

## **SPECIAL SECOND DIVISION**

**[ CA-G.R. SP NO. 130421, November 28, 2014 ]**

**MARIA RITA ORTIZ, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN- FIELD INVESTIGATION OFFICE, RESPONDENT.**

### **DECISION**

**BUESER, J.:**

This is a Petition for Review under Rule 43 of the Rules of Court seeking the review of the May 24, 2012 Decision<sup>[1]</sup> of the Office of the Ombudsman finding Maria Rita Ortiz, herein petitioner, guilty of grave misconduct and conduct prejudicial to the best interest of the service and imposing on her the penalty of dismissal from service, forfeiture of whatever benefits still due to her from the government and disqualification from employment in any branch or instrumentality of the government, including government-owned or controlled corporations, and of the April 30, 2013 Order<sup>[2]</sup> of the Office of the Ombudsman denying the Motion for Reconsideration of petitioner.

### **THE ANTECEDENT FACTS**

Saint Anthony College of Science and Technology (SACST) decided to offer the Bachelor of Science in Nursing (BSN) program on March 10, 2004. SACST, through its Chairman and President, Atty. Bayani C. Delos Reyes petitioned for the grant of Government Permit to operate the BSN program on April 5, 2004.

A Resolution No. 238-2004 was adopted by the Commission *En Banc* in its 220<sup>th</sup> Commission meeting held on the 31<sup>st</sup> day of May 2004, which stated among others that the Commission disapproved the applications for Government Permit to offer BSN program effective School Year (S.Y.) 2004-2005 of some Higher Education Institutions (HEI) including SACST of Calapan, Oriental Mindoro in Region IV-B.

Atty. Julito D. Vitriolo, the acting executive director of CHED, in his June 4, 2004 Memorandum<sup>[3]</sup> addressed to petitioner, Dr. Maria Rita C. Ortiz (Petitioner Ortiz), recommended the issuance of a provisional permit to SACST to offer the 1<sup>st</sup> and 2<sup>nd</sup> year levels of the BSN program for S.Y. 2004-2005 citing the Commission *En Banc* Resolution (CEB Resolution) No. 238-2004.

Pursuant thereto petitioner Ortiz, who was then Officer-in-Charge, issued a provisional permit to SACST to offer BSN program for the S.Y. 2004-2005.

As stressed by petitioner Ortiz, Atty. Vitriolo, as the acting executive director of CHED, participated in the Commission *En Banc* while petitioner Ortiz, who was a director, did not.

On June 12, 2007, the Fact-Finding Investigation Team (FIT) created by the Executive Office of CHED conducted an investigation on the irregularities in the issuance of permits and government recognition to SACST to offer BSN program.

According to FIT, the alleged irregularity originated from the application of SACST for government permit to offer the BSN program effective SY 2004-2005. The application letter addressed to petitioner Ortiz was stamped received at CHEDRO IV-B on December 27, 2002 by Maria Elena Gabulac, a co-respondent in the said case, although it was supposedly made in 2004. That, in CEB Resolution No. 238-2004 dated May 31, 2004, the application of SACST was disapproved by the Commission *En Banc*. And, despite its disapproval, petitioner Ortiz, in her capacity as former Officer-in-Charge of CHEDRO IV-B, issued Provincial Permit No. 001, S. 2004, allowing SACST to open the First and Second Year Levels of BSN program effective SY 2004-2005.

However, petitioner Ortiz alleged that after she was transferred to CHED Regional Office (CHEDRO) VIII on October 18, 2004, she came across a similar Memorandum<sup>[4]</sup> from Atty. Vitriolo but this time it was addressed to then Regional Director, CHEDRO VIII, Dr. Isabel Mahler, which also recommended the issuance of provisional permits to San Lorenzo College of Ormoc, Ormoc City and College of Maasin, Maasin City.

Furthermore, petitioner Ortiz said that it was also during her assignment at CHEDRO VIII that she was able to read a copy of CEB Resolution No. 238-2004 during one of her meetings at the Central Office and said resolution actually disapproved the application of SACST.

Consequently, petitioner Ortiz sent on June 3, 2005 a letter<sup>[5]</sup> to Hon. Carlito Puno, acting chairman of CHED, thru Dr. William C. Medrano, executive director, informing them that her basis for the grant of provisional permit to SACST was the memorandum of Atty. Vitriolo.

However, according to petitioner Ortiz, she never received a response from the office of Hon. Carlito S. Puno.

On August 28, 2007, petitioner Ortiz sent another letter<sup>[6]</sup> to Dr. William C. Medrano reiterating that her basis for the issuance of the provisional permit to SACST was the June 4, 2004 memorandum of Atty. Vitriolo.

Petitioner Ortiz, thereafter, was instructed by Dr. William C. Medrano to submit her explanation in affidavit form.

On November 21, 2007, petitioner Ortiz submitted her affidavit<sup>[7]</sup> to Dr. William C. Medrano and also to Chairman Romulo L. Neri, Commissioner Nona S. Ricafort, Commissioner Nenalyn P. Defensor, Commissioner Saturnino M. Ocampo, Jr. and Commissioner Hadja Luningning Misuarez-Umar.

On August 11, 2010, unknown to petitioner Ortiz, respondent Field Investigation Office, as represented by Associate Graft Investigation Officer I, Dindo B. Jacinto, filed this Complaint for Dishonesty, Grave Misconduct and Conduct Prejudicial to the

Best Interest of the Service against petitioner Ortiz as Director III of CHEDRO No. VIII and against two (2) others with the Office of the Ombudsman.

That, petitioner Ortiz was charged because she used Resolution No. 238-2004 dated May 31, 2004, as basis of her issuance of Provisional Permit No. 001 s. 2004 dated 11 June 2004, which actually disapproved the application of SACST for government permit to offer the BSN program effective SY 2004-2005.

On March 2, 2011, the Office of the Ombudsman-Preliminary Investigation and Administrative Adjudication Bureau-E (Bureau-E) issued an Order<sup>[8]</sup> addressed to petitioner Ortiz as Director III, CHEDRO No. VII at corner Real Street and Calanipawan Road, Sagkahan, Tacloban City, Leyte, which directed her to submit her counter-affidavit.

Then, a second Order<sup>[9]</sup> to file her counter-affidavit was issued by Bureau-E and sent to the petitioner Ortiz on April 4, 2011 at 907 Barangay 79, Marasbaras, Tacloban City.

On August 18, 2011, Bureau-E issued an Order<sup>[10]</sup> which directed petitioner Ortiz to submit her verified position paper. The order was addressed to her as Director III, CHEDRO No. VII, at Corner Real Street and Calanipawan Road, Sagkahan, Tacloban City, Leyte.

However, petitioner Ortiz alleged that at the time of the foregoing issuance she was already at her residence in Legazpi City and further alleged that such should have been known to respondent during their investigation.

As a consequence, petitioner Ortiz did not receive any of the orders and did not participate in any investigation.

On May 24, 2012, the Office of the Ombudsman issued a Decision<sup>[11]</sup> finding petitioner Ortiz guilty of grave misconduct and conduct prejudicial to the best interest of the service for issuing a provisional permit to SACST to offer the BSN program for the S.Y. 2004-2005. She was then imposed the penalty of dismissal from the service with accessory penalties and was likewise declared disqualified from employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

According to petitioner Ortiz, it was sometime in March 2013 that she learned that a case was filed against her before the Office of the Ombudsman and was really surprised to learn that a Decision had already been rendered on May 24, 2012.

On March 14, 2013, petitioner Ortiz filed a Motion for Reinvestigation/Reconsideration<sup>[12]</sup> with the Office of the Ombudsman, which prayed that the May 24, 2012 Decision be set aside and reconsidered and a new one be rendered dismissing the complaint against her. In the alternative, she prayed that a reinvestigation be conducted.

The same was denied in an Order<sup>[13]</sup> issued by the Office of the Ombudsman dated April 30, 2013.

Hence, this petition.

### **ISSUES**

1. Whether the petitioner was denied due process considering that she was not duly notified of the complaint filed against her.
2. Whether the petitioner may be held administratively liable for grave misconduct for alleged failure to exercise due diligence to first verify the recommendation of her superior, Atty. Vitriolo, to issue provisional permit to SACST to offer the 1<sup>st</sup> and 2<sup>nd</sup> year levels of the BSN Program for S.Y. 2004-2005.

### **THE RULING OF THE COURT**

The petition is partly meritorious.

On the first issue, petitioner claims that she was denied due process because she allegedly was not notified of the proceedings before the Office of the Ombudsman during the preliminary investigation of this case.

We do not agree.

As clearly observed by the Investigating Prosecutor in the assailed Order dated April 30, 2013, petitioner was not denied her right to due process. The Office of the Ombudsman served her notices at her last known addresses as indicated in her personal data sheet, to wit: petitioner's CHED office in Sangkahan, Tacloban City and at 907 Barangay 79, Marasbaras, Tacloban City.

Also, it is worthy to note that the Supreme Court in a long line of cases held that the essence of due process is a reasonable opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

In *Trinidad vs. COMELEC*<sup>[14]</sup>, the Supreme Court said:

*"x x x. Due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard (Pepsi Cola Distributors of the Phil. v. NLRC, G.R. No. 100686, August 15, 1995). One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings (Concerned Officials of MWSS v. Vasquez, G.R. No. 109113, January 25, 1995). In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense (Ibid.). Indeed, deprivation of due process cannot be successfully invoked where a party was given a chance to be heard on his motion for reconsideration (Rodriguez v. Project 6 Market Service Cooperative, G.R. No. 79968, August 23, 1995), as in the instant case, when private respondents were undisputedly given the opportunity to present their*