



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

OFFICE OF THE OMBUDSMAN,  
Petitioner,

G.R. No. 201643

Present:

SERENO, C.J.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

JOSE T. CAPULONG,  
Respondent.

Promulgated:

**MAR 12 2014**

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DECISION

REYES, J.:

This is a petition for review on *certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated July 29, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 119071, and the Resolution<sup>3</sup> dated April 12, 2012, denying the Office of the Ombudsman's (Ombudsman) Motion for Reconsideration.

<sup>1</sup> Rollo, pp. 11-46.

<sup>2</sup> Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S. E. Veloso and Angelita A. Gacutan, concurring; id. at 52-66.

<sup>3</sup> Id. at 69-70.

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### The Facts

The case arose from the Complaint-Affidavit<sup>4</sup> for violation of Section 8<sup>5</sup> of Republic Act (R.A.) No. 6713<sup>6</sup>, Perjury under Article 183 of the Revised Penal Code, and serious dishonesty and grave misconduct under the Uniform Rules on Administrative Cases in the Civil Service<sup>7</sup>, filed on July 27, 2009, before the Ombudsman, docketed as OMB-C-C-09-0560-J (LSC) and OMB-C-A-09-0570-J (LSC), by Joselito P. Fangon, Acting Director of the General Investigation Bureau of the Ombudsman, against respondent Jose T. Capulong (Capulong), Customs Operation Officer V of the Bureau of Customs (BOC).

These charges were based on two particular acts: *first*, for failure to file the required Statements of Assets, Liabilities and Net Worth (SALN) for calendar years 1987, 1990, 1991, 1993 and 1998; and *second*, for failure to disclose in his SALNs for calendar years 1999 to 2004 his wife's business interest in two corporations, namely, SYJ Realty Corporation and Radsy Production, Inc. Accordingly, the Ombudsman issued an Order<sup>8</sup> dated December 7, 2009 directing Capulong to file a counter-affidavit.

In his Counter-Affidavit<sup>9</sup> filed on February 24, 2010, Capulong denied all the allegations against him, asserting that he had been diligently filing his SALNs since his assumption of office. He claimed that since he had never received any order from their head office requiring him to submit his SALNs for the aforesaid periods as stated

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<sup>4</sup> Id. at 449-453.

<sup>5</sup> Sec. 8. *Statements and Disclosure*. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

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The documents must be filed:

(a) within thirty (30) days after assumption of office;  
(b) on or before April 30, of every year thereafter; and  
(c) within thirty (30) days after separation from the service.

x x x x

<sup>6</sup> AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES

<sup>7</sup> Civil Service Commission Resolution No. 99-1936 (1999)

<sup>8</sup> *Rollo*, pp. 340-341.

<sup>9</sup> Id. at 342-346.

under Section 3<sup>10</sup> of the Civil Service Commission Resolution No. 060231, a presumption exists that he had faithfully complied with the annual filing of the SALN. He further asserted that he was not informed by his wife that she was made an incorporator of the aforementioned corporations; hence there was no willful and deliberate assertion of falsehood on his part. Besides, the registration of both corporations had already been revoked by the Securities and Exchange Commission (SEC) as of March 15, 2004.

On March 17, 2010, Capulong filed a Rejoinder<sup>11</sup> arguing that: (1) the submission of photocopies of his SALNs for calendar years 1991 and 1998 to a responsive pleading is a matter of ordinary procedure; (2) he had filed his SALNs in accordance with the regular procedure practiced in the Manila International Container Port (MICP) of the BOC; (3) his 1991 and 1998 SALNs are contained in the records of the BOC, as evidenced by the MICP-BOC Certification dated March 15, 2010; (4) the complaint against him is barred by prescription; (5) no legal and factual basis exists to support the complaint; and (6) criminal rules should be strictly construed.

Capulong filed a motion to set the case for hearing for the presentation of certified true copies of his SALNs for calendar years 1991 and 1998. He also filed, on July 30, 2010, a motion for early resolution of the complaint considering that the parties have already filed their respective pleadings. However, the Ombudsman did not act on the said motions.

On March 30, 2011, Capulong received an undated Order<sup>12</sup> issued by the Ombudsman placing him under preventive suspension without pay which shall continue until the case is terminated but shall not exceed six months effective from receipt of the Order.

Capulong filed an Urgent Motion to Lift/Reconsider Order of Preventive Suspension with Motion to Resolve<sup>13</sup> contending that his preventive suspension was not warranted because his continued stay in office will not prejudice the investigation of the case against him.<sup>14</sup>

Questioning the preventive suspension and wary of the threatening and coercive nature of the Ombudsman's order, Capulong, on April 19, 2011, filed with the CA a petition for *certiorari*, docketed as CA-G.R. SP No. 119071, with urgent prayer for the issuance of a

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<sup>10</sup> Sec. 3. Ministerial Duty of the Head of Office to issue Compliance Order.—Immediately upon receipt of the aforementioned list and recommendation, it shall be the ministerial duty of the Head of Office to issue an order requiring those who have incomplete data in their SALN to correct/supply the desired information and those who did not file/submit their SALNs to comply within a non-extendible period of three (3) days from receipt of said order.

<sup>11</sup> *Rollo*, pp. 359-367.

<sup>12</sup> *Id.* at 72-77.

<sup>13</sup> *Id.* at 347-358.

<sup>14</sup> *Id.* at 229.

temporary restraining order (TRO) and a writ of preliminary injunction.<sup>15</sup> The CA granted the petition and issued a TRO dated April 26, 2011, enjoining and prohibiting the Ombudsman and any person representing them or acting under their authority from implementing the preventive suspension order of the Ombudsman until further orders from the court.<sup>16</sup>

Meanwhile, the Ombudsman issued an Order<sup>17</sup> dated May 13, 2011 lifting Capulong's preventive suspension. On the same date, in the scheduled hearing, the Ombudsman's representative manifested in open court that the assailed order of preventive suspension had already been lifted, thus the CA held in abeyance the application for preliminary injunction.<sup>18</sup>

On May 18, 2011, Capulong filed a Manifestation with Motion for Leave to File and Admit Memorandum asking the CA to rule on the merits of the petition. On the other hand, the Ombudsman filed a manifestation on June 9, 2011 declaring that the lifting of Capulong's preventive suspension had rendered the case moot and academic; hence the petition should be dismissed.

On July 29, 2011, the CA rendered the herein assailed Decision,<sup>19</sup> which granted Capulong's petition and dismissed the criminal charge docketed as OMB-C-C-09-0560-J (LSC). According to the CA, the petition is not rendered moot and academic by the subsequent lifting of Capulong's preventive suspension. Thus:

It must be noted that the Petition likewise prays for "other reliefs just and equitable under the premises." This is sanctioned by Section 1, Rule 65 of the Rules of Court which states that the aggrieved person, that is Petitioner herein, may, among others, pray for "such incidental reliefs as law and justice may require." Hence, as long as there is, as can be gleaned from the evidence presented, an indicia of grave abuse of discretion on the part of the Respondent, even in the absence of a specified prayer in the petition, a ruling on the merits is nevertheless imperative. x x x. Moreover, it bears emphasis that the prayers in a petition are not determinative of what legal principles will operate based on the factual allegations thereof.<sup>20</sup> (Citations omitted)

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<sup>15</sup> Id. at 89-108.

<sup>16</sup> Id. at 56.

<sup>17</sup> Id. at 78-88.

<sup>18</sup> Id. at 57.

<sup>19</sup> Id. at 52-66.

<sup>20</sup> Id. at 59-60.

The CA further held that: (a) the Ombudsman has lost its right to prosecute Capulong for non-filing of SALNs because it had already prescribed in accordance with Act No. 3326;<sup>21</sup> and (b) the simple allegation of non-disclosure of Capulong's spouse's business interest does not constitute gross misconduct and serious dishonesty since the complaint-affidavit failed to allege that the said non-disclosure were deliberately done. Hence, there was absolutely no basis to warrant Capulong's preventive suspension as it is evident on the face of the complaint that there was nothing to support the same.

The Ombudsman sought reconsideration<sup>22</sup> thereto but the same was denied.<sup>23</sup> Aggrieved by the foregoing disquisition of the CA, the Ombudsman assails the same before this Court *via* a Petition for Review on *Certiorari*.<sup>24</sup>

### The Issue

Essentially, the issue presented to the Court for resolution is whether the CA has jurisdiction over the subject matter and can grant reliefs, whether primary or incidental, after the Ombudsman has lifted the subject order of preventive suspension.

### The Court's Ruling

The petition has no merit.

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<sup>21</sup> AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

**Section 1.** Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. *Provided, however,* That all offenses against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months. (*As amended by Act No. 3585 and by Act No. 3763, approved on November 23, 1930.*)

**Section 2.** Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

**Section 3.** For the purposes of this Act, special acts shall be acts defining and penalizing violations of the law not included in the Penal Code.

**Section 4.** This Act shall take effect on its approval.

Approved on December 4, 1926

<sup>22</sup> *Rollo*, pp. 116-129.

<sup>23</sup> *Id.* at 69-70.

<sup>24</sup> *Id.* at 11-46.

As a rule, it is the consistent and general policy of the Court not to interfere with the Ombudsman's exercise of its investigatory and prosecutory powers. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman but upon practicality as well. It is within the context of this well-entrenched policy that the Court proceeds to pass upon the validity of the preventive suspension order issued by the Ombudsman.<sup>25</sup>

While it is an established rule in administrative law that the courts of justice should respect the findings of fact of said administrative agencies, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction.<sup>26</sup> These exceptions exist in this case and compel the appellate court to review the findings of fact of the Ombudsman.

In the instant case, the subsequent lifting of the preventive suspension order against Capulong does not render the petition moot and academic. It does not preclude the courts from passing upon the validity of a preventive suspension order, it being a manifestation of its constitutionally mandated power and authority to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The preventive suspension order is interlocutory in character and not a final order on the merits of the case. The aggrieved party may then seek redress from the courts through a petition for *certiorari* under Section 1,<sup>27</sup> Rule 65 of the 1997 Rules of Court. While it is true that the primary relief prayed for by Capulong in his petition has already been voluntarily corrected by the Ombudsman by the issuance of the order lifting his preventive suspension, we must not lose sight of the fact that Capulong likewise prayed for other remedies. There being a finding of grave abuse of discretion on the part of the Ombudsman, it was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65.

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<sup>25</sup> *Office of the Ombudsman v. Evangelista*, G.R. No. 177211, March 13, 2009, 581 SCRA 350, 355-356.

<sup>26</sup> *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 877 (2007).

<sup>27</sup> **Sec. 1. Petition for *certiorari*.**—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and **granting such incidental reliefs as law and justice may require.** (Emphasis ours)

The decision of the appellate court to proceed with the merits of the case is included in Capulong's prayer for such "other reliefs as may be just and equitable under the premises." Such a prayer in the petition justifies the grant of a relief not otherwise specifically prayed for.<sup>28</sup> More importantly, we have ruled that it is the allegations in the pleading which determine the nature of the action and the Court shall grant relief warranted by the allegations and proof even if no such relief is prayed for.<sup>29</sup>

Significantly, the power of adjudication, vested in the CA is not restricted to the specific relief claimed by the parties to the dispute, but may include in the order or decision any matter or determination which may be deemed necessary and expedient for the purpose of settling the dispute or preventing further disputes, provided said matter for determination has been established by competent evidence during the hearing. The CA is not bound by technical rules of procedure and evidence, to the end that all disputes and other issues will be adjudicated in a just, expeditious and inexpensive proceeding.

The requisites for the Ombudsman to issue a preventive suspension order are clearly contained in Section 24<sup>30</sup> of R.A. No. 6770.<sup>31</sup> The rule is that whether the evidence of guilt is strong is left to the determination of the Ombudsman by taking into account the evidence before him. In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if "*in his judgment*" the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present.<sup>32</sup> The Court, however, can substitute its own judgment for that of the Ombudsman on this matter, with a clear showing of grave abuse of discretion on the part of the Ombudsman.

Undoubtedly, in this case, the CA aptly ruled that the Ombudsman abused its discretion because it failed to sufficiently establish any basis to issue the order of preventive suspension. Capulong's non-disclosure of his wife's business interest does not constitute serious dishonesty or grave misconduct. Nothing in the records reveals that Capulong deliberately placed "N/A" in his SALN despite knowledge about his wife's

<sup>28</sup> *Primelink Properties & Development Corporation v. Lazatin-Magat*, 526 Phil. 394, 414 (2006).

<sup>29</sup> *Banco Filipino Savings & Mortgage Bank v. CA*, 388 Phil. 27, 41 (2000).

<sup>30</sup> Sec. 24. *Preventives Suspension*. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

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<sup>31</sup> AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES

<sup>32</sup> *The Ombudsman v. Valeroso*, 548 Phil. 688, 695 (2007), citing *Yasay, Jr. v. Hon. Desierto*, 360 Phil. 680, 697-698 (1998).

business interest. As explained by Capulong, the SEC already revoked the registration of the corporations where his wife was an incorporator; hence, he deemed it not necessary to indicate it in his SALN.

Ineluctably, the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts, which were the subject of the administrative complaint. The Court finds no cogent reason to depart from this rule. However, the crime of perjury for which Capulong was charged, requires a willful and deliberate assertion of a falsehood in a statement under oath or in an affidavit, and the statement or affidavit in question here is Capulong's SALNs. It then becomes necessary to consider the administrative charge against Capulong to determine whether or not he has committed perjury. Therefore, with the dismissal of Capulong's administrative case, the CA correctly dismissed its criminal counterpart since the crime of perjury which stemmed from misrepresentations in his SALNs will no longer have a leg to stand on.


**WHEREFORE**, in consideration of the foregoing premises, the Decision dated July 29, 2011 and Resolution dated April 12, 2012 of the Court of Appeals in CA-G.R. SP No. 119071 are **AFFIRMED**.

**SO ORDERED.**



**BIENVENIDO L. REYES**  
Associate Justice

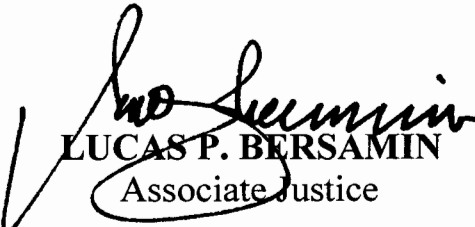
**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson



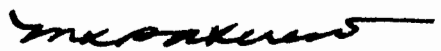
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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