

THIRD DIVISION

[G.R. No. 142888, June 06, 2001]

**EVELIO P. BARATA, PETITIONER, VS. BENJAMIN ABALOS, JR.,
OFFICE OF THE OMBUDSMAN AND THE COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Before this Court is a Petition for Review in *Certiorari* seeking to reverse the Decision^[1] dated April 10, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 56973 as well as the Order dated July 1, 1999 of the Office of the Ombudsman.

The antecedents are as follows: Petitioner heads the San Miguel Bukid Homeowners' Association, Inc. whose members have occupied a certain parcel of land in Mandaluyong City. Sometime in March 1995, the City Government of Mandaluyong initiated the construction of medium size condominiums and row houses for the benefit of qualified members of the said homeowners' association. To give way to the construction, the members of the said homeowners' association had to vacate the area which they were occupying as the medium size housing project and row houses were supposed to be completed within 540 days from June 1995. When the period for construction lapsed, petitioner and the members of the homeowners' association demanded from the previous City Mayor, Benjamin Abalos, Sr., the completion of the said housing project but the same allegedly fell on deaf ears. When herein respondent Benjamin Abalos, Jr. assumed office as Mandaluyong City Mayor, petitioner and his members again made similar demands for the completion of the housing project. Alleging that the demands have been ignored, petitioner filed on May 17, 1999 an administrative complaint against respondent Abalos, Jr. for violation of Section 5 (a) of R.A. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) for failing to act promptly on letters and requests sent by the public. Respondent Office of the Ombudsman rendered a Decision dated July 21, 1999 dismissing the administrative complaint "for insufficiency of evidence." The Motion for Reconsideration therefrom was likewise denied in the Order of September 10, 1999. The order was received by petitioner on October 15, 1999. On November 4, 1999, petitioner appealed by way of a petition for review on certiorari with this Court in G.R. No. 140272. The Second Division denied the petition in the Resolution of November 24, 1999 in view of A.M. No. 9-2-02-SC^[2] and the ruling in the case of *Fabian vs. Desierto*.^[3] The resolution was received by petitioner on January 18, 2000.

On February 1, 2000, petitioner filed a "Petition for Review on *Certiorari*" with the Court of Appeals which rendered a Decision dated April 10, 2000 dismissing the petition on the ground that the decision exonerating respondent mayor of administrative charge is not appealable and that the petition was filed out of time.

Hence, the present petition raising the sole ground that:

"THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT THE OMBUDSMAN'S DECISION EXONERATING RESPONDENT ABALOS, JR. OF AN ADMINISTRATIVE CHARGE IS NOT APPEALABLE."

Petitioner claims that respondent court erred in ruling that it has no appellate authority to review the decision of the Ombudsman arguing that pursuant to the decision of this Court in *Fabian vs. Desierto*, decisions of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals. He insists that the Ombudsman's decision absolving respondent Abalos of the charge against him is appealable.

In his Comment and/or Motion to Dismiss, private respondent Abalos, Jr. argues that under Section 7, Rule III of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman), the decision of the Ombudsman is immediately final and unappealable where the respondent is absolved of the charge. Respondent further avers that the petition was nonetheless filed out of time as section 7, Rule III of Administrative Order No. 7 provides that decisions of the office of the Ombudsman in administrative cases not falling under those immediately declared final and unappealable become final within ten (10) days unless a motion for reconsideration or a petition for certiorari as prescribed by Section 27, R.A. 6770 (The Ombudsman Act of 1989) shall have been filed. Private respondent is of the view that since the Order dated September 10, 1999 of the Ombudsman denying the motion for reconsideration was received by petitioner on October 15, 1999 and on the assumption that appeal is allowed, petitioner had until October 25, 1999 to file his appeal in accordance with Section 27, R.A. 6770 or at the most, until November 25, 1999, if he availed of the 30-day extension provided under Section 2, Rule 45 of the 1997 Rules on Civil Procedure; however, the petition was filed only on February 2, 2000 (sic).

In the Comment filed by the Office of the Ombudsman, thru the Office of the Solicitor General, it was averred that the decision of the Ombudsman exonerating respondent Abalos of the administrative charge is final and unappealable. Citing the case of *Lapid vs. Court of Appeals* (G.R. No.142261, June 29, 2000), it is of the view that what the *Fabian* case declared invalid and of no force and effect is Section 27 of R.A. 6770 relating only to the mode of appeal from the Office of the Ombudsman to the Supreme Court, which appeal should now be taken to the Court of Appeals.

In his Reply, petitioner stresses that the Office of the Ombudsman should not restrict the right of appeal allowed in Section 27 of R.A. 6770 nor limit the power of review of this Court. He contends that whether the decision of the Ombudsman is for conviction or acquittal of the respondent, it should be reviewed by this Court.

The petition lacks merit.

Section 27 of R.A. 6770 provides:

"SEC. 27. *Effectivity and Finality of Decisions.* - (1) All provisional orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any *order*, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt