

## FIRST DIVISION

[ G.R. NO. 167828, April 02, 2007 ]

**THE OMBUDSMAN, FACT-FINDING AND INTELLIGENCE BUREAU,  
OFFICE OF THE OMBUDSMAN, AND PRELIMINARY  
INVESTIGATION AND ADMINISTRATIVE ADJUDICATION  
BUREAU, OFFICE OF THE OMBUDSMAN, PETITIONERS, VS.  
NESTOR S. VALEROSO, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals (CA) in *CA-G.R. SP No. 84641*, to wit:

1. Decision<sup>[1]</sup> dated December 16, 2004 annulling and setting aside petitioner Ombudsman's Order of June 10, 2004, which placed respondent Nestor S. Valeroso under preventive suspension for six (6) months without pay; and
2. Resolution<sup>[2]</sup> dated April 13, 2005 denying petitioners' motion for reconsideration.

The facts may be briefly stated as follows:

On 16 January 2004, the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman (OMB) lodged with OMB's Preliminary Investigation and Administrative Adjudication Bureau-B (PIAAB-B) a complaint<sup>[3]</sup> with prayer for preventive suspension against respondent Nestor S. Valeroso in effect charging him **criminally** with *Perjury* and **administratively** with *Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service*.

It was alleged in said complaint that respondent, then occupying the position of Director II at the Bureau of Internal Revenue, failed to disclose his ownership of several properties, as well as certain business interests of his wife, in his sworn Statements of Assets, Liabilities and Net Worth (SALN) from 1995 to 2002, in violation of Republic Act (R.A.) No. 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*.

In an Order dated 19 February 2004, the PIAAB-B, by authority of the Ombudsman, directed Valeroso to submit his counter-affidavit. He subsequently did so, and followed it with a supplement thereto. Denying the allegations in the complaint that he had failed to disclose his ownership of the properties listed therein, as well as certain business interests of his wife, Valeroso prayed for the dismissal of the charges and the denial of the prayer for his preventive suspension.

Finding the existence of a *strong indicia of guilt on the part [of Valeroso] for administrative offense of Dishonesty*, and an unexplained increase in his net worth, the Ombudsman, in an **Order<sup>[4]</sup> dated 10 June 2004**, placed respondent under ***preventive suspension for a period of six (6) months without pay***.

On 17 June 2004, respondent filed with the CA a petition for *certiorari* and prohibition, with a prayer for preliminary injunction and/or temporary restraining order, thereat docketed as *CA-G.R. SP No. 84641*, seeking to nullify the preventive suspension order against him. Respondent alleged in his petition that the element of strong evidence of guilt was lacking. He also claimed lack of due process since his right to be informed of the nature of the charges against him was allegedly denied when the Ombudsman changed the basis of the complaint.

In its resolution of 02 July 2004, the appellate court initially dismissed *CA-G.R. SP No. 84641* on the ground of prematurity and for being the wrong remedy. The appellate court, however, would later change its mind. Thus, in its Resolution of 21 July 2004, the CA granted respondent Valeroso's motion for reconsideration and thus reinstated his *certiorari* petition and even issued a temporary restraining order enjoining the petitioners from implementing the preventive suspension order above adverted to.

Ultimately, in the herein assailed decision of 16 December 2004, the CA, finding that grave abuse of discretion tainted the issuance of the preventive suspension order in question, granted respondent's petition and accordingly annulled and set aside the said order<sup>[5]</sup> of preventive suspension, to wit:

**WHEREFORE**, in the light of the foregoing, the extant Petition is **GRANTED**.

The Order of the Ombudsman, placing the petitioner (now respondent) under preventive suspension for six (6) months without pay, having been issued with grave abuse of discretion is hereby **ANNULLED** and **SET ASIDE**.

No pronouncement as to costs.

**SO ORDERED.**

Explains the CA in its decision:

In the present case, it is clear from the recital of the Complaint and the summary thereof as contained in the assailed Order that the charge was only for the alleged failure to disclose certain properties and not for unexplained wealth or increase in net worth. Consequently, and in view of the above-mentioned rule, [petitioner] Ombudsman could not just arbitrarily expand the original charge of "Dishonesty" for failure to declare certain assets to "Dishonesty" for unexplained wealth or unexplainable increase in net worth.

Secondly, We do not agree with the [petitioner] Ombudsman that the [respondent] was well aware that the charge for failure to disclose

certain properties in the Statement of Assets and Liabilities amounted to a charge for ill-gotten wealth. (Words in brackets added.)

In essence, the CA found Valeroso's claim of denial of due process meritorious since he was being made to answer, not only the alleged non-disclosure of certain properties, but also for unexplained increase in net worth, a charge about which, to the CA, Valeroso was denied the opportunity to explain.

Their motion for reconsideration having been denied by the CA in its equally assailed Resolution of 13 April 2005, petitioners are now with this Court on the basic issue of whether or not the CA had erred in finding that grave abuse of discretion attended the issuance of the subject preventive suspension order. It is petitioners' posture that, contrary to the conclusion of the appellate court, respondent Valeroso was accorded due process of law, and that there was no infirmity in the issuance of the disputed preventive suspension order.

We **GRANT** the petition.

We shall first cut through the procedural technicalities with which each party attempts to trip its opponent, and ultimately decide the case on its substantial merits.

There is no dispute as to the power of the Ombudsman to place a public officer charged with an administrative offense under preventive suspension. That power is clearly confined under Section 24 of R.A. No. 6770, otherwise known as the *Ombudsman Act of 1989*, which reads:

Sec. 24. *Preventive 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.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Clear it is from the above that the law sets forth two conditions that must be satisfied to justify the issuance of an order of preventive suspension pending an investigation, to wit:

1. The evidence of guilt is strong; and
2. Either of the following circumstances co-exist with the first requirement:
  - a. The charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty;