

FIRST DIVISION

[G.R. No. 154083, February 27, 2013]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. SAMSON DE LEON, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

A public official is guilty of grave misconduct when he neglects to act upon a complaint about a violation of the law he is enforcing. He may be suspended or dismissed from office for his first offense.

The Office of the Ombudsman seeks the review and reversal of the decision promulgated on January 30, 2002, whereby the Court of Appeals (CA) reduced to suspension for three months without pay for simple neglect of duty the penalty of suspension for one year without pay the Office of the Ombudsman had imposed on respondent Samson De Leon (De Leon) upon finding him guilty of neglect of duty.^[1]

Antecedents

Acting on a report of illegal quarrying being committed in the Municipality of Baras, Rizal, Graft Investigation Officer Dante D. Tornilla of the Fact Finding Investigation Bureau (FFIB) of the Office of the Ombudsman conducted an investigation pursuant to a mission order dated April 17, 1998.

On June 8, 1998, Tornilla filed his report to Ombudsman Aniano Desierto, through Assistant Ombudsman Abelardo L. Aportadera, Jr. and Director Agapito B. Rosales,^[2] confirming the illegal quarrying, to wit:

From the Municipal Hall, we proceeded to the quarrying area. Along our way, we have noticed a dump truck loaded with quarrying materials coming from the quarrying site. At this juncture, we signaled the truck driver to stop and then checked the driver's license, the truck registration while my other companions took pictures of the truck.

Verification of the above hauler truck with Plate No. TKU-121 (Isuzu) is owned and operated by Mayor Lito Tanjuatco of Tanay, Rizal. The truck driver, a certain Alfredo Casamayor Payot informed this Investigator that he is paying One hundred (P100.00) Pesos per truckload of quarrying materials to the quarry operator, a certain Mr. Javier.

x x x x

Jonathan Llagas, Municipal Planning and Development Coordinator denied

knowing Mr. Javier nor any quarrying activities going on in Baras, Rizal. When we informed him of our findings, he insisted that the quarrying operations is within the jurisdictional area of Tanay, Rizal. To cut short our discussion, we requested him to look and see the quarrying operations to determine the territorial boundaries, whether it is a part of Baras or Tanay and to submit his findings and action taken on our request. However, up to this writing, Jonathan Llagas failed to comply.

Per report received by the Office of the Assistant Ombudsman, EIO, stated that the quarrying activities in Baras, Rizal is still going on the following day, Saturday, April 18, 1998, after our visit on Friday, April 17, 1998, (p. 21, Records). With this information, this investigator proceeded back to the Baras, Rizal and conducted ocular inspection on May 8, 1998, before proceeding to the Laguna Lake Development Authority in Calauan, Laguna, in compliance with a Mission Order.

True enough, we were able to see for ourselves the continuing quarry operations and the quarried stones, soil and materials were dumped to a portion of the Laguna de Bay thereby reclaiming said portion allegedly to be developed as Resort and restaurant establishments.^[3]

Tornilla recommended that a preliminary investigation be conducted against Baras Municipal Mayor Roberto Ferrera, Baras Municipal Planning and Coordinator Jonathan Llagas, and property owner Venancio Javier for the probable violation of Section 3(e) of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*); and that administrative proceedings for violations of the Civil Service Rules be also undertaken.

In his report and recommendation dated July 13, 1998,^[4] DILG Resident Ombudsman Rudiger G. Falcis II sought the inclusion in the investigation of De Leon as the Provincial Environment and Natural Resources Officer (PENRO) and as concurrently the Chairman of the Provincial Mining Regulatory Board (PMRB) of Rizal.

After the preliminary investigation, Graft Investigation Officer II Edgardo V. Geraldez of the FFIB, Office of the Ombudsman, issued a decision dated April 29, 1999,^[5] dismissing the complaint against all the respondents for lack of substantial evidence. However, Assistant Ombudsman Aportadera, Jr. recommended the disapproval of the said decision. Ombudsman Desierto approved the recommendation of Assistant Ombudsman Aportadera, Jr.

The case was then referred to Atty. Sabino M. Cruz, Resident Ombudsman for the Department of Environment and Natural Resources (DENR), who ultimately submitted a memorandum on October 20, 1999^[6], duly approved by the Ombudsman, finding De Leon liable for gross neglect of duty, as follows:

WHEREFORE , it is respectfully recommended that:

x x x x

3) Respondent SAMSON G. DE LEON, Provincial Environment and Natural Resources Officer, be penalized with one (1) year suspension without pay, for Gross Neglect of Duty.^[7]

x x x x

On December 2, 1999, De Leon moved for Reconsideration,^[8] praying that the memorandum dated October 20, 1999 be set aside.

On January 31, 2000, the Ombudsman denied De Leon's motion for reconsideration.^[9]

On November 17, 1999, the DENR directed the Regional Executive Director of Region IV to effect De Leon's suspension.^[10]

Ruling of the CA

Aggrieved, De Leon appealed to the CA *via* a petition for review,^[11] seeking the reversal of the memorandum dated October 20, 1999 and the order dated January 31, 2000 of the Ombudsman. He averred as grounds of his appeal the following, namely:

- I. PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN DISREGARDING THE FINDINGS AND CONCLUSIONS EMBODIED IN THE DECISION DATED 29 APRIL 1999.
- II. PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN FINDING THE PETITIONER LIABLE FOR GROSS NEGLIGENCE OF DUTY.
- III. PUBLIC RESPONDENTS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN EFFECTING THE IMMEDIATE EXECUTION OF THE PENALTY OF SUSPENSION FOR A PERIOD OF ONE YEAR, ON THE PETITIONER.^[12]

The Office of the Solicitor General (OSG), representing the Office of the Ombudsman, submitted its comment on July 14, 2000,^[13] praying that De Leon's petition for review be dismissed for its lack of merit.

On January 30, 2002, the CA promulgated its assailed decision, *viz*:

WHEREFORE, premises considered, the Memorandum dated October 20, 1999 issued by the Office of the Ombudsman in OMB-ADM-0-98-0414 is hereby **MODIFIED** in that petitioner SAMSON DE LEON is hereby

penalized with THREE (3) MONTHS SUSPENSION without pay for SIMPLE NEGLIGENCE OF DUTY. Furthermore, it appearing that he has already served such penalty, petitioner is hereby ordered **REINSTATED** to his former position.

SO ORDERED.^[14]

The Office of the Ombudsman sought reconsideration,^[15] but the CA denied its motion on June 21, 2002.

Issues

Dissatisfied, the Office of the Ombudsman appeals, contending that:

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT CONSIDERING THAT:

I.

IT DECREED PRIVATE RESPONDENT LIABLE FOR SIMPLE NEGLIGENCE OF DUTY NOTWITHSTANDING THE UNDENIABLE FACT THAT HE FAILED TO PERFORM A TASK WHICH IS CLEARLY REPOSED ON HIM ON A REGULAR BASIS AND WHICH BREACH OF DUTY APPEARS FLAGRANT AND PALPABLE.

II.

IT SUBSTITUTED ITS FINDING TO THAT OF THE OMBUDSMAN WHEN NO COGENT REASON EXISTS THEREFOR.

III.

IT HELD THAT THE DECISION OF THE OMBUDSMAN IS NOT IMMEDIATELY EXECUTORY.^[16]

The pivotal issue is whether or not the CA committed reversible error in modifying the findings and reducing the penalty imposed by the Office of the Ombudsman.

Ruling

The petition for review on *certiorari* is meritorious.

In its assailed decision, the CA justified its modification of the decision of the Office of the Ombudsman in the following manner, to wit:

In the case at bench, petitioner, although guilty of neglect in the performance of his official duties, may only be held liable for Simple

Neglect of Duty. Petitioner's offense is not of such nature to be considered brazen, flagrant and palpable as would amount to a Gross Neglect of Duty. As pointed out by petitioner, as early as May 1997, upon the complaint of one Teresita G. Fabian, he ordered the inspection of the subject property located in Baras, Rizal. Relying on the report of Forrester Ferrer and Engineer Aide Velasquez, petitioner indorsed to the Provincial Mining Regulatory Board the former's findings that there were "extraction" in the area. The same findings were likewise forwarded to the Regional Executive Director of the DENR. A reinvestigation of the area was again conducted in July 1997 upon petitioner's instruction with the findings that there were no illegal quarrying activities being undertaken in the premises although a payloader and a back hoe can be seen in the area. Nonetheless, petitioner should not have merely relied on the reports and instead confirmed such findings by personally proceeding to the premises and verifying the findings, specially since the report cited the presence of large machineries, and that there was visible extraction in the area. While the Court is not inclined to conclude that there were indeed illegal quarrying activities in the area, nevertheless, prudence dictates that petitioner should have brought it upon himself to confirm the findings of the investigation. Moreover, in this day and age where environmental concerns are not to be trifled with, it devolves upon petitioner, as the Provincial Environment and Natural Resource Officer, to oversee the protection and preservation of the environment within his province. The Court cannot accept petitioner's passing the buck, so to speak, to the Regional Director of the DENR for to do so would be tolerating bureaucracy and inefficiency in government service.

Be that as it may, as the Court previously stated, petitioner's negligence does not amount to a gross neglect of duty. Given that his neglect is not that odious, petitioner should only be liable for Simple Neglect of Duty and should accordingly be meted out the penalty of three (3) months suspension without pay.^[17]

We disagree with the CA that De Leon was liable only for simple misconduct. An examination of the records persuasively shows that the Office of the Ombudsman correctly held De Leon guilty of gross neglect of duty, a grave offense punishable by dismissal even for the first offense.^[18]

A PENRO, who is appointed by the Secretary of the DENR, has the responsibility to implement DENR policies, programs and projects in the province of his assignment. De Leon was appointed as the PENRO of Rizal and concurrently the Chairman of the PMRB of Rizal. As such, his duties and responsibilities included the following:

1. Plans, organizes, directs and coordinates the overall office and field activities and operation of the province concerning environmental and natural resources programs/projects;
2. Supervises and enforces discipline to personnel pertaining to norm and conduct in the effective performance of tasks pursuant to manual operation guidelines and establish[ed] practices;