charge, Treasurer and Auditor, respectively.<sup>[4]</sup> Barillo then drafted an Operation Manual for the implementation of the PES. The Operation Manual provided the organizational and operational details of the program and was to serve as a guideline for the safekeeping of funds and the sharing of the program's realized income as follows:

a. Personnel

- |    |                     |     |
|----|---------------------|-----|
| 1. | Chairman            | 4%  |
| 2. | Project Coordinator | 4%  |
| 3. | Project Treasurer   | 4%  |
| 4. | Project Auditor     | 4%  |
| 5. | Management          | 22% |
| 6. | Project Teacher     | 25% |
| 7. | Student Workers     | 30% |

b. Maintenance

- |    |              |                   |
|----|--------------|-------------------|
| 1. | Electricity  | 5%                |
| 2. | Depreciation | 5%                |
| 3. | Water        | 2% <sup>[5]</sup> |

In order to establish the PES, seed money in the amount of ₱40,000.00 was obtained from the Cebu State Entrepreneurship Training Center (ETC) Funds purportedly as a loan to the PES. For this purpose, Rojas, as PES representative, and Eustiquio C. Alinabo, as Fund Administrator of the ETC, executed a Memorandum of Understanding dated September 2, 1994, which was approved by Barillo.<sup>[6]</sup>

The PES was thus formally established. It accepted printing jobs from Cebu State as well as other private entities. The seed money was used to acquire the necessary equipment and facilities for the printing shop although at the time, printing technology was not yet offered as a course in Cebu State. The course was eventually offered as a two (2)-year Certificate of Printing Technology program in school year 1996-1997, almost two (2) years after the establishment of the PES.<sup>[7]</sup>

Meanwhile, the funds initially deposited in the account of ETC were subsequently withdrawn by Barillo, Rojas and Plaza and deposited in their joint account in Banco de Oro. Similarly, all the subsequent income and funds generated from the PES's operations were deposited in this joint account. It appears that as of August 31, 1995, the PES had already realized a total income of ₱149,600.00.<sup>[8]</sup>

In the course of the post-audit and verification of the accounts and operations of Cebu State, Commission on Audit (COA) State Auditor III Asuncion D. Dela Peña (Auditor Dela Peña)<sup>[9]</sup> uncovered certain irregularities and anomalous transactions in relation to the operations of the PES. Thus, on September 4, 1995, Auditor Dela Peña requested from Barillo a Value for Money Audit (VFM). Barillo denied the request saying that the VFM Audit was already moot and academic because Auditor Dela Peña had already gathered information on the matter from students, teachers and non-teaching staff.<sup>[10]</sup>

In a letter dated September 11, 1995 addressed to the Director of the COA Regional Office, Auditor Dela Peña reported these irregularities and anomalous transactions alleging that the school facilities, resources and manpower were being utilized for the advancement of the private interests of petitioners. Moreover, considering that the printing office is deemed an auxiliary service of Cebu State, Auditor Dela Peña alleged that Barillo also violated Sec. 2 of DBM Circular Letter No. 92-8 dated November 18, 1998, which requires that all receipts from auxiliary services shall accrue to a revolving fund and be remitted to the National Treasury.<sup>[11]</sup>

Auditor Dela Peña submitted a supplemental report to the COA Regional Office, requesting that the documents relative to the operations of the PES be subpoenaed. The COA Regional Director requested the assistance of the Ombudsman-Visayas for this purpose. Accordingly, on October 2, 1995, the Ombudsman-Visayas demanded that appropriate action be taken by Barillo with regard to the request made by the COA Regional Director and Auditor.<sup>[12]</sup>

Barillo again denied the request in a letter dated October 18, 1995. Although Barillo admitted having barred Auditor Dela Peña from conducting an examination and audit of the accounts of the PES, he claimed that the latter was not covered by a COA audit because it did not use public funds in its operations. He also denied that the PES used funds from the appropriation of Cebu State for maintenance and other operating expenses. He averred that to allow Auditor Dela Peña to examine the PES's records would violate Cebu State's right to academic freedom and due process of law.<sup>[13]</sup>

In a letter dated October 26, 1995, Auditor Dela Peña asked Barillo for information on how the entrepreneurial programs comply with Letter of Instruction No. 1026 (LOI 1026) and MECS Order No. 26. Barillo replied admitting that Cebu State has not put its ETC into operation. As such, the ETC Operation Plan as approved by LOI 1026 is not yet applicable to the PES.<sup>[14]</sup>

Based on the foregoing, Auditor Dela Peña executed an Affidavit accusing Barillo, Hinoguin, Rojas, Plaza and Allego, in their respective capacities as President, Professor III, Assistant Professor, Clerk II and Stenographer of Cebu State, of violating Sec. 3(e), (f) and (h) of the Anti-Graft and Corrupt Practices Act and Sec. 4(a) and (c) of the Code of Conduct and Ethical Standards for Public Officials and Employees (Code of Conduct). Auditor Dela Peña alleged that the expenditures for the PES projects were illegally taken from the General Fund of Cebu State and that the income generated therefrom were illegally funneled to the personal accounts of petitioners. The complaint for violation of Sec. 3(e) of the Anti-Graft and Corrupt Practices Act was filed with the Sandiganbayan and docketed as Criminal Case No. 23554, while the charge of Dishonesty under Sec. 4(a) and (c) of the Code of Conduct was docketed with the Ombudsman-Visayas as Administrative Case No. OMB-VIS-ADM 97-0243.<sup>[15]</sup>

After due proceedings, the Ombudsman-Visayas issued a Resolution dated March 30, 1998, which was approved by then Ombudsman Aniano A. Desierto (Ombudsman Desierto) on June 26, 1998, finding petitioners guilty of Dishonesty and imposing upon them the penalty of dismissal from the service with forfeiture of all benefits and perpetual disqualification from government service.

Petitioners filed a motion for reconsideration and a supplemental motion for reconsideration both of which were denied in an Order of the Ombudsman-Visayas dated July 31, 1998. However, pursuant to the memoranda of the Office of the Chief Legal Counsel of the Ombudsman dated November 5, 1998 and March 25, 1999, Ombudsman Desierto, in an Order dated April 30, 1999, modified the Order of the Ombudsman-Visayas by reducing the penalty imposed upon Hinoguin, Rojas, Plaza and Allego from dismissal from service to six (6) months suspension without pay. The Ombudsman-Visayas subsequently issued an Order dated May 19, 1999 directing petitioners to cease and desist from holding public office.<sup>[16]</sup>

Petitioners assailed the resolution, memoranda and orders of the Ombudsman in a petition for review with the Court of Appeals. However, the appellate court denied their petition.

The Court of Appeals found no merit in petitioners' contention that the seed money

used for the establishment of the PES and its subsequent income are private funds. According to the appellate court, the seed money was sourced from the ETC Funds of Cebu State which funds are allocations made in favor of Cebu State by the Bureau of Technical and Vocational Education (BTVE) of the Department of Education Culture and Sports (DECS) for the creation of the Cebu State ETC. These funds were not meant to be loaned out as capital for supposed entrepreneurial projects.

Moreover, the evidence on record supports the Ombudsman's finding that petitioners used the facilities and resources of Cebu State for their personal and financial interest. Despite the fact that Cebu State's resources, manpower and facilities were used in the operations of the PES, no portion of its income was ever remitted to Cebu State's coffers.

The Court of Appeals further found that the PES was operated without following the guidelines laid down in the Handbook on the Establishment of an Entrepreneurial Training Center<sup>[17]</sup> in violation of MECS Order No. 26. There was also a clear conflict of interest because Barillo, who brokered for the PES to obtain printing contracts from Cebu State, was also the one who approved said contracts.

As regards Barillo's reliance on his acquittal by the Sandiganbayan in Criminal Case No. 23554, the appellate court held that such dismissal does not affect Barillo's administrative liability because administrative proceedings are independent from criminal proceedings.

Petitioners insist that due to the dismissal by the Sandiganbayan of Criminal Case No. 23554, the administrative case for Dishonesty should similarly be dismissed because the acts which the Sandiganbayan declared as not unlawful are the same acts for which they were held administratively liable. Petitioners also assail the Order dated May 19, 1999, directing them to immediately cease and desist from holding office as a palpable violation of the Constitution. According to them, while the Ombudsman has authority to file and investigate administrative cases against government officials and employees, the power to implement the decision of dismissal lies in the Office of the President or the Department Head.

The Office of the Solicitor General (OSG) filed a Manifestation and Motion<sup>[18]</sup> dated December 15, 2002, taking the position that the Ombudsman can only recommend administrative sanctions to the head of agency and but not impose them on its own.

The Ombudsman, for its part, filed a Comment<sup>[19]</sup> dated February 5, 2003, maintaining that the seed money of ₱40,000.00 was released to the PES by way of a loan from the Cebu State ETC Funds. In turn, the ETC Funds were allocations made in favor of the school by the BTVE of the DECS for the purpose of creating the Cebu State ETC. Clearly, the funds were public in character.

It further averred that the PES was an illegal money-making venture because petitioners allocated to themselves specific percentages of the income generated from the project as shown by the sharing scheme in the Operation Manual. They treated the income generated by the project like their own by depositing the same in their private account. However, the expenditures for the PES such as supplies, equipment and materials used for printing office maintenance and electricity were borne by the school.<sup>[20]</sup>

Citing *Ocampo v. Ombudsman*,<sup>[21]</sup> the Ombudsman contends that the dismissal of the criminal case against petitioners has no effect on the present administrative case because the evidence against petitioners, though found insufficient to establish guilt beyond reasonable doubt, satisfies the quantum of evidence required in administrative proceedings.

Finally, as regards the OSG's position, the Ombudsman argues that the ruling of this Court in *Tapiador v. Office of the Ombudsman*,<sup>[22]</sup> to the effect that the Ombudsman is without authority to directly dismiss an erring employee from government service, is the subject of a pending motion for reconsideration in which the Ombudsman argued that it is invested with administrative disciplinary powers to the fullest extent. The Ombudsman insists that it has the authority to compel and enforce, even through the use of the coercive power of contempt, the implementation of the penalties it assesses against erring public officials and employees.

Petitioners reiterate their arguments in their Reply<sup>[23]</sup> dated July 24, 2003.

There are three questions submitted for our resolution. The first pertains to the scope of the powers granted to the Ombudsman by the Constitution; the second concerns the effect of the Sandiganbayan's Decision in Criminal Case No. 23554, acquitting Barillo and dismissing the case against the other petitioners, on the present administrative proceeding; and the third involves the question of whether there is substantial evidence against petitioners.

On the first issue. The authority of the Ombudsman to determine the administrative liability of a public official or employee, and to direct and compel the head of the office or agency concerned to implement the penalty imposed is already settled.

In *Ledesma v. Court of Appeals*,<sup>[24]</sup> we held that the statement in *Tapiador v. Office of the Ombudsman*, *supra*, to the effect that the disciplinary power of the Ombudsman is only recommendatory is a mere obiter dictum which cannot be cited as a doctrinal declaration of the Court. We declared that the authority of the Ombudsman under Sec. 15 of Republic Act No. 6770 (RA 6770), otherwise known as The Ombudsman Act of 1989, to recommend the removal, suspension, demotion, fine, censure, or prosecution of an erring public officer or employee is not merely advisory but is actually mandatory within the bounds of the law, such that the refusal, without just cause, of any officer to comply with an order of the Ombudsman to penalize an erring public officer or employee is a ground for disciplinary action.

The power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged.<sup>[25]</sup> The provisions of the Constitution<sup>[26]</sup> and RA 6770 should be taken to mean that the recommendation of the Ombudsman regarding the action to be taken against an erring public officer or employee should be coursed through the proper officer, often the head of the agency to which such officer or employee belongs.