

EN BANC

[G.R. No. 232131, April 24, 2018]

REY NATHANIEL C. IFURUNG, PETITIONER, VS. HON. CONCHITA C. CARPIO MORALES IN HER CAPACITY AS THE OMBUDSMAN, HON. MELCHOR ARTHUR H. CARANDANG, HON. GERARD ABETO MOSQUERA, HON. PAUL ELMER M. CLEMENTE, HON. RODOLFO M. ELMAN, HON. CYRIL ENGUERRA RAMOS IN THEIR CAPACITIES AS DEPUTIES OMBUDSMAN, AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS,

D E C I S I O N

MARTIRES, J.:

Through this Petition for Certiorari and Prohibition, petitioner Rey Nathaniel C. Ifurung (*petitioner*), *in propria persona*, seeks a declaration from the Court that: (a) Section (Sec.) 8(3) in relation to Sec. 7 of Republic Act (R.A.) No. 6770, also known as the Ombudsman Act of 1989, is unconstitutional for being an outright transgression of Sec. 11, in relation to Secs. 8 and 10 of Article (Art.) XI of the 1987 Constitution; and (b) all individual respondents as *de facto* Ombudsman and Deputies Ombudsman, respectively, and all these positions are vacant.^[1]

The Petition

Petitioner, who claims to be a taxpayer, a concerned Filipino citizen, and a member of the Bar, invokes the jurisprudence laid down by the Court in *Funa v. Villar*,^[2] in asserting that he has *locus standi* to file the instant petition. He avers that he is seeking the correction of a recurring statutory wrong and a declaration from the Court that the positions held by the respondents are vacant.^[3]

Respondents are the incumbent officials of the Office of the Ombudsman, *viz*: Conchita Carpio Morales, Ombudsman (*Ombudsman Morales*); Melchor Arthur H. Carandang, Overall Deputy Ombudsman; Gerard Abeto Mosquera, Deputy Ombudsman for Luzon; Paul Elmer M. Clemente as Deputy Ombudsman for Visayas; Rodolfo M. Elman, Deputy Ombudsman for Mindanao; and Cyril Enguerra Ramos, Deputy Ombudsman for the Military.^[4]

Petitioner maintains that the constitutional issue raised in his petition is of transcendental importance since this Court's ruling will finally determine the correct term and tenure of the Ombudsman and his deputies and settle the matter as to the constitutionality of Sec. 8(3) of R.A. No. 6770. He alleges that Sec. 8(3), in relation to Sec. 7 of R.A. No. 6770, which provides that in case of a vacancy at the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman and his deputies, the newly appointed Ombudsman and his deputies shall be appointed to a full term of seven (7) years, is constitutionally infirm as it contravenes Sec. 11 in relation to Secs. 8 and 10 of Art. XI of the 1987

Constitution. He avers that like all constitutionally created positions, i.e., President, Vice-President, Senators, Members of the House of Representatives and Members of the Civil Service Commission (CSC), the Commission on Elections (COMELEC), and the Commission on Audit (COA), the successor to the positions of the Ombudsman and deputies should serve only the unexpired term of the predecessor. Hence, petitioner insists that the incumbent Ombudsman and deputies have been overstaying in their present positions for more than two years considering that their terms have expired on 1 February 2015. "To allow them to stay in the said positions one day longer constitutes a continuing affront to the 1987 Constitution, unduly clips presidential prerogatives, and deprives the nation of the services of legitimate Ombudsman and Deputies Ombudsman."^[5]

To fortify his position, petitioner states that the intent of the framers of the 1987 Constitution during its 26 July 1986 discussion was to constitutionalize the Office of the Ombudsman, i.e., by granting it autonomy and independence the same as and equal to those of the other constitutionally created offices and positions. That in the process of constitutionalizing the Office of the Ombudsman, the framers ensured its stature and clout as a constitutional body like the COMELEC, the COA, the CSC, and the Commission on Human Rights (CHR), viz: by creating the office and giving it fiscal autonomy and independence thus making it a constitutionally created office; by providing the qualifications, disqualifications, manner of appointment, cessation, and removal from office; and by specifying the salary, positional rank, term of office, powers, functions, and duties thereof; thereby making the Ombudsman and the deputies constitutionally created positions. He claims that the intention of the framers was evident in Secs. 5 to 14, Art. XI of the 1987 Constitution.^[6]

According to the petitioner, with the effectivity of the 1987 Constitution, President Corazon C. Aquino (*President Aquino*), on 24 July 1987, issued pursuant to Sec. 6, ^[7] Art. XVIII of the 1987 Constitution, Executive Order (*E.O.*) No. 243^[8] creating the Office of the Ombudsman. On 17 November 1989, R.A. No. 6770 was approved. Considering that the intent of the framers of the Constitution was that the position of the Ombudsman and the deputies shall have the same status as the three constitutional commissions, the limitations as to the latter's term of office shall likewise apply to the Ombudsman and the deputies. Hence, petitioner maintains that the grant of a full term to an Ombudsman's successor, when the vacancy in the office is for a cause other than the expiration of term, is an outright non-observance of the intent of the framers and Sec. 11, Art. XI of the 1987 Constitution.^[9]

Petitioner insists that in *Gaminde v. COA (Gaminde)*,^[10] the Court en banc has determined that the starting point of the terms of office of the first appointees to the constitutional commissions is uniformly set on 2 February 1987. He maintains as regards the appointment of Conrado M. Vasquez as first Ombudsman in May 1988, the seven-year term which was supposed to start on 2 February 1987 and culminate seven (7) years thereafter, was not complied with.^[11]

The petitioner presented the following table:^[12]

OMBUDSMAN	7-YEAR TERM	ACTUAL TENURE	DE FACTO SERVICE	CESSATION OF SERVICE

Conrado M. Vasquez	1st 2 Feb. 1987 to 1 Feb. 1994	May 1988 to May 1995	2 Feb. 1994 to May 1995	Supposed expiration of term
Aniano A. Desierto	2nd 2 Feb. 1994 to 1 Feb. 2001	4 Aug. 1995 to 3 Aug. 2002	2 Feb. 2001 to 3 Aug. 2002	Supposed expiration of term
Simeon V. Marcelo	3rd 2 Feb. 2001 to 1 Feb. 2008	10 Oct. 2002 to Nov. 2005	Not applicable	Resignation
Ma. Merceditas Navarro-Gutierrez		1 Dec. 2005 to 1 Feb. 2008	Not applicable	Not applicable
Ma. Merceditas Navarro-Gutierrez	4th 2 Feb. 2008 to 1 Feb. 2015	2 Feb. 2008 to 6 May 2011	2 Feb. 2008 to 6 May 2011	Resignation
Conchita Carpio Morales		25 July 2011 to 1 Feb. 2015	Not applicable	Not applicable
Conchita Carpio Morales	5th 2 Feb. 2015 to 1 Feb. 2022	2 Feb. 2015 to present	2 Feb. 2015 to present	Not applicable

Petitioner states that it can be gleaned from the above data that the explicit seven-year term for the Ombudsman and the deputies has neither been followed nor complied with.^[13]

Petitioner claims that Ombudsman Morales should have ceased to hold office on 1 February 2015 considering that the unexpired term of the supposed fourth seven-year term ended on that date; thus, Ombudsman Morales has been holding the position in a *de facto* capacity since 2 February 2015 up to the present. This observation, petitioner claims, holds true with the other respondent deputies.^[14]

Petitioner posits that the "recurrence of this cycle of noncompliance and nonobservance of the intent of the framers and the explicit provision of the 1987 Philippine Constitution is an outright affront to the fundamental law of the land and, if it remains unchecked, will create a cycle of non-compliance with and nonobservance of what the Constitution provides."^[15]

Petitioner argues that the Office of the Ombudsman is not *sui generis*; thus, what applies and holds true for all the other constitutionally created offices and positions should also apply to this office. The Ombudsman cannot be an exception, to the rule set by the 1987 Constitution, i.e., to serve for the unexpired term, so much so that each uncompleted term creates a fresh term for the appointed Ombudsman. Petitioner speculates that such fresh term of seven years could effectively deprive

an incoming President the power and opportunity to appoint an Ombudsman. Thus the term of the Ombudsman will be subject to political maneuverings such that the outgoing President can divest the next President of the prerogative to appoint. If the unexpired term is the policy, every President can appoint an Ombudsman.^[16]

Petitioner cites the ruling in *Tañada v. Angara*^[17] (*Tañada*) and *Imbong v. Ochoa*^[18] (*Imbong*) to justify his position that he availed of the appropriate remedies of certiorari and prohibition in the instant case.^[19]

Asserting that the present petition involves the resolution of a constitutional issue which affects the very fabric and integrity of the Office of the Ombudsman, petitioner pleads for the exemption from the observance of the rule on hierarchy of courts in view of the transcendental importance of this constitutional issue.^[20]

The Comment of the Respondents

Respondents, through the Office of the Solicitor General (*OSG*), claim that petitioner failed to appreciate the *verba legis* approach to constitutional construction; and that, instead, petitioner resorted to an interpretation that was not only self-serving but also devoid of basis and reason.^[21]

Respondents aver that Sec. 11, Art. XI of the 1987 Constitution is clear that the term of the Ombudsman and the Deputies shall be seven years without reappointment without distinction on the cause of filling the vacancy. According to the respondents, to follow petitioner's interpretation would lead to a distinction not found in the law between: (1) the term of the Ombudsman and the deputies who succeeded a predecessor who finished a full term of seven years; and (2) the term of the Ombudsman and the deputies who merely succeeded the predecessor who did not finish the full term of seven years.^[22]

Respondents state that unlike Sec. 11, Art. XI of the 1987 Constitution, the term of office of the constitutionally created offices provides that a successor who is appointed to any vacancy shall only serve the unexpired term of the successor.^[23]

To disprove the petitioner's assertion that the distinction as to the term of office of constitutionally created offices applies to the Ombudsman and his Deputies, respondents explain that there are other offices created by the Constitution, *viz*: Supreme Court, Judicial and Bar Council (*JBC*), Senate Electoral Tribunal (*SET*), House of Representatives Electoral Tribunal (*HRET*), judges of lower courts, elective local officials, and the CHR, among others, where such distinction does not apply.^[24]

Respondents allege that the deliberations of the framers of the Constitution reveal their intent to grant the Ombudsman and his deputies the same rank and salary as the Chair and members of the Constitutional Commissions but not by the staggered term.^[25]

Respondents contend that the ruling in *Gaminde* where the rotational system of appointment of the CSC chairperson and the commissioners was crucial to the determination of the start of Commissioner Gaminde's term, does not apply to the

Office of the Ombudsman where there are no seven-five-three-year rotational intervals for the appointment. Moreover, the Office of the Ombudsman is not a commission composed of a chairperson and several commissioners; thus, whether the term of the first Ombudsman began on 2 February 1987 would be immaterial because the succeeding Ombudsman shall have a fresh seven-year term.^[26]

Respondents maintain that the present petition seeks to unseat respondents from public office; thus, the *Tañada* and *Imbong* rulings on which petitioner anchors his petition would not apply since these cases do not involve an attack on a public officer's title. Moreover, the present petition, which involves a collateral attack on the respondents' title, should be dismissed for being an improper remedy. Respondents emphasize that the proper remedy would have been a petition for *quo warranto* under Rule 66 of the Rules of Court to be initiated by the Solicitor General or public prosecutor when directed by the President of the Philippines.^[27]

ISSUES

I.

Whether Section 8(3) of R.A. No. 6770 is unconstitutional for being violative of Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine constitution and applicable jurisprudence.

II.

Whether the instant petition is the proper remedy.

III.

Whether this Honorable Court has jurisdiction.

OUR RULING

To properly resolve this petition, it would be better to dwell foremost on the issue of whether petitioner has availed of the proper vehicle to obtain the relief he pleads the Court.

A petition for certiorari is the proper remedy to challenge the constitutionality of Sec. 8(3) of R.A. No. 6770.

To justify his claim that a petition for certiorari and prohibition is the proper remedy to assail the validity of Sec. 8(3) of R.A. No. 6770, petitioner cites the ruling in *Tañada* and *Imbong* that "certiorari, prohibition, and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no plain, speedy, or