670 Phil. 169

SECOND DIVISION

[G.R. No. 164679, July 27, 2011]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ULDARICO P. ANDUTAN, JR., RESPONDENT.

D E C I S I O N

BRION, J.:

Through a petition for review on *certiorari*, [1] the petitioner Office of the Ombudsman (*Ombudsman*) seeks the reversal of the decision [2] of the Court of Appeals (*CA*), dated July 28, 2004, in "*Uldarico P. Andutan, Jr. v. Office of the Ombudsman and Fact Finding and Intelligence Bureau* (*FFIB*), etc.," docketed as CA-G.R. SP No. 68893. The assailed decision annulled and set aside the decision of the Ombudsman dated July 30, 2001, [3] finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty.

THE FACTUAL ANTECEDENTS

Andutan was formerly the Deputy Director of the One-Stop Shop Tax Credit and Duty Drawback Center of the Department of Finance (*DOF*). On June 30, 1998, then Executive Secretary Ronaldo Zamora issued a Memorandum directing all non-career officials or those occupying political positions to vacate their positions effective July 1, 1998. [4] On July 1, 1998, pursuant to the Memorandum, Andutan resigned from the DOF. [5]

On September 1, 1999, Andutan, together with Antonio P. Belicena, former Undersecretary, DOF; Rowena P. Malonzo, Tax Specialist I, DOF; Benjamin O. Yao, Chairman and Executive Officer, Steel Asia Manufacturing Corporation (*Steel Asia*); Augustus S. Lapid, Vice-President, Steel Asia; Antonio M. Lorenzana, President and Chief Operating Officer, Steel Asia; and Eulogio L. Reyes, General Manager, Devmark Textiles Ind. Inc., was criminally charged by the Fact Finding and Intelligence Bureau (*FFIB*) of the Ombudsman with Estafa through Falsification of Public Documents, and violations of Section 3(a), (e) and (j) of Republic Act No. (*R.A.*) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. [6] As government employees, Andutan, Belicena and Malonzo were likewise administratively charged of Grave Misconduct, Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service. [7]

The criminal and administrative charges arose from anomalies in the illegal transfer of Tax Credit Certificates (*TCCs*) to Steel Asia, among others. [8]

During the investigation, the FFIB found that Steel Asia fraudulently obtained *TCCs* worth Two Hundred Forty-Two Million, Four Hundred Thirty-Three Thousand, Five Hundred Thirty-Four Pesos (P242,433,534.00). [9] The FFIB concluded that

Belicena, Malonzo and Andutan - in their respective capacities - irregularly approved the "issuance of the TCCs to several garment/textile companies and allowing their subsequent illegal transfer" to Steel Asia. [10]

On November 11, 1999, the Ombudsman ordered the respondents therein (respondents) to submit their counter-affidavits. Only Malonzo complied with the order, prompting the Ombudsman to set a Preliminary Conference on March 13, 2000.

Upon the respondents' failure to appear at the March 20, 2000 hearing, the Ombudsman deemed the case submitted for resolution.

On July 30, 2001, the Ombudsman found the respondents guilty of Gross Neglect of Duty. [11] Having been separated from the service, Andutan was imposed the penalty of forfeiture of all leaves, retirement and other benefits and privileges, and perpetual disqualification from reinstatement and/or reemployment in any branch or instrumentality of the government, including government owned and controlled agencies or corporations. [12]

After failing to obtain a reconsideration of the decision, [13] Andutan filed a petition for review on *certiorari* before the CA.

On July 28, 2004, [14] the CA annulled and set aside the decision of the Ombudsman, ruling that the latter "should not have considered the administrative complaints" because: *first,* Section 20 of R.A. 6770 provides that the Ombudsman "may not conduct the necessary investigation of any administrative act or omission complained of if it believes that x x x [t]he complaint was filed after one year from the occurrence of the act or omission complained of"; [15] and *second*, the administrative case was filed after Andutan's forced resignation. [16]

THE PETITIONER'S ARGUMENTS

In this petition for review on *certiorari*, the Ombudsman asks the Court to overturn the decision of the CA. It submits, *first*, that contrary to the CA's findings, administrative offenses do not prescribe after one year from their commission, [17] and *second*, that in cases of "capital" administrative offenses, resignation or optional retirement cannot render administrative proceedings moot and academic, since accessory penalties such as perpetual disqualification and the forfeiture of retirement benefits may still be imposed. [18]

The Ombudsman argues that Section 20 of R.A. 6770 is not mandatory. Consistent with existing jurisprudence, the use of the word "may" indicates that Section 20 is merely directory or permissive. [19] Thus, it is not ministerial upon it to dismiss the administrative complaint, as long as any of the circumstances under Section 20 is present. [20] In any case, the Ombudsman urges the Court to examine its mandate under Section 13, Article XI of the 1987 Constitution, and hold that an imposition of a one (1) year prescriptive period on the filing of cases unconstitutionally restricts its mandate. [21]

Further, the Ombudsman submits that Andutan's resignation from office does not render moot the administrative proceedings lodged against him, even after his resignation. Relying on Section VI(1) of Civil Service Commission (*CSC*) Memorandum Circular No. 38, [22] the Ombudsman argues that "[a]s long as the breach of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication." [23] It is irrelevant that Andutan had already resigned from office when the administrative case was filed since he was charged for "acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public." [24] Furthermore, even if Andutan had already resigned, there is a need to "determine whether or not there remains penalties capable of imposition, like bar from reentering the (*sic*) public service and forfeiture of benefits." [25] Finally, the Ombudsman reiterates that its findings against Andutan are supported by substantial evidence.

THE RESPONDENT'S ARGUMENTS

Andutan raises three (3) counterarguments to the Ombudsman's petition.

First, Andutan submits that the CA did not consider Section 20(5) of R.A. 6770 as a prescriptive period; rather, the CA merely held that the Ombudsman should not have considered the administrative complaint. According to Andutan, Section 20(5) "does not purport to impose a prescriptive period x x x but simply prohibits the Office of the Ombudsman from conducting an investigation where the complaint [was] filed more than one (1) year from the occurrence of the act or omission complained of." [26] Andutan believes that the Ombudsman should have referred the complaint to another government agency. [27] Further, Andutan disagrees with the Ombudsman's interpretation of Section 20(5). Andutan suggests that the phrase "may not conduct the necessary investigation" means that the Ombudsman is prohibited to act on cases that fall under those enumerated in Section 20(5). [28]

Second, Andutan reiterates that the administrative case against him was moot because he was no longer in the public service at the time the case was commenced. [29] According to Andutan, *Atty. Perez v. Judge Abiera* [30] and similar cases cited by the Ombudsman do not apply since the administrative investigations against the respondents in those cases were commenced prior to their resignation. Here, Andutan urges the Court to rule otherwise since unlike the cases cited, he had already resigned before the administrative case was initiated. He further notes that his resignation from office cannot be characterized as "preemptive, i.e. made under an atmosphere of fear for the imminence of formal charges" [31] because it was done pursuant to the Memorandum issued by then Executive Secretary Ronaldo Zamora.

Having established the propriety of his resignation, Andutan asks the Court to uphold the mootness of the administrative case against him since the cardinal issue in administrative cases is the "officer's fitness to remain in office, the principal penalty imposable being either suspension or removal." [32] The Ombudsman's opinion - that accessory penalties may still be imposed - is untenable since it is a fundamental legal principle that "accessory follows the principal, and the former cannot exist independently of the latter." [33]

Third, the Ombudsman's findings were void because procedural and substantive due process were not observed. Likewise, Andutan submits that the Ombudsman's findings lacked legal and factual bases.

ISSUES

Based on the submissions made, we see the following as the issues for our resolution:

I. Does Section 20(5) of R.A. 6770 prohibit the Ombudsman from conducting an administrative investigation a year after the act was committed?

II. Does Andutan's resignation render moot the administrative case filed against him?

III. Assuming that the administrative case is not moot, are the Ombudsman's findings supported by substantial evidence?

THE COURT'S RULING

We rule to deny the petition.

The provisions of Section 20(5) are merely directory; the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed.

The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence. [34] In *Office of the Ombudsman v. De Sahagun*, [35] the Court, speaking through Justice Austria-Martinez, held:

> [W]ell-entrenched is the rule that administrative offenses do not prescribe [*Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218;*Melchor v. Gironella,* G.R. No. 151138, February 16, 2005, 451 SCRA 476;*Heck v. Judge Santos*, 467 Phil. 798, 824 (2004);*Floria v. Sunga,*420 Phil. 637, 648-649 (2001)]. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [*Melchor v. Gironella,* G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481;*Remolona v. Civil Service Commission,*414 Phil. 590, 601 (2001)].
>
> Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:
>
> > SEC. 20.*Exceptions*. - The Office of the Ombudsman**may**not conduct the necessary investigation of any administrative act

> or omission complained of if it believes that:
>
> x x x x
>
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In*Melchor v. Gironella* [G.R. No. 151138, February 16, 2005, 451 SCRA 476]*,* the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the*Ombudsman*on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion [*Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481;*Jaramilla v. Comelec*, 460 Phil. 507, 514 (2003)]. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation [*Melchor v. Gironella,* G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481;*National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910, 918 (2000)].

In *Filipino v. Macabuhay* [G.R. No. 158960, November 24, 2006, 508 SCRA 50],the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

> Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.
>
> The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore,**it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.** (Emphasis supplied)

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is