

FIRST DIVISION

[G.R. NO. 147640, October 16, 2006]

**JOWETT K. GOLANGCO, PETITIONER, VS. ATTY. JONE B. FUNG,
RESPONDENT.**

[G.R. No. 147762]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. HON. COURT OF
APPEALS AND ATTY. JONE B. FUNG, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Petitioners Jowett K. Golangco (Golangco) and the Office of the Ombudsman, in this consolidated Petitions for Review under Rule 45 of the Rules of Court, assail the Decision^[1] of the Court of Appeals in CA- G.R. SP No. 57418 dated 24 August 2000 and its Resolution^[2] dated 28 March 2001 setting aside the Resolution dated 13 March 1995 and the Order dated 25 September 1996 of the Office of the Ombudsman in OMB-ADM-0-93-0149. The assailed Decision also directed the Office of the Ombudsman to cause the withdrawal of the Information it filed with the Regional Trial Court (RTC) of Manila, Branch 38 entitled, "*People of the Philippines v. Atty. Jone B. Fung*," docketed as Criminal Case No. 96-149444. The said Resolution and Order of the Office of the Ombudsman found Atty. Jone B. Fung (respondent) guilty of oppression, gross inefficiency, gross neglect of duty and grave misconduct and imposed upon him the penalty of dismissal from government service.

Respondent is an employee of the Philippine Overseas Employment Administration (POEA) and was, at that time, assigned as Officer-In-Charge of the Operations and Surveillance Division, Anti-Illegal Recruitment Branch, Licensing and Regulation Office, under the auspices of the Department of Labor and Employment (DOLE).

On 1 February 1993, then DOLE Secretary Nieves Confesor received a letter from then Senator Ernesto Maceda bringing to her attention a letter-complaint of a certain Edwin Belarmino, an applicant for overseas employment with the Golangco and Monteverde recruitment agency [G&M (Phil.) Inc.]. In the letter-complaint, Belarmino alleged that he was required by the recruitment agency to pay P20,000.00 as initial payment of the total recruitment fee of P55,000.00 before his application as factory worker in Taiwan could be processed.

The DOLE Secretary referred the letter-complaint to the POEA Administrator who instructed the POEA Licensing and Regulation Office, headed by respondent, to conduct an on-the-spot investigation of the activities of G&M (Phil.) Inc. and to verify in particular the placement fee being charged as alleged in the letter-complaint. Respondent was likewise directed to conduct a discreet surveillance of the recruitment agency.

On 8 February 1993, some inspectors of the POEA Licensing and Regulation Office went to the office of G&M (Phil.) Inc. and inquired from petitioner Golangco, the President of G&M (Phil.) Inc., about the allegation that the agency collected excessive fees from its applicants. Petitioner Golangco denied such allegation.

On 10 February 1993, respondent dispatched SPO4 Domingo Bonita and SPO2 Alfonso Zacarias, PNP-CIS operatives, to perform a surveillance operation on the activities of the agency and to submit a written report of their findings and recommendations.

The PNP-CIS operatives proceeded to the premises of G&M (Phil.) Inc. located at 426 J. Nepomuceno St., San Miguel, Manila, where they posed as applicant-workers for Taiwan. They were entertained by Elizabeth Encenada (Encenada), who introduced herself as an employee of the agency. She gave them bio-data forms to fill up and a list of documents to prepare. The bio-data forms bore the letterhead and the control numbers of G&M (Phil.) Inc. Encenada informed the operatives that the total job placement fee per applicant was P55,000.00 payable as follows: P7,000.00 downpayment, P20,000.00 to be paid after submission of the requirements, and P28,000.00 payable at the airport prior to departure for Taiwan.

As a result of their surveillance, the operatives recommended that an entrapment operation be conducted on the employees of the agency.

On 15 February 1993, a joint POEA-CIS team headed by respondent with eight others as members, including SPO4 Bonita and SPO2 Zacarias, proceeded to the premises of G&M (Phil.) Inc. to conduct the said operation. SPO4 Bonita was entertained by Encenada. Thereafter, SPO4 Bonita handed P7,000.00 to Encenada as initial payment of the placement fee of P55,000.00. When Encenada received the money, she was arrested by the team.

During the arrest of Encenada, petitioner Golangco was not around. When he arrived, he, too, was arrested by the POEA-CIS team and was brought to the POEA Headquarters for investigation.

Petitioner Golangco left the POEA premises at around 7:30 p.m. after the termination of the investigation.

Subsequently, petitioner Golangco and Encenada were charged with violation of Articles 29, 32 and 34(a) of the Labor Code. Thereafter, Senior State Prosecutor Romeo A. Danosos issued a Resolution finding probable cause against Encenada for violations of Articles 32 and 34(a) of the Labor Code, and dismissing all the charges against petitioner Golangco.

Administrative cases were also hurled against G&M (Phil.) Inc. for violations of the Labor Code. However, the cases were dismissed based on the finding that there was no evidence adduced showing that the agency was involved in the illegal acts of Encenada.

Aggrieved by his arrest, petitioner Golangco filed a criminal complaint against respondent before the Office of the Ombudsman for arbitrary detention and violation of Section 3, paragraphs (a) and (e) of Republic Act No. 3019. The case was

docketed as OMB-0-93-0407. An administrative complaint for oppression, abuse of authority, gross inefficiency, gross neglect of duty and grave misconduct arising from the same incident was likewise filed against respondent which was docketed as OMB-ADM-0-93-0149.

In a Resolution dated 9 June 1993, Graft Investigation Officer (GIO) II Mothalib C. Onos (GIO Onos) recommended the dismissal of the criminal complaint against respondent in OMB-0-93-0407. This recommendation was approved by Overall Deputy Ombudsman Francisco A. Villa in a Resolution dated 15 July 1993. Petitioner Golangco filed a motion for reconsideration of the resolution of dismissal which was denied by GIO Onos in an Order dated 16 September 1993 and approved by Overall Deputy Ombudsman Francisco A. Villa on 28 October 1993.

Unfazed by the denial of his motion for reconsideration, petitioner Golangco filed a Petition for *Certiorari* before this Court entitled, "*Jowett K. Golangco v. Office of the Ombudsman, et al.*" docketed as G.R. No. 112857.

In a Resolution dated 24 January 1994, this Court dismissed the petition. Petitioner Golangco filed a motion for reconsideration of the said resolution which this Court denied in a Resolution dated 16 March 1994.

In the meantime, the administrative complaint against respondent, docketed as OMB- ADM-0-93-0149, proceeded independently of the criminal complaint. In a Resolution dated 13 March 1995, GIO II Celso R. Dao found respondent guilty of the administrative charges against him and recommended his dismissal from the service for cause with the accessory penalties of forfeiture of his leave credits and retirement benefits and disqualification from further re-employment in the government. This Resolution was disapproved by Assistant Ombudsman Abelardo L. Aportadera, Jr. who recommended the reassignment of the case to another graft investigating officer so that the administrative aspect of the case can "be reconciled with the facts found in the criminal aspect of the case." The recommendation of Assistant Ombudsman Abelardo L. Aportadera, Jr. was later approved by Overall Deputy Ombudsman Francisco A. Villa and the case was reassigned to GIO Onos.

Convinced that the administrative complaint against respondent was bereft of evidence, GIO Onos, in a Resolution dated 17 May 1995, recommended the dismissal of the same which was approved by Assistant Ombudsman Abelardo Aportadera, Jr. by authority of then Acting Ombudsman Francisco A. Villa on 14 June 1995.

Petitioner Golangco filed a motion for reconsideration of the Resolution dated 17 May 1995, which was denied by GIO Onos in an Order dated 9 August 1995.

When Aniano A. Desierto assumed the Office of the Ombudsman, he referred the Order dated 9 August 1995 of GIO Onos to the Office of the Special Prosecutor for further study.

Special Prosecution Officer I Lemuel M. De Guzman (De Guzman), to whom the case was assigned, issued a Memorandum dated 22 January 1996 finding probable cause against petitioner Golangco for violation of Section 3(e) of Republic Act No. 3019. Thus, De Guzman recommended to Ombudsman Aniano A. Desierto that the Resolutions dated 9 June 1993 and 16 September 1993 in the criminal complaint

docketed as OMB-0-93-0407 be set aside, and that the information he prepared indicting respondent before the RTC for violating Section 3(e) of Republic Act No. 3019 to be approved. De Guzman also recommended that GIO Onos' Resolution dated 9 August 1996 dismissing the administrative complaint against respondent be disapproved; that the Resolution of the Overall Deputy Ombudsman dated 17 May 1995 be set aside; that petitioner Golangco's motion for reconsideration be given due course; and that GIO Dao's Resolution dated 13 March 1995 finding respondent guilty of the administrative charge be approved.

On 12 February 1996, Ombudsman Desierto approved the Information charging respondent with violation of Section 3(e) of Republic Act No. 3019 as well as the Resolution dated 13 March 1995 of GIO Dao finding respondent guilty of the administrative charges filed against him. Ombudsman Desierto disapproved GIO Onos' Resolution dated 17 May 1995 recommending the dismissal of the administrative complaint against respondent, which, as earlier stated, had already been approved by Assistant Ombudsman Aportadera by authority of then Acting Ombudsman Villa.

With the Ombudsman's approval of the Information prepared by De Guzman, said information was subsequently filed before the RTC, Branch 38, Manila, docketed as Criminal Case No. 96-149144.

Respondent filed a Motion for Reconsideration of GIO Dao's Resolution dated 13 March 1995. GIO Dao denied the motion in an Order dated 25 September 1996. The Order of Denial was later approved by Ombudsman Desierto on 24 February 1997.

Disgruntled with the actions of the Ombudsman in OMB-ADM-0-93-0149, respondent filed a Petition for Review on Certiorari with this Court impugning the validity of the foregoing Resolution and Order adjudging him guilty of oppression, gross inefficiency, gross neglect of duty and grave misconduct. The petition, docketed as G.R. No. 112857, was later referred to the Court of Appeals based on the doctrine laid down in *Fabian v. Hon. Desierto*^[3] which vested in the Court of Appeals the appellate jurisdiction over decisions of the Ombudsman pertaining to administrative disciplinary cases.

In a Decision dated 24 August 2000, the Court of Appeals reversed the ruling of the Ombudsman. It likewise directed the Ombudsman to cause the withdrawal of the information filed with the RTC of Manila, Branch 38, in the criminal case filed against respondent, docketed as Criminal Case No. 96-149444.

Petitioner Golangco and the Office of the Ombudsman separately filed motions for reconsideration of the decision. These motions were denied by the Court of Appeals in a Resolution dated 28 March 2001.

Hence, these petitions.

In G.R. No. 147640, petitioner Golangco raises the following issues: