

SECOND DIVISION

[G.R. Nos. 165399 and 165475, May 30, 2011]

THERON V. LACSON, PETITIONER, VS. THE HON. EXECUTIVE SECRETARY, THE PRESIDENTIAL ANTI-GRAFT COMMISSION, PUBLIC ESTATES AUTHORITY, AND TEODORICO C. TAGUINOD, IN HIS CAPACITY AS GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER OF THE PUBLIC ESTATES AUTHORITY, RESPONDENTS.

[G.R. NOS. 165404 AND 165489]

JAIME R. MILLAN AND BERNARDO T. VIRAY, PETITIONERS, VS. THE HON. EXECUTIVE SECRETARY, THE PRESIDENTIAL ANTI-GRAFT COMMISSION, AND THE PUBLIC ESTATES AUTHORITY, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

These are consolidated petitions for review on certiorari under Rule 45 seeking to set aside the June 8, 2004 Decision and the September 20, 2004 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 78749 and CA-G.R. SP No.78290.^[1]

The Facts

Petitioners Theron V. Lacson (*Lacson*), Jaime R. Millan (*Millan*) and Bernardo T. Viray (*Viray*) were non-presidential appointees and career service officials of respondent Philippine Estates Authority (*PEA*), holding the positions of Deputy General Manager for Finance, Legal and Administration; Assistant General Manager; and Department General Manager, respectively.^[2]

On October 3, 2002, Sulficio O. Tagud (*Tagud*) filed a complaint-affidavit with the Office of the Ombudsman (*Ombudsman*) accusing petitioners Lacson, Millan and Viray for overpricing, by P600,000,000.00, the contract for the construction of the Central Boulevard Project (*the Project*), otherwise known as the President Diosdado Macapagal Boulevard.^[3]

Acting on the complaint, the Ombudsman proceeded with the investigation of both the criminal and the administrative aspects of the case.^[4] The criminal case, docketed as OMB-C-C-02-0667-J and entitled "*Sulficio O. Tagud Jr., et al. v. Ernesto Villareal, et al.*," charged petitioners for committing an act in violation of Republic Act (R.A.) No. 7080. The administrative case, docketed as OMB-C-A-02-0523-K, on the other hand, charged them with Dishonesty, Serious Misconduct and Acts Inimical to the Interest of the Public Service in violation of Section 52A (1), (3) and (20) of the Uniform Rules on Administrative Cases.^[5]

Meanwhile, on October 14, 2002, the Presidential Anti-Graft Commission (*PAGC*) requested the Ombudsman for authority to conduct administrative disciplinary proceedings against the petitioners and other individuals involved in the Project.^[6]

In its Letter-Reply dated October 17, 2002,^[7] the Ombudsman responded in the following manner:

This has reference to your letter dated 14 October 2002 requesting for authority to conduct administrative disciplinary proceedings against the presidential appointees at the Public Estates Authority (PEA) named respondents in the case involving the construction of the President Diosdado Macapagal Boulevard (PDMB). It is our humble view that the authority is not necessary.

The Office takes the opportunity to confirm the fact that the case filed with this Office on 3 October 2002, involving the subject controversy, is criminal in nature. It now bears the docket number OMB-C-C-02-0667-J, entitled "Sulficio Tagud, Jr., et al. versus Ernest Villareal, et al." The basic complaint has not been further docketed as an administrative case. Thus, **the same did not preclude the subsequent filing with the PAGC of an administrative complaint against the concerned PEA officials.** [Emphasis supplied]

Subsequently, on November 12, 2002, a formal complaint was filed by the Investigation Office of PAGC charging several employees of PEA, including petitioners, with acts and/or omissions contrary to: (1) Item 1B2 of the Implementing Rules and Regulations (*IRR*) of Presidential Decree (*P.D.*) No. 1594, as amended; (2) Section 3(i), (g) and (e) of R.A. No. 3019, as amended; (3) Article 217 of the Revised Penal Code in relation to R.A. No. 3019, as amended; (4) Articles 8.1 and 8.2 of the Construction Agreement signed on April 10, 2000 between PEA and J.D. Legaspi Construction; and (5) Section 46 (a) and (b) of Executive Order (*E.O.*) No. 292, as amended, in particular Item (B), Nos. 3, 4 and 27, in relation to R.A. No. 3019, as amended.^[8]

On the same date, PAGC issued an order requiring petitioners to file their counter-affidavit/verified answer (not a motion to dismiss or motion for bill of particulars) within a non-extendible period of 10 days from receipt of the order. Preliminary conference was set on November 22, 2002.^[9]

During the preliminary conference, petitioners raised several jurisdictional issues, particularly the following: the absence of certification of non-forum shopping in the complaint; the primary jurisdiction of the Ombudsman to investigate them; the lack of jurisdiction of PAGC over the complaint against them considering that they were not presidential appointees and there was no allegation that they had conspired with the presidential appointees who were charged with them; the futility of any investigation by PAGC as the same would have no bearing on the case filed with the Ombudsman; and the fatally defective complaint which was not based on personal knowledge of the complainant who, as an officer of PAGC, was merely a nominal

party and was never privy to the project subject of the investigation.^[10]

PAGC directed petitioners to file their memoranda to formalize their arguments.^[11]

On November 28, 2002, PAGC issued a resolution recommending the dismissal of petitioners from PEA with the imposition of the corresponding accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government.^[12]

In a letter dated December 16, 2002, the Office of the President, through the Executive Secretary, informed the PEA Chairman and Members of the Board that the President approved the recommendation of PAGC in its November 28, 2002 Resolution dismissing the petitioners from PEA and imposing upon them the accessory penalties of forfeiture of retirement benefits and disqualification from employment in the government service, and directed them to take the necessary actions to effect the instructions of the President. ^[13]

On December 18, 2002, petitioners received a notice dated December 4, 2002 informing them that PAGC had resolved their case and that the records therein had been forwarded to the Office of the President. It also advised the petitioners that any inquiry relative thereto should be addressed to the said office.^[14]

After securing a copy of the PAGC Resolution, petitioners Millan and Viray, together with Manuel R. Beriña, Jr. (*Beriña*) filed a motion for reconsideration^[15] dated January 2, 2003 with the Office of the President assailing the November 28, 2002 Resolution and Recommendation of the PAGC.

This motion was not acted upon.^[16]

On July 25, 2003, PEA dismissed the petitioners. They received their copies of the notice of dismissal on July 28, 2003.^[17]

Aggrieved, Beriña, Millan and Viray filed their Petition for Certiorari and Prohibition under Rule 65 with the CA on July 30, 2003, which was docketed as CA G.R. SP No. 78290.^[18]

Lacson, on the other hand, filed a motion for reconsideration of the dismissal order^[19] in a letter dated August 11, 2003 addressed to Teodorico C. Taguinod (*Taguinod*), PEA General Manager and Chief Executive Officer. This motion, however, was denied on August 20, 2003.^[20]

On August 25, 2003, Ernesto L. Enriquez (*Enriquez*) and Lacson filed a petition for certiorari and prohibition under Rule 65 with the CA, which was docketed as CA G.R. SP No. 78749.^[21] Said petition, however, was later consolidated with CA G.R. SP No. 78290 upon motion of the Office of the Solicitor General (*OSG*). But, before the consolidation of the mentioned petitions, writs of preliminary injunction were issued.^[22] The writs, dated August 6, 2003 in CA G.R. SP No. 78290 and September 16, 2003 in CA G.R. SP No. 78749, temporarily enjoined the respondents from implementing the dismissal orders.^[23]

Finally, in a consolidated decision dated June 29, 2004, the CA dismissed the consolidated petitions.^[24]

On July 5, 2004 and July 22, 2004, Lacson in CA-G.R. SP No. 78749 and Beriña, Millan and Viray in CA-G.R. SP No. 78290, filed their respective motions for reconsideration.^[25] Unfortunately for petitioners, both motions were denied in a resolution dated September 20, 2004.^[26]

Hence, these petitions.

Upon motion of the OSG, on behalf of respondents Executive Secretary and PAGC, the Court issued a resolution ordering the consolidation of the petitions in G.R. Nos. 165404 and 165489 with the petitions in G.R. Nos. 165399 and 165475.^[27]

ISSUES

In their respective petitions for review, petitioners assigned the following errors, to wit:

I.

RESPONDENTS ERRED WHEN THEY ISSUED THE QUESTIONED MEMORANDA AND ORDERED THE DISMISSAL OF PETITIONERS ALLEGEDLY ON THE BASIS OF THE RECOMMENDATION OF THE RESPONDENT PAGC, IN THAT:

A. UNDER THE CONSTITUTION AND THE LAWS APPLICABLE, IT IS THE OMBUDSMAN WHICH HAS THE JURISDICTION TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF CAREER SERVICE OFFICERS SUCH AS PETITIONERS HEREIN.

B. IT IS THE OMBUDSMAN WHO HAS PRIMARY JURISDICTION OVER THE INVESTIGATION AND REMOVAL OF PETITIONERS AND NOT RESPONDENT PAGC.

C. EXECUTIVE ORDER NO. 12, SERIES OF 2002, WHICH GRANTS RESPONDENT PAGC THE AUTHORITY TO INVESTIGATE AND RECOMMEND THE DISMISSAL OF PUBLIC OFFICERS AND EMPLOYEES WITHIN THE CIVIL SERVICE WHO ARE NON-PRESIDENTIAL APPOINTEES AS PETITIONERS HEREIN IS UNCONSTITUTIONAL AND INVALID FOR BEING CONTRARY TO LAW.

D. THE DIRECT ACTION OF RESPONDENTS IN DISMISSING THE PETITIONERS FROM THE SERVICE WITHOUT THE HEAD OF RESPONDENT PEA HAVING CONDUCTED ANY INVESTIGATION AT ALL IS CONTRARY TO LAW.

II.

RESPONDENTS ERRED IN DISMISSING THE PETITIONERS FROM RESPONDENT PEA AND PUBLIC OFFICE IN THAT:

A. PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO DUE PROCESS OF LAW, PETITIONERS HAVING BEEN DEPRIVED OF A FORMAL INVESTIGATION WHICH THEY ARE ENTITLED TO UNDER THE RULES OF PROCEDURE OF THE OMBUDSMAN AND THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

B. THE PETITIONERS' DISMISSAL WAS VIOLATIVE OF THEIR RIGHT TO SECURITY OF TENURE AS THEY WERE TERMINATED FROM SERVICE UPON A MERE PRESIDENTIAL DIRECTIVE.

III.

RESPONDENTS ENGAGED IN PROHIBITED FORUM SHOPPING BY THE FILING OF MULTIPLE ADMINISTRATIVE COMPLAINTS AGAINST PETITIONERS FOR THE SAME CAUSE; HENCE, THE INSTANT CHARGE AGAINST PETITIONERS SHOULD BE DISMISSED.^[28]

These alleged errors in G.R. Nos. 165399 and 165475 and G.R. Nos. 165404 and 165489 can be categorized into two principal issues:

- (1) Whether it is the Ombudsman who should conduct the investigation on the charge of overpricing of the Project against petitioners; and
- (2) Whether the Court can still review the dismissal ordered by PEA.

THE COURT'S RULING

The Ombudsman has concurrent jurisdiction with similarly authorized agencies

Petitioners argue that because they are not presidential appointees, it is only the Ombudsman which has jurisdiction over them.

In this regard, the petitioners are not correct. The Court has repeatedly ruled that the power of the Ombudsman to investigate offenses involving public officials is not exclusive, but is concurrent with other similarly authorized agencies of the government in relation to the offense charged. ^[29] Therefore, with respect to petitioners, the Ombudsman may share its authority to conduct an investigation concerning administrative charges against them with other agencies.

At any rate, this issue is already moot and academic as the Ombudsman has terminated its investigation of petitioners. This can be gleaned from the certified true copies of the Ombudsman's May 30, 2008 Decision as well as the July 3, 2008