

SECOND DIVISION

[G.R. No. 173121, April 03, 2013]

**FRANKLIN ALEJANDRO, PETITIONER. VS. OFFICE OF THE
OMBUDSMAN FACT-FINDING AND INTELLIGENCE BUREAU,
REPRESENTED BY ATTY. MARIA OLIVIA ELENA A. ROXAS,
RESPONDENT.**

D E C I S I O N

BRION, J.:

We resolve the petition for review on *certiorari*,^[1] tiled by Franklin Alejandro (*petitioner*), assailing the February 21, 2006 decision^[2] and the June 15, 2006 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 88544. The CA dismissed for prematurity the petitioner's appeal on the August 20, 2004 decision^[4] of the Office of the Deputy Ombudsman in OMB-C-A-03-0310-I finding him administratively liable for grave misconduct.

The Factual Antecedents

On May 4, 2000, the Head of the Non-Revenue Water Reduction Department of the Manila Water Services, Inc. (MWSI) received a report from an Inspectorate and Special Projects team that the Mico Car Wash (MICO), owned by Alfredo Rap Alejandro, has been illegally opening an MWSI fire hydrant and using it to operate its car-wash business in Binondo, Manila.^[5]

On May 10, 2000, the MWSI, in coordination with the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG), conducted an anti-water pilferage operation against MICO.^[6]

During the anti-water pilferage operation, the PNP-CIDG discovered that MICO's car-wash boys indeed had been illegally getting water from an MWSI fire hydrant. The PNP-CIDG arrested the car-wash boys and confiscated the containers used in getting water. At this point, the petitioner, Alfredo's father and the Barangay Chairman or *punong barangay* of Barangay 293, Zone 28, Binondo, Manila, interfered with the PNP-CIDG's operation by ordering several men to unload the confiscated containers. This intervention caused further commotion and created an opportunity for the apprehended car-wash boys to escape.^[7]

On August 5, 2003, the respondent Office of the Ombudsman Fact- Finding and Intelligence Bureau, after conducting its initial investigation, filed with the Office of the Overall Deputy Ombudsman an administrative complaint against the petitioner for his blatant refusal to recognize a joint legitimate police activity, and for his unwarranted intervention.^[8]

In its decision^[9] dated August 20, 2004, the Office of the Deputy Ombudsman found the petitioner guilty of grave misconduct and ordered his dismissal from the service. The Deputy Ombudsman ruled that the petitioner cannot overextend his authority as Barangay Chairman and induce other people to disrespect proper authorities. The Deputy Ombudsman also added that the petitioner had tolerated the illegal acts of MICO's car-wash boys.^[10]

The petitioner filed a motion for reconsideration which the Office of the Deputy Ombudsman denied in its order^[11] of November 2, 2004.

The petitioner appealed to the CA via a petition for review under Rule 43 of the Rules of Court. In its decision^[12] dated February 21, 2006, the CA dismissed the petition for premature filing. The CA ruled that the petitioner failed to exhaust proper administrative remedies because he did not appeal the Deputy Ombudsman's decision to the Ombudsman.

The petitioner moved for the reconsideration of the CA ruling. On June 15, 2006, the CA denied the motion.^[13]

The Petition

The petitioner posits that the CA erred in dismissing his petition outright without considering Rule 43 of the Rules of Court and Administrative Order No. 07 (otherwise known as the Rules of Procedure of the Office of the Ombudsman),^[14] on the belief that the filing of a motion for reconsideration of the decision of the Office of the Overall Deputy Ombudsman can already be considered as an exhaustion of administrative remedies. The petitioner further argues that the Office of the Ombudsman has no jurisdiction to order his dismissal from the service since under Republic Act No. (RA) 7160 (otherwise known as the Local Government Code of 1991), an elective local official may be removed from office only by the order of a proper court. Finally, he posits that the penalty of dismissal from the service is not warranted under the available facts.

The Office of the Deputy Ombudsman, through the Office of the Solicitor General, pointed out in its Comment^[15] that the petitioner failed to exhaust administrative remedies since he did not appeal the decision of the Deputy Ombudsman to the Ombudsman. The Office of the Deputy Ombudsman maintained that under RA 6770^[16] (The Ombudsman Act of 1989), the Office of the Ombudsman has disciplinary authority over all elective and appointive officials. It also asserted that sufficient evidence exists to justify the petitioner's dismissal from the service.

As framed by the parties, the case poses the following issues:

I.

WHETHER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRES A REQUEST FOR RECONSIDERATION FROM THE OFFICE OF THE DEPUTY OMBUDSMAN TO THE OMBUDSMAN FOR THE

PURPOSE OF A RULE 43 REVIEW.

II.

WHETHER THE OFFICE OF THE OMBUDSMAN HAS JURISDICTION OVER ELECTIVE OFFICIALS AND HAS THE POWER TO ORDER THEIR DISMISSAL FROM THE SERVICE.

III.

WHETHER PETITIONER'S ACT CONSTITUTES GRAVE MISCONDUCT TO WARRANT HIS DISMISSAL.

The Court's Ruling.

We deny the petition for lack of merit.

Preliminary Issues

The CA committed no reversible error in affirming the findings and conclusions of the Deputy Ombudsman.

No further need exists to exhaust administrative remedies from the decision of the Deputy Ombudsman because he was acting in behalf of the Ombudsman

We disagree with the CA's application of the doctrine of exhaustion of administrative remedies which states that when there is "a procedure for administrative review, x x x appeal, or reconsideration, the courts x x x will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum."^[17]

Section 7, Rule III of Administrative Order No. 07, dated April 10, 1990, provides that:

Section 7. *FINALITY OF DECISION.* — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, **unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.** [italics supplied; emphasis and underscore ours]

Administrative Order No. 07 did not provide for another appeal from the decision of the Deputy Ombudsman to the Ombudsman. It simply requires that a motion for reconsideration or a petition for *certiorari* may be filed in all other cases where the penalty imposed is not one involving public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1) month salary. This post-judgment remedy is merely an opportunity for the Office of the Deputy Ombudsman, or the Office of the Ombudsman, to correct itself in certain cases. To our mind, the petitioner has fully exhausted all administrative remedies when he filed his motion for reconsideration on the decision of the Deputy Ombudsman. There is no further need to review the case at the administrative level since the Deputy Ombudsman has already acted on the case and **he was acting for and in behalf of the Office of the Ombudsman.**

The Ombudsman has concurrent jurisdiction over administrative cases which are within the jurisdiction of the regular courts or administrative agencies

The Office of the Ombudsman was created by no less than the Constitution.^[18] It is tasked to exercise disciplinary authority over **all** elective and appointive officials, save only for impeachable officers. While Section 21 of The Ombudsman Act^[19] and the Local Government Code both provide for the procedure to discipline elective officials, the seeming conflicts between the two laws have been resolved in cases decided by this Court.^[20]

In *Hagad v. Gozo-Dadole*,^[21] we pointed out that “there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent x x x as to compel us to only uphold one and strike down the other.” The two laws may be reconciled by understanding the **primary** jurisdiction and **concurrent** jurisdiction of the Office of the Ombudsman.

The Ombudsman has **primary** jurisdiction to investigate any act or omission of a public officer or employee who is under the jurisdiction of the *Sandiganbayan*. RA 6770 provides:

Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction,** it may take over, at any stage, from any investigatory agency of

Government, the investigation of such cases[.] [italics supplied; emphasis and underscore ours]

The *Sandiganbayan*'s jurisdiction extends only to public officials occupying positions corresponding to salary grade 27 and higher.^[22] Consequently, as we held in *Office of the Ombudsman v. Rodriguez*,^[23] any act or omission of a public officer or employee occupying a salary grade lower than 27 is within the **concurrent** jurisdiction of the Ombudsman and of the regular courts or other investigative agencies.^[24]

In administrative cases involving the **concurrent** jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising **concurrent** jurisdiction.^[25] In this case, the petitioner is a Barangay Chairman, occupying a position corresponding to salary grade 14.^[26] Under RA 7160, the *sangguniang panlungsod* or *sangguniang bayan* has disciplinary authority over any elective *barangay* official, as follows:

Section 61. *Form and Filing of Administrative Complaints.* – A verified complaint against any erring local elective official shall be prepared as follows:

x x x x

(c) A complaint against any elective barangay official shall be filed before the *sangguniang panlungsod* or *sangguniang bayan* concerned whose decision shall be final and executory. [italics supplied]

Since the complaint against the petitioner was **initially filed** with the Office of the Ombudsman, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* whose exercise of jurisdiction is **concurrent**.

The Ombudsman has the power to impose administrative sanctions

Section 15 of RA 6770^[27] reveals the manifest intent of the lawmakers to give the Office of the Ombudsman full administrative **disciplinary** authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty.^[28]

These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions; its power is not merely recommendatory.