

THIRD DIVISION

[G.R. No. 142261, June 28, 2000]

GOVERNOR MANUEL M. LAPID, PETITIONER, VS. HONORABLE COURT OF APPEALS, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, FACT-FINDING INTELLIGENCE BUREAU (FFIB) OF THE OFFICE OF THE OMBUDSMAN, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.

R E S O L U T I O N

GONZAGA-REYES, J.:

Before us are the Motions for Reconsideration filed by the National Bureau of Investigation and the Department of the Interior and Local Government, represented by the Office of the Solicitor-General, and the Office of the Ombudsman of our 5 April 2000 Resolution.^[1] In this resolution, we ordered the immediate reinstatement of petitioner Manuel Lapid to the position of Governor of Pampanga as the respondents failed to establish the existence of a law mandating the immediate execution of a decision of the Office of the Ombudsman in an administrative case where the penalty imposed is suspension for one year.

The factual antecedents are as follows:

On the basis of an unsigned letter dated July 20, 1998, allegedly originating from the "Mga Mamamayan ng Lalawigan ng Pampanga," addressed to the National Bureau of Investigation, the latter initiated an "open probe" on the alleged illegal quarrying in Pampanga & exaction of exorbitant fees purportedly perpetrated by unscrupulous individuals with the connivance of high-ranking government officials. The NBI Report was endorsed to the respondent Ombudsman and was docketed as OMB-1-98-2067.

On Oct. 26, 1998, a complaint was filed charging petitioner Gov. Manuel M. Lapid, Vice-Governor Clayton Olalia, Provincial Administrator Enrico Quiambao, Provincial Treasurer Jovito Sabado, Mabalacat Municipal Mayor Marino Morales and Senior Police Officer 4 Nestor Tadeo with alleged "Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service" for allegedly "having conspired between and among themselves in demanding and collecting from various quarrying operators in Pampanga a control fee, control slip, or monitoring fee of P120.00 per truckload of sand, gravel, or other quarry material, without a duly enacted provincial ordinance authorizing the collection thereof and without issuing receipts for its collection. They were also accused of giving unwarranted benefits to Nestor Tadeo, Rodrigo "Rudy" Fernandez & Conrado Pangilinan who are neither officials/employees of the Provincial Government. of Pampanga nor quarry operators by allowing them to collect the said amount which was over and above the P40.00 prescribed under the present provincial ordinance and in allowing Tadeo, Fernandez

and Pangilinan to sell and deliver to various quarry operators booklets of official receipts which were pre-stamped with "SAND FEE P40.00." [2]

The Ombudsman issued an Order dated January 13, 1999 preventively suspending petitioner Lapid, Olalia, Quiambao, Sabado, Morales and Tadeo for a period of six (6) months without pay pursuant to Sec. 24 of RA 6770. On Jan. 19, 1999, the Department of the Interior and Local Government (hereinafter the "DILG") implemented the suspension of petitioner Lapid [3].

On November 22, 1999 the Ombudsman rendered a decision [4] in the administrative case finding the petitioner administratively liable for misconduct thus:

"Wherefore, premises considered, respondent Manuel M. Lapid, Clayton A. Olalia, Jovito S. Sabado and Nestor C. Tadeo are hereby found guilty of misconduct for which they are meted out the penalty of one (1) year suspension without pay pursuant to section 25 (2) of R.A. 6770 (Ombudsman Act of 1989). Respondent Marino P. Morales is hereby exonerated from the same administrative charge for insufficiency of evidence. The complaint against respondent Enrico P. Quiambao, who resigned effective June 30, 1998 was dismissed on March 12, 1999, without prejudice to the outcome of the criminal case." [5]

The copy of the said decision was received by counsel for the petitioner on November 25, 1999 and a motion for reconsideration was filed on November 29, 1999. The Office of the Ombudsman, in an Order [6] dated 12 January 2000, denied the motion for reconsideration.

Petitioner then filed a petition for review with the Court of Appeals on January 18, 2000 praying for the issuance of a temporary restraining order to enjoin the Ombudsman from enforcing the questioned decision. The temporary restraining order was issued by the appellate court on January 19, 2000. [7]

When the 60-day lifetime of the temporary restraining order lapsed on March 19, 2000 without the Court of Appeals resolving the prayer for the issuance of a writ of preliminary injunction, a petition [8] for *certiorari*, prohibition and *mandamus* was filed with this Court on March 20, 2000. The petition asked for the issuance of a temporary restraining order to enjoin the respondents from enforcing the assailed decision of the Ombudsman and prayed that "after due proceedings, judgment be rendered reversing and setting aside the questioned decision (of the Ombudsman) dated November 22, 1999 and the order dated January 12, 2000." [9]

On March 22, 2000 the Third Division of this Court issued a Resolution requiring the respondents to comment on the petition. That same day, the Court of Appeals issued a resolution [10] denying the petitioner's prayer for injunctive relief. The following day, or on March 23, 2000, the DILG implemented the assailed decision of the Ombudsman and the highest ranking Provincial Board Member of Pampanga, Edna David, took her oath of office as O.I.C.- Governor of the Province of Pampanga.

On March 24, 2000 a Motion for Leave to File Supplement to the Petition for

Certiorari, Prohibition and *Mandamus*^[11] and the Supplement to the Petition^[12] itself were filed in view of the resolution of the Court of Appeals denying the petitioner's prayer for preliminary injunction. In addition to the arguments raised in the main petition, the petitioner likewise raised in issue the apparent pre-judgment of the case on the merits by the Court of Appeals in its resolution denying the prayer for preliminary injunction. In so doing, petitioner argued that the respondent court exceeded the bounds of its jurisdiction. Proceeding from the premise that the decision of the Ombudsman had not yet become final, the petitioner argued that the writs of prohibition and *mandamus* may be issued against the respondent DILG for prematurely implementing the assailed decision. Finally, the petitioner prayed for the setting aside of the resolution issued by the Court of Appeals dated March 22, 2000 and for the issuance of a new one enjoining the respondents from enforcing the said decision or, if it has already been implemented, to withdraw any action already taken until the issue of whether or not the said decision of the Ombudsman is immediately executory has been settled.

The Solicitor-General and the Office of the Ombudsman filed their respective comments^[13] to the petition praying for the dismissal thereof. Regarding the issue of the immediate enforcement of the decision of the Ombudsman, the Solicitor-General maintains that the said decision is governed by Section 12, Rule 43 of the Rules of Court and is therefore, immediately executory. For its part, the Office of the Ombudsman maintains that the Ombudsman Law and its implementing rules are silent as to the execution of decisions rendered by the Ombudsman considering that the portion of the said law cited by petitioner pertains to the finality of the decision but not to its enforcement pending appeal. The Office of the Ombudsman also stated that it has uniformly adopted the provisions in the Local Government Code and Administrative Code that decisions in administrative disciplinary cases are immediately executory.

The Solicitor-General filed an additional comment^[14] alleging that the petitioner did not question the executory character of the decision of the Ombudsman and that he is presenting this argument for the first time before the Supreme Court. The appellate court should be given an opportunity to review the case from this standpoint before asking the Supreme Court to review the resolutions of the Court of Appeals. The petitioner filed a consolidated Reply^[15] to the Comments of the respondents.

After oral arguments before the Third Division of this Court on 5 April 2000, the Resolution^[16] subject of the instant Motions for Reconsideration was issued. The Resolution provides as follows:

"From the pleadings filed by the parties and after oral arguments held on April 5, 2000, the petitioner represented by Atty. Augusto G. Panlilio, the respondent Ombudsman represented by its Chief Legal Counsel, and the National Bureau of Investigation and the Department of the Interior and Local Government represented by the Solicitor General, and after due deliberation, the Court finds that the respondents failed to establish the existence of a law mandating the immediate execution of a decision of the Ombudsman in an administrative case where the penalty imposed is suspension for one year. The immediate implementation of the decision of the Ombudsman against petitioner is thus premature.

WHEREFORE, the respondents are ordered to reinstate effective immediately the petitioner to the position of Governor of the Province of Pampanga. This case is hereby remanded to the Court of Appeals for resolution of the appeal in CA-GR. SP No. 564744 on the merits. Said court is hereby directed to resolve the same with utmost deliberate dispatch.

This is without prejudice to the promulgation of an extended decision."

From this 5 April 2000 Resolution, the Offices of the Solicitor-General and the Ombudsman filed the instant motions for reconsideration.

The sole issue addressed by our 5 April 2000 Resolution is whether or not the decision of the Office of the Ombudsman finding herein petitioner administratively liable for misconduct and imposing upon him a penalty of one (1) year suspension without pay is immediately executory pending appeal.

Petitioner was administratively charged for misconduct under the provisions of R.A. 6770, the Ombudsman Act of 1989. Section 27 of the said Act provides as follows:

"Section 27. Effectivity and Finality of Decisions. - All provisional orders of 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 of written notice and shall be entertained only on the following grounds:

X X X

Findings of fact of the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court."

The Rules of Procedure of the Office of the Ombudsman^[17] likewise contain a similar provision. Section 7, Rule III of the said Rules provides as follows:

"Sec. 7. Finality of Decision - where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine not equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari, shall have been filed by him as prescribed in Section 27 of R.A. 6770."