

THIRD DIVISION

[G. R. No. 143092, February 14, 2003]

**TERESITA G. FABIAN, PETITIONER, VS. NESTOR V. AGUSTIN,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Amended Decision of the Court of Appeals dated May 8, 2000 in CA G.R. SP No. 49182, "*Teresita G. Fabian vs. Hon. Aniano Desierto, et al.*"

The instant controversy arose from the verified letter-complaint^[1] dated July 24, 1995 filed by Teresita Fabian, petitioner, with the Office of the Ombudsman, charging Nestor Agustin, herein respondent, with grave misconduct, disgraceful and immoral acts, and oppression.

Petitioner alleged therein that she was the major stockholder and president of PROMAT Construction and Development Corporation (PROMAT) engaged in construction business. In 1986, PROMAT participated in the various biddings for the construction of government projects within the First Metro Manila Engineering District (FMED) of the Department of Public Works and Highways (DPWH). Respondent is the incumbent District Engineer of the FMED.

Petitioner further averred that "respondent became a persistent suitor" and refused to deal with PROMAT's liaison officer, insisting that she personally attend to her company's projects with FMED, otherwise, her papers "would get stuck in his office." Respondent relentlessly pursued her and one time invited her to a snack at the Philippine Plaza Hotel. After finishing her drink, she felt dizzy. Taking advantage of her "semi-conscious state," he brought her to a motel and raped her. That was the beginning of a hateful relationship. Her attempts to extricate herself proved futile since he constantly warned her that PROMAT would no longer do business with FMED unless the relationship continues. Whenever she tried to avoid him, he would go to her house in the middle of the night and create a scene by blowing the horn of his car, pounding at the gate, shouting on top of his voice and pelting her windows with stones. As a result of these disturbances, she suffered nervous breakdown and was eventually operated for breast cancer on October 1994.

On May 22, 1995, one Winnie Gutierrez and respondent's elder brother, Honorato Agustin, persuaded petitioner to meet respondent as he would apologize to her for his misdeeds. She agreed and met respondent at Lasap Restaurant, Tomas Morato Street, in Quezon City. After sometime, his two companions went out of the restaurant. Not wanting to be alone with respondent, she attempted to leave. But respondent suddenly embraced her and fondled her breast area, saying, "*Tingnan nga kung talagang tinanggal na ang suso mo.*" Out of extreme outrage and

embarrassment, she lost consciousness and had to be brought to the nearest hospital.

In his counter-affidavit, treated as his comment on the complaint, respondent vehemently denied petitioner's allegations, claiming that he accepted her various invitations in order to discuss the projects of PROMAT. Through his assistance as Chief of Office of FMED, PROMAT was awarded various public work projects valued at millions of pesos. Whenever PROMAT committed violations of its contracts with FMED, petitioner would persuade him to mediate so that her company's interest would not be prejudiced and he was able to settle its problems. On account of his cordial, warm and intimate relationship with petitioner, she reaped "windfall profits from her transactions with respondent's office." He never had an "affair" with her since he is a happily married man. On the Lasap Restaurant incident, he explained that he accepted her invitation out of pity knowing that she was undergoing chemotherapy. When she expressed her desire to get a multi-million peso project from his office, he could not give a favorable assurance. Thus, she got angry, raised her voice and threatened to have him removed from his job. He surmised that she filed the instant case to harass and intimidate him to submit to her unlawful demands.

On January 31, 1996, Graft Investigation Officer Eduardo Benitez issued a Resolution^[2] finding respondent guilty of grave misconduct and irregular or immoral acts and ordering his dismissal from the service with forfeiture of all benefits under the law, thus:

"WHEREFORE, in view of all the foregoing, this office finds substantial evidence and so finds respondent guilty of grave misconduct under Section 36 of PD 807 and for acts which are contrary to law or regulations or otherwise irregular or immoral under Section 19, RA 6770, Rule III, Section 1 of the Rules of Procedure of the Office of the Ombudsman and hereby orders his dismissal from the service with forfeiture of all benefits under the law."

In holding that respondent is guilty of such administrative offenses, Graft Investigation Officer Benitez made the following findings:

"As District Engineer, respondent exercised functional and administrative supervision over the district office (Sec. 23, Administrative Code of 1987). The District Office undertakes the planning, design, construction and work supervision function of the Department for infrastructures in the district.

"Respondent did not deny complainant's statement that practically all matters that have a bearing on the project from inception to completion required his approval; although he pointed out that he was not the sole signatory to documents relevant to the projects.

"During the tenure of respondent as District Engineer of FMED, Promat was awarded by that office several public works projects listed in Annex "A" of complainant's Supplemental Affidavit. According to respondent, the listing was incomplete. In his words, 'This list, is however, incomplete, because there are still other contracts involving millions of pesos which

complainant obtained from the DPWH with the assistance of respondent.' (Memorandum for Respondent, p. 8)

"Respondent admitted that he is a married man. Complainant was married but her marriage was annulled in 1992.

"While respondent denied courting complainant and said that it was the latter who initiated their meetings through her personal invitations, one of his letters to the complainant reads in part to prove the contrary:

'It was in July, 1986 your beauty was stunning. Your looks excelled among all contractors and non-contractors in the FMED.

'My relationship then with my wife was not any better. You captured my heart. I courted you. (Annex "A", Complainant's Reply Affidavit dated Oct. 2, 1995).'

"In another letter to the complainant, the respondent described his relationship with complainant as 'emotional, spiritual and sexual.' In the same letter he admitted that they 'lived and shared the nights together.'

"Respondent admitted authorship of these two letters when the xerox copies of which were compared with the originals in the possession of the complainant, and in fact made use of them to deny that he threatened or otherwise harassed the complainant.

"Relevant to that relationship between complainant and respondent, the latter said that as Chief of Office, he assisted complainant in getting multi-million peso contract from his office and that on the occasions where Promat committed violations of the public works contract, he mediated so that the interest of complainant's company would not be prejudiced. Respondent also said that on account of his relationship with complainant, she was able to reap 'windfall profits from her transactions with respondent's office.' (Memorandum For Respondent, p. 17)

"ANALYSIS OF RESPONDENT'S COUNTER-AFFIDAVIT

"In his Counter-Affidavit, respondent states thus:

"1. That I vehemently DENY the allegations of Ms. Fabian in her sworn statement against me."

"xxx xxx xxx

"2. In due time I got acquainted with the complainant and through my assistance she was able to secure various projects from our office valued at millions of pesos;

"3. While I assisted the complainant in getting the multi-million pesos public works contracts from our office, as chief of office I always see to it that complainant's transactions met the required standards imposed on

these projects bearing in mind the protection of the government and public interest above anything else; neither have I compromised these strict standards of my office to place the complainant at a great advantage over her rival private contractors;

"xxx xxx xxx

"4. On certain occasions, however, complainant's construction company committed violations in their awarded projects, hence, our office called memorandum, copies of two (2) of these memoranda are hereto attached as ANNEXES "1" AND "1-a";

"5. Complainant would then see me personally about these matters and persuade me to mediate so that her company's interest will not be prejudiced; I tried to help the best of my ability and somehow I was able to settle these problems to her satisfaction and that of my office;

"Relevantly, in his Memorandum, respondent flaunts the benefits that complainant supposedly gained, thus:

"Complainant frequently sought Respondent's assistance to secure business transactions with his office. She succeeded; Respondent had unselfishly lent the necessary assistance to enable Complainant secure contracts from the FMED which covered millions of pesos. Complainant enumerated some of said projects in her Supplemental Affidavit. She continued to court the favor of Respondent to further her business interests when he was designated District Engineer of the Rizal Engineering District, Kapitolyo, Pasig. (at pp. 3-4)

"The letter (by respondent to complainant) clearly shows the cordial warm and intimate relationship between Respondent and Complainant . . . that it was on account of said pleasant relationship that she was able to profit from multi-million-peso public works contracts from DPWH office as shown in the list of projects she submitted to this Honorable Office. This list, however, is incomplete because there still are other contracts involving millions of pesos which Complainant obtained from the DPWH with the assistance of Respondent. (at p. 8)

"Respondent further speaks of complainant "reaping a windfall profits" and "financial gains" she had been showered on account of her multi-million pesos transactions which she obtained with the help of Respondent. (at p. 17)

"On complainant's supposed motive for filing this case, respondent theorized in his Memorandum that she wanted to "continue" to reap significant financial benefits out of public works projects under respondent's office; and that she was angered when he ensured that she 'follow' the requisite standards and procedure. (at p. 18) Respondent thus implies that in the previous contracts awarded to complainant's company the 'requisite standards and procedures' were not ensured and applied and thereby she 'reaped windfall profits.'"

On February 27, 1996, then Ombudsman Aniano Desierto approved^[3] with modification the said Resolution (reviewed by Assistant Ombudsman Abelardo Aportadera) in the sense that respondent was found guilty only of misconduct and that the penalty was reduced from dismissal from office to suspension without pay for one (1) year.

Both parties filed their respective motions for reconsideration. In his Order dated June 19, 1996, Graft Investigation Officer Benitez denied respondent's motion and reiterated his assailed Order. Graft Investigation Officer Rafaelito H. Imperial and Legal Officer Andrew F. Ammuyutan likewise recommended that respondent be found guilty of grave misconduct and imposed upon him the penalty of dismissal from the service.

Before the parties' motions for reconsideration were resolved, Atty. Amador Casino, a "classmate and close associate" of Ombudsman Desierto, entered his appearance as counsel for the respondent. Forthwith, Ombudsman Desierto inhibited himself and designated then Deputy Ombudsman Jesus Guerrero to resolve the motions.

On June 18, 1997, Deputy Ombudsman Guerrero issued a Joint Order,^[4] dismissing the administrative complaint, thus:

"WHEREFORE, the foregoing premises considered, the subject Motion for Reconsideration of the respondent is hereby GRANTED and the subject Motion for Modification (Reconsideration) of the complainant is hereby DENIED; and accordingly, the instant administrative case against the respondent is hereby DISMISSED for insufficiency of evidence.

"SO ORDERED."

In dismissing the case, Deputy Ombudsman Guerrero held:

1. That respondent raped and harassed complainant is "highly doubtful" because she reported the incident to the NBI only on December 15, 1993, or after more than seven (7) years;
2. On the Lasap Restaurant incident, complainant stated in her sworn statement taken before the PNP Criminal Investigation Service Command that respondent embraced her and fondled her chest area. However, in her sworn statement dated June 23, 1995, she claimed that he held her at different delicate parts of her body and kissed her. Moreover, the eyewitnesses did not identify respondent as the person who molested her;
3. As to respondent's improper behavior in complainant's residence, it appears that she failed to report the disturbances to the security personnel of the village;
4. Although it is improper for a married man to court another woman, "this Office is by no means prepared to hold that such act by itself constitutes the administrative offense of immorality."

Aggrieved, petitioner filed with this Court a petition for review^[5] pursuant to Section 27 of RA 6770,^[6] docketed as G.R. No. 129742. In its Decision dated September