

## THIRD DIVISION

[ G.R. Nos. 170500 & 170510-11, June 01, 2011 ]

**MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA AND ERNESTO H. NARCISO, JR., PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, NATIONAL TRANSMISSION COMMISSION (TRANSCO), ALIPIO NOOL, FERMIN P. LANAG, SR., EUSEBIO B. COLLADO, JOSE S. TEJANO, NECIMIO A. ABUZO, ELISEO P. MARTINEZ AND PERFECTO LAZARO, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

Petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr., pray in their present petition for certiorari that the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 90280-82 be set aside supposedly for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. Petitioners raise the sole issue of whether administrative decisions of the Office of the Ombudsman imposing the penalties of dismissal and one-year suspension from office are immediately executory pending appeal.

The facts are as follows.

On September 30, 2002, the Office of the Ombudsman promulgated its Decisions<sup>[2]</sup> in OMB-L-A-02-0068-B (involving the charge of dishonesty and misconduct), OMB-L-A-02-0069-B (involving the charge of dishonesty and acts inimical to public service), and OMB-L-A-02-0070-B (likewise involving the charge of dishonesty and acts inimical to public service). In OMB-L-A-02-0068-B and OMB-L-A-02-0070-B, the Ombudsman found petitioners Ganaden, Bautista and Narciso liable for dishonesty and imposed upon them the penalty of one-year suspension while in OMB-L-A-02-0069-B, the Ombudsman found petitioners Ganaden and Mina liable for dishonesty and imposed on them the penalty of one-year suspension.

Petitioners filed motions for reconsideration, but the Office of the Ombudsman, in three Orders<sup>[3]</sup> all dated April 8, 2005, not only denied their motions for reconsideration, but it also modified the penalties imposed in OMB-L-A-02-0069-B and OMB-L-A-02-0070-B. Instead of the penalty of one-year suspension it originally imposed, the Ombudsman increased the penalty to dismissal from the service as to petitioner Ganaden in OMB-L-A-02-0069-B and as to petitioners Ganaden, Bautista and Narciso in OMB-L-A-02-0070-B. The penalty of one-year suspension as to petitioner Mina was, however, maintained.

Aggrieved, petitioners filed separate petitions for review before the CA to question the three Decisions, as well as the Orders denying their motions for reconsideration. On September 8, 2005, the CA ordered the consolidation of all

three petitions.<sup>[4]</sup>

Meanwhile, on February 28, 2003 petitioners availed of the early retirement program from the NPC. At the time the three Decisions and three orders of the Ombudsman came to their attention, they were already employed at the National Transmission Commission (TRANSCO).

Hence, on September 19, 2005, the Office of the Ombudsman issued a 1<sup>st</sup> Indorsement<sup>[5]</sup> referring to respondent Alan T. Ortiz, President and Chief Executive Officer of TRANSCO, the three Decisions dated September 30, 2002 as well as the three Orders dated April 8, 2005. In the 1<sup>st</sup> Indorsement, the Office of the Ombudsman requested from TRANSCO the issuance of Orders for Dismissal from the service of petitioners Ganaden, Bautista and Narciso and the issuance of an Order of Suspension from Service for one-year against petitioner Mina.

In compliance with the aforesaid 1<sup>st</sup> Indorsement, respondent Ortiz issued Orders of Dismissal<sup>[6]</sup> against petitioners Ganaden, Bautista, and Narciso, and an Order of Suspension<sup>[7]</sup> for one-year against petitioner Mina on October 12, 2005.

Aggrieved again, petitioners filed with the CA a verified petition<sup>[8]</sup> to cite respondent Ortiz in contempt for issuing the orders of dismissal and suspension. Petitioners claimed that by virtue of their appeal to the CA and a Resolution<sup>[9]</sup> of the CA granting their verified motion to amend their petition to include TRANSCO as public respondent, the execution of the three Decisions, as modified by the three Orders of the Ombudsman, was automatically stayed even without a restraining order. Thus, respondent Ortiz's issuance of orders of dismissal and suspension was an outright violation of the authority of the CA amounting to contempt.

On October 28, 2005, the CA issued a Resolution<sup>[10]</sup> denying petitioners' motion to cite respondent Ortiz in contempt of court. The CA clarified that the October 11, 2005 Resolution allowing the inclusion of TRANSCO as public respondent did not carry with it the relief of automatic stay of execution. The petitioners filed a motion for reconsideration, but their motion was denied by the CA in a Resolution dated November 23, 2005.<sup>[11]</sup>

Thus, petitioners now come to this Court via a petition for certiorari to annul the October 11, 2005, October 28, 2005 and November 23, 2005 Resolutions of the CA and to enjoin the enforcement of the 1<sup>st</sup> Indorsement of the Office of the Ombudsman. According to them, jurisprudence provides that the execution of a decision of the Office of the Ombudsman is automatically stayed upon filing of an appeal and is stayed throughout the pendency of the appeal.

We dismiss the petition for utter lack of merit.

Petitioners rely heavily on the cases of *Lopez v. Court of Appeals*<sup>[12]</sup> and *Lapid v. Court of Appeals*<sup>[13]</sup> where the Court held, in essence, that a decision of the Office of the Ombudsman in administrative cases is stayed as a matter of right during the pendency of an appeal. The *Lapid* and *Lopez* cases, however, were decided in 2000 and 2002 respectively. Since then, there have been amendments to the Rules of