



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FREDERICK JAMES C. ORAIS,
Petitioner,

G.R. No. 181195

Present:

- versus -

BRION,* *Acting Chairperson,*
DEL CASTILLO,
PEREZ,
PERLAS-BERNABE, *and*
LEONEN,** *JJ.*

DR. AMELIA C. ALMIRANTE,
Respondent.

Promulgated:


JUN 10 2013

X ----- X

DECISION

DEL CASTILLO, J.:

Where the respondent is absolved of the charge, or in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable. Indeed, in one case, the Court went so far as to declare that in such cases, the Court of Appeals (CA) had no appellate jurisdiction to review, rectify or reverse the order or decision of the Ombudsman.

This Petition for Review on *Certiorari*¹ seeks a review and setting aside of the CA's August 17, 2006 Decision,² as well as its December 10, 2007 Resolution³ in CA-G.R. SP No. 82610, entitled "*Frederick James C. Orais,* 

* Per Special Order No. 1460 dated May 29, 2013.

** Per Special Order No. 1461 dated May 29, 2013.

¹ *Rollo*, pp. 12-28.

² *Id.* at 29-37; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

³ *Id.* at 38-39; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Priscilla Baltazar-Padilla and Francisco P. Acosta.

petitioner, versus Dr. Amelia C. Almirante, respondent.”

Factual Antecedents

In 2003, petitioner Frederick James C. Orais, Veterinary Quarantine Inspector-Seaport of the Veterinary Quarantine Service-Seaport, Region VII Office of the Department of Agriculture (DA), filed with the Office of the Ombudsman a Complaint⁴ for corruption and grave misconduct against his superior, herein respondent Dr. Amelia C. Almirante, Veterinary Quarantine Officer-Seaport. Docketed as OMB-V-A-03-0184-D, petitioner accused respondent of committing the following anomalies:

1. Ordering, directing, persuading and inducing Veterinary Quarantine Inspector Luz Tabasa to receive money in check or in cash, from importers of meat products and other imported items for the preparation and issuance of Clearance Certificate[s] without [issuing any official receipt therefor];
2. Directly or indirectly request[ing] or receiv[ing] money in check or in cash [in the amount of ₱600.00] from importers of meat products and other goods allegedly as inspection fee without issuing official receipts therefor;
3. Knowingly approving [and/or] granting permit[,] authority or privilege to private or contractual workers of the office to perform some veterinary quarantine functions, like allowing them to board and inspect domestic vessels carrying quarantine products or items, conduct quarantine inspections on imported items in ports or inland quarantine sites, issue quarantine permits, etc.;
4. Knowingly approving and granting monetary considerations to private or contractual workers whom x x x respondent authorized or permitted to perform some veterinary quarantine services; and
5. Lack of *delicadeza* or lack of professionalism, justness and sincerity; knowingly allowing a situation [where she and her husband Oscar Almirante work in the same office, with the latter as her subordinate, thus creating doubt or suspicion that she is granting favors or undue advantage to the latter in the assignment of quarantine inspections].⁵

⁴ Id. at 56-57.

⁵ Id. at 30.

In support of his Complaint, petitioner attached the affidavits of Luz Tabasa (Tabasa), Agriculturist II – Veterinary Quarantine Inspector; Dr. Verna Agriam (Agriam), Bohol Veterinary Quarantine Officer; and Alfredo Barbon (Barbon), Janitor-Utility employed by Perfect Clean General Services, janitorial and maintenance contractor.⁶

In her March 27, 2003 Affidavit,⁷ Tabasa alleged that private contractual employees including Barbon, who are not DA employees, were assigned by respondent to perform quarantine functions like inspection of imported cargoes in cold storages/warehouses/processing plants and the preparation and issuance of clearance certificates, commodity clearance for export, and shipping permits; that in the preparation and issuance of clearance certificates, no official receipt is issued but the money paid therefor is remitted to respondent, who would only issue an acknowledgment receipt signed by her; and that for every inspection she made, she was given ₱250.00 by respondent.

Agriam, on the other hand, alleged in her April 2, 2003 Affidavit⁸ that respondent defied Special Orders of the Regional Director of DA Region 7 which assigned her (Agriam) to the Veterinary Quarantine Services at Seaport, refusing to honor said orders of assignment; that instead, she was assigned at DA Region 7 Regulatory Division, Cebu City; that respondent allowed and authorized janitors and contractual employees employed by a private manpower agency to perform quarantine functions like issuance of quarantine permits, inspection of domestic vessels, and veterinary inspections, despite an August 9, 2002 Memorandum⁹ issued to her by the Regional Executive Director which ordered her to desist from the practice.

Barbon's March 27, 2003 Affidavit¹⁰ stated that he was employed by Perfect Clean General Services, manpower contractor; that apart from his actual duty as janitor, respondent likewise authorized him to perform quarantine services, namely: to inspect imported products or items at quarantine sites owned by companies such as Tennessee Feedmill, Popular Feedmill, and Upland Feedmill; to board and inspect local/domestic vessels for quarantine services; to disinfect chicken dung of some clients; and to issue quarantine domestic shipping permits. Barbon added that for every inspection he made, respondent gave him ₱100.00, while respondent kept the additional ₱500.00 as her share; that he had been performing quarantine services until the latter part of 2002; and that he performed overtime work but was not given overtime pay therefor.

⁶ Id. at 58-59, 64-65, 67-68.

⁷ Id. at 58-59.

⁸ Id. at 64-65.

⁹ Id. at 66.

¹⁰ Id. at 67-68.

In her June 16, 2003 Counter-Affidavit,¹¹ respondent claimed that there was no truth to the accusations against her; that all payments were received by the DA Regulatory Division through its duly authorized Collection Officers who issue the proper official receipts therefor, pursuant to Orders of Payment issued by respondent; that all Clearance Certificates were issued by the Veterinary Quarantine Office, and not by respondent; that the payments made for which acknowledgment receipts were issued do not cover Clearance Certificates, but reimbursements/payments made to quarantine personnel for their overtime services, transportation, meals, lodging and other expenses incurred in the examination and inspection of imported animal meat/by-products, which is authorized under DA Administrative Order No. 22, series of 1993¹² (DAO 22) issued by then Acting Secretary of Agriculture Joemari D. Gerochi; that petitioner's accusation that respondent received money from importers of meat products as "inspection fee" without issuing official receipts is untrue, and is not supported by specifics as to which importers, transactions, or dates are covered, and the exact amounts she allegedly received; that if indeed importers were aggrieved or victimized, said importers would have complained or come forward, yet none has come out to complain or act as petitioner's witness; that the amounts given to Tabasa and Barbon as alleged in their affidavits were duly authorized payments pursuant to DAO 22 for their transportation, meals, lodging, etc., and were not bribes or donations from respondent; that petitioner and Tabasa were motivated by hatred and resentment for respondent's refusal to sign their respective Daily Time Records (DTRs) on account of their multiple absences and irregular reporting to work, which have become constant sources of disagreement and conflict between them.¹³

In a June 29, 2003 Reply-Affidavit,¹⁴ petitioner submitted the respective Affidavits¹⁵ of Rogelio C. Mainit (Mainit), DA utility driver, and Danilo E. Tidoso (Tidoso), representative of Gusay Customs Brokerage. Mainit merely alleged that he would serve as temporary/occasional driver to respondent and other quarantine personnel. Tidoso, on the other hand, claimed that he acted as customs broker to two importers of feed additives and supplements, and that for the inspection and clearance of these clients' imports, he would pay a flat rate of ₱700.00 per vessel to the Veterinary Quarantine Office, after which an acknowledgment receipt is issued therefor. To this, respondent explained that DAO 22 authorized the payment/reimbursement of transportation and other allowable expenses, including overtime, and the rate is agreed upon by her office and the importers' representatives or brokers, who find it difficult to liquidate their cash advances if payment thereof is made on contractual basis, and regardless of distance traveled by the inspector, volume of imported items, or whether inspection/service was carried out during regular working day, holiday or after office hours upon the

¹¹ Id. at 69-73.

¹² Id. at 157-158.

¹³ Id. at 78-86.

¹⁴ Id. at 87-88.

¹⁵ Id. at 89-91.

request of the importer concerned.¹⁶

On July 18, 2003, petitioner filed a Supplemental Affidavit accusing respondent of refusal to obey office memoranda and other Special Orders issued by her superiors.¹⁷ To this, respondent submitted her Supplemental Counter-Affidavit,¹⁸ arguing that the flat rate payments for overtime work of quarantine personnel and reimbursements of transportation, meal and lodging expenses were the result of an agreement arrived at between her office and the representatives/brokers of the concerned importers who found it difficult to liquidate their cash advances if payments were instead made on a contractual basis.

Ruling of the Office of the Ombudsman

On July 31, 2003, the Office of the Ombudsman rendered its Decision¹⁹ in favor of respondent, as follows:

WHEREFORE, premises considered, the above entitled case filed against respondent **DR. AMELIA C. ALMIRANTE**, Veterinary Quarantine Officer-Seaport, Department of Agriculture, Regional Office No. 7, Veterinary Quarantine Service Seaport, Port of Cebu, Cebu City, is **DISMISSED** for lack of substantial basis.

SO DECIDED.²⁰

The Ombudsman held that respondent's acts were in accordance with law and the regulations of her office. There was no irregularity covering the issuance of Clearance Certificates; nor was it irregular to issue acknowledgment receipts covering payments for overtime and reimbursements of transportation, meal and lodging expenses incurred by quarantine personnel during the course of each quarantine inspection. These amounts were given directly to quarantine personnel who incurred the expenses per DAO 22; thus, no government official receipt is necessary as the proceeds do not go to the government coffers. Moreover, the flat rate for these payments/reimbursements was agreed upon jointly by the DA's Veterinary Quarantine Services-Seaport and the representatives/brokers of the importers concerned. The Ombudsman nevertheless observed that this procedure of payment/reimbursement as authorized under DAO 22 is susceptible to graft and corruption, as there is no transparency and the money collected is not subjected to audit. Still, it held that petitioner has not shown that the amounts received by respondent's office relative to this reimbursement scheme was pocketed by respondent; on the contrary, his witnesses attested that they received from respondent their respective overtime pay and reimbursements for incurred

¹⁶ Id. at 128-129.

¹⁷ Id. at 129-131.

¹⁸ Id. at 176-177.

¹⁹ Id. at 125-133.

²⁰ Id. at 133. Emphases in the original.

expenses during their quarantine inspections.

As for the charge of assigning contractual employees to perform quarantine services, the Ombudsman held that the matter should have been properly addressed to respondent's superiors, and not the respondent solely, as the matter of assigning, utilizing, or deputizing quarantine personnel is not for the sole account of respondent, but constitutes a Department-wide responsibility.

Regarding the petitioner's accusations of violation of office memoranda and other Special Orders issued by the DA, the Ombudsman dismissed them as trivial, noting that these accusations relate to the internal operation and management of the Regional Office, which it could not interfere with lest it be accused of directly running the affairs of the office. It added that the evidence suggests that contrary to petitioner's allegations, respondent did not disobey any of these memoranda and Special Orders.

Finally, the Ombudsman held that as respondent was not actuated by a dishonest purpose, she may not be held liable for grave misconduct.

Petitioner moved for reconsideration,²¹ but in a November 4, 2003 Order,²² the same was denied.

Petitioner thus filed a Petition for *Certiorari*²³ with the CA.

Ruling of the Court of Appeals

On August 17, 2006, the CA issued the assailed Decision dismissing the Petition for lack of merit.

The CA held that decisions of the Ombudsman in cases absolving the respondent of the charge are deemed final and unappealable, pursuant to the Rules of Procedure of the Office of the Ombudsman, specifically Section 7,²⁴ Rule III of

²¹ Id. at 102-108.

²² Id. at 134-135.

²³ Id. at 109-124.

²⁴ SECTION 7. Finality and execution 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 equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from the receipt of the written decision or order denying the motion for reconsideration. (As amended by Adm. Order No. 14, and further amended by A.O. No. 14-A, s. 2000.)

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

Administrative Order No. 7, as amended by Administrative Order No. 17 dated September 15, 2003. The appellate court added that absent compelling reasons, it may not disturb the findings of the Office of the Ombudsman in keeping with the principle of non-interference with the investigatory and prosecutorial powers of the office. Citing *Young v. Ombudsman*,²⁵ the CA held that practical considerations called for the application of this principle of non-interference, or else the courts will be swamped with petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman or compelling judicial review of the exercise of its otherwise discretionary functions.

Petitioner filed a Motion for Reconsideration,²⁶ but in the second assailed December 10, 2007 Resolution, the CA denied the same.

Issues

In this Petition, the following issues are raised:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT SIMPLY CONCURRED WITH THE OFFICE OF THE OMBUDSMAN IN DISMISSING (THE) COMPLAINT BY STATING THAT THE DISMISSAL “WAS DONE IN THE EXERCISE OF ITS INVESTIGATORY AND PROSECUTORY POWERS GRANTED BY LAW” X X X DESPITE KNOWING THE OMBUDSMAN’S FINDINGS (REGARDING) ONE OF THE QUESTIONABLE ACTS OF DR. AMELIA ALMIRANTE – I.E. THE ISSUANCE OF “ACKNOWLEDGMENT RECEIPT” – AS A “SYSTEM SUSCEPTIBLE TO GRAFT AND CORRUPTION.”

THE HONORABLE COURT OF APPEALS ERRED WHEN IT SIMPLY DISMISSED (THE) PETITION FOR LACK OF MERIT.²⁷

Petitioner’s Arguments

In his Petition and Reply,²⁸ petitioner argues that with the finding of the Ombudsman that –

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (The Revised Rules of Court of the Philippines, Central Book Supply, Inc., 2008 Twelfth Edition, pp. 604-605.)

²⁵ G.R. No. 110736, December 27, 1993, 228 SCRA 718.

²⁶ *Rollo*, pp. 136-142.

²⁷ *Id.* at 20. Capitalization supplied.

²⁸ *Id.* at 235-238.

As explained by the respondent in her Supplemental Counter-Affidavit x x x, the flat rate of ₱700.00 was agreed upon between the Veterinary Quarantine Services-Seaport and the representatives or brokers of importers who feel difficult [sic] to liquidate their (representatives/brokers) cash advances from importers if payment is made on contractual basis. Anyway, importers are allowed to protest the billing if they see it did not reflect the actual services rendered by the quarantine personnel x x x.

As observed, this procedure wherein there is no transparency and the money is not subject to audit, creates doubt in the mind of the respondent's subordinates as to the actual amount paid by the importers and exact division/sharing of this amount. Moreover, this system is susceptible to graft and corruption.²⁹

there is sufficient basis to indict the respondent administratively. He argues that there are no definite guidelines regarding the collection of this flat rate and the issuance of acknowledgment receipts therefor, which practice, according to him, is "dangerous" and should be stopped.

Respondent's Arguments

In her Comment,³⁰ respondent argues that the Petition fails to raise questions of law, which thus places the case beyond the Court's power of review. She contends that, apart from the consistent policy of non-intervention with respect to the Office of the Ombudsman's sound exercise of discretion and the performance of its investigatory functions, this Court may not delve into the CA's factual finding that no dishonest motives attended respondent's performance of her duties in her office.

Our Ruling

The Court denies the Petition.

The Court agrees with the CA that the instant Petition presents no opportunity to depart from past pronouncements – consistent with law³¹ and the rules of procedure³² of the Office of the Ombudsman – that where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is

²⁹ Id. at 132.

³⁰ Id. at 213-226.

³¹ REPUBLIC ACT NO. 6770, or the Ombudsman Act of 1989, which provides:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

x x x x

Findings of fact by 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.

³² Section 7, Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17 dated September 15, 2003. See Footnote 24.

public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable.³³ Indeed, in one case, the Court went so far as to declare that in such cases, "it follows that the [Court of Appeals] has no appellate jurisdiction to review, rectify or reverse"³⁴ the order or decision of the Ombudsman.

But of course, the above principles are subject to the rule that decisions of administrative agencies which are declared final and unappealable by law are still "subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law[, or w]hen such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings."³⁵

However, there is no reason to apply the abovestated exception. The Court notes that the sole basis of the instant Petition rests on the Office of the Ombudsman's observation in its Decision that the practice and procedure for payment and reimbursement of overtime services, transportation, meal, and lodging expenses present an opportunity for graft and corruption and; that the issuance of mere acknowledgment receipts by respondent warrants the filing of charges against her. First of all, this argument is flawed; if petitioner's argument is allowed, then charges should just as well be filed against all who are covered by the said practice and procedure, including the petitioner. They are all part of the system covered by DAO 22, which petitioner claims to be a defective system.

Secondly, the presumption of validity attaches to DAO 22. The work of quarantine inspection and providing quarantine services in general requires employees of the DA to be assigned to field work, to perform tasks outside the office where these quarantine personnel are assigned. It is inconceivable that an importer with tons of meat, vegetable or fish products should physically proceed to the DA office with the meat, vegetables or fish in tow just so the quarantine personnel therein could perform a quarantine inspection. DAO 22, which sets the guidelines on overtime service as well as transportation, meal and lodging expenses, and the rates to be charged therefor from importers (or what the administrative order refers to as "parties served") whose imports require on-site quarantine inspection by the DA, answers to the need for quarantine personnel to be mobile and dynamic, yet at minimum expense to the government. What is collected from the parties served goes directly to the quarantine personnel in the

³³ *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 431-432; *Office of the Ombudsman (Mindanao) v. Cruzabra*, G.R. No. 183507, February 24, 2010, 613 SCRA 549, 554-555; *Reyes, Jr. v. Belisario*, G.R. No. 154652, August 14, 2009, 596 SCRA 31, 43-45; *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546, 552; *Herrera v. Bohol*, 466 Phil. 905, 910-911 (2004); *Lopez v. Court of Appeals*, 438 Phil. 351, 358-359 (2002).

³⁴ *Republic v. Bajao*, G.R. No. 160596, March 20, 2009, 582 SCRA 53, 65, citing *Republic v. Francisco*, 539 Phil. 433, 450 (2006).

³⁵ *Republic v. Francisco*, *supra* at 450.

form of overtime pay or reimbursements for travel, meal and lodging expenses. There is very little room for allegations of corruption in this regard, contrary to what petitioner believes. All quarantine personnel receive what they deserve, by way of overtime pay and reimbursements for expenses. If they do not, they will naturally complain; and the first to complain should be the petitioner and his witnesses. Yet they have not claimed that they were short-changed for their services.

Thirdly, even if there be truth to petitioner's allegations that the practice could breed corruption, he certainly has not shown how, nor could he attribute the same to respondent, just as the Ombudsman could not.

An apparent reason for issuing acknowledgment receipts, rather than official receipts, with respect to amounts charged under DAO 22 is that these amounts are not accountable funds which must go to the national coffers; they only cover the cost of the quarantine personnel's time and expenses, and are ultimately distributed to them in the form of overtime pay and reimbursements for expenses incurred during the performance of quarantine services. Besides, DAO 22 does not require the issuance of official receipts; indeed, in this regard it is silent.

Finally, if petitioner believes that DAO 22 is inherently infirm, or that there are irregularities or anomalies in its issuance and implementation, he should initiate the proper move to question the same. A direct challenge in court would settle any doubts as to its validity. As it stands, he, respondent and all others covered by it are simply acting pursuant to its mandate. Until it is invalidated, they must follow it to the letter.

WHEREFORE, the Petition is **DENIED**. The August 17, 2006 Decision and December 10, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 82610 are hereby **AFFIRMED**.

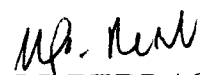
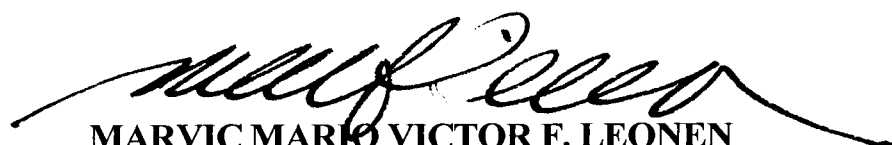
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ARTURO D. BRION

Associate Justice
Acting Chairperson


JOSE PORTUGAL PEREZ
Associate Justice
ESTELA M. PERLAS-BERNABE
Associate Justice
MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ARTURO D. BRION
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice