

FIRST DIVISION

[G.R. No. 172553, December 14, 2011]

OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, HONORABLE VICTOR C. FERNANDEZ, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR LUZON, AND THE GENERAL INVESTIGATION BUREAU-A, REPRESENTED BY MARIA OLIVIA ELENA A. ROXAS, PETITIONERS, VS. JESUS D. FRANCISCO, SR., RESPONDENT.

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision^[2] dated December 23, 2005 and the Resolution^[3] dated May 3, 2006 of the Court of Appeals in CA-G.R. SP No. 90567. The decision of the appellate court reversed the Order^[4] dated May 30, 2005 of the Office of the Deputy Ombudsman for Luzon in Administrative Case No. OMB-C-A-05-0032-A, while its resolution denied the motion for reconsideration of herein petitioners.

We quote hereunder the preliminary facts of the case, as succinctly stated in the Decision of the Court of Appeals dated December 23, 2005:

Sometime in November 1998, Ligorio Naval filed a complaint before the Office of the Ombudsman, accusing Jessie Castillo, the mayor of the Municipality of Bacoor, Cavite, among others, of violating Section[s] 3(e), (g) and (j) of the Anti-Graft and Corrupt Practices Act, in relation to the award of the construction of the municipal building of Bacoor, Cavite, worth more than 9 Million Pesos, to St. Martha's Trading and General Contractors. Naval alleged that the latter was not qualified for the award; its license had expired at the time the contract was signed, and was classified as belonging to Category "C," hence, may only undertake projects worth 3 Million Pesos or lower. The complaint was docketed as OMB-1-98-2365.

Castillo submitted certifications to the effect that the contractor was not a holder of an expired license, and was classified as a Category "A" contractor.

On 29 April 1999, the Ombudsman ruled that Naval's allegation of lack of qualification of the contractor has been satisfactorily controverted by Castillo, and dismissed the complaint. Naval moved for reconsideration, which was denied on 27 August 1999.

In a series of communications with Deputy Ombudsman Margarito P. Gervacio, Jr., Naval insinuated that his evidence [was] not considered and

the complaint was dismissed in exchange for millions of pesos. Ombudsman Gervacio relayed the said allegations to Ombudsman Aniano Desierto, who ordered a reevaluation of the 29 April 1999 decision.

In a Memorandum dated 30 May 2000, Graft Investigation and Prosecution Officer II, Julieta Calderon, recommended that OMB-1-98-2365 be revived, re-docketed, and be subjected to a further preliminary investigation, with the inclusion of additional respondents. On 30 September 2000, Ombudsman Gervacio approved the said memorandum. Thereafter, the Fact-Finding and Intelligence Bureau of the Ombudsman executed a complaint-affidavit for gross negligence and conduct prejudicial to the interest of the service, against 5 municipal officers, including [Jesus Francisco], which was docketed as OMB-C-A-05-0032-A.^[5] (Emphases ours.)

The respondents specifically named in Administrative Case No. OMB-C-A-05-0032-A were Saturnino F. Enriquez, Salome O. Esagunde, Federico Aquino, Eleuterio Ulatan and herein respondent Jesus D. Francisco, Sr.,^[6] all of whom were members of the Prequalification, Bids and Awards Committee (PBAC) of the Municipality of Bacoor, Cavite. Francisco was then the Municipal Planning and Development Officer of the Municipality of Bacoor, Cavite.

The complaint stated, among others, that when the Municipality of Bacoor conducted its prequalification of documents and bidding, St. Martha's Trading and General Contractor's license was not renewed. Furthermore, the said contractor was allegedly not qualified to undertake the construction of the P9.5 million project as it can only enter into a contract for a project that is worth P3 million or less. The complaint likewise sought to place the aforementioned individuals under preventive suspension pending the investigation of the case.^[7]

On May 30, 2005, Director Joaquin F. Salazar of the Office of the Deputy Ombudsman for Luzon issued an Order^[8] preventively suspending the above PBAC members. The same was approved by Deputy Ombudsman for Luzon Victor C. Fernandez on May 31, 2005.^[9] The Order decreed thus:

WHEREFORE, in accordance with Section 24, R.A. No. 6770 and Section 9, Rule III of Administrative Order No. 07, respondents Saturnino F. Enriquez, Salome Esagunde, Jesus D. Francisco, Sr., Federico Aquino, and Eleuterio Ulatan, all municipal employees of Bacoor, Cavite are hereby PREVENTIVELY SUSPENDED during the pendency of this case until its termination, but not to exceed the total period of six (6) months without pay. In case of delay in the disposition of the case due to the fault, negligence or any cause attributable to the respondents, the period of such delay shall not be counted in computing the period of the preventive suspension.

In accordance with Section 27, par. (1), R.A. No. 6770, this Order is immediately executory. Notwithstanding any motion, appeal or petition that may be filed by the respondents seeking relief from this Order,

unless otherwise ordered by this Office or by any court of competent jurisdiction, the implementation of this Order shall not be interrupted within the period prescribed.^[10] (Emphasis ours.)

Francisco received the above Order on July 1, 2005.^[11] Consequently, on July 22, 2005, he filed before the Court of Appeals a Petition for *Certiorari* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction. He argued that the Office of the Deputy Ombudsman for Luzon committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered his preventive suspension since the transactions questioned in the case had already been passed upon in OMB-1-98-2365 entitled, *Naval v. Castillo*, which was dismissed for lack of merit. Furthermore, Francisco averred that the imposition of preventive suspension was not justified given that: (1) he was charged with gross negligence and conduct prejudicial to the interest of the service, not dishonesty, oppression, grave misconduct or neglect in the performance of duty, as required by law; (2) it was not shown that he caused prejudice to the government that would warrant his removal from office; and (3) his stay in office would not prejudice the case filed against him as the documentary evidence therein were not in his possession.^[12]

On December 2, 2005, Francisco moved for the early resolution of his petition, reiterating his prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

On December 23, 2005, the Court of Appeals rendered its assailed Decision, finding in favor of Francisco. Thus, said the Court of Appeals:

The petition has merit.

Francisco argues that while he may not have been charged in OMB-1-98-2365, which was dismissed, still the transaction involved therein is the same transaction for which he was charged in OMB-C-A-05-0032-A, thus barred under the principle of *res judicata*.

We agree. The respondents in OMB-C-A-05-0032-A were administratively charged for gross negligence and conduct prejudicial to the interest of the service *when they awarded the contract to construct their municipal hall to St. Martha's Contractor, allegedly an unqualified contractor, because both at the time of the bidding and at the time of contract signing, the contractor had an expired license. Moreover, St. Martha's Contractor belongs to "small B" category, which means it cannot enter into a contract for a project worth 3 Million Pesos or less. Therefore, the respondents should have disqualified the said contractor.*

The said allegation was the exact matter decided by the Ombudsman in OMB-1-98-2365, to wit:

"x x x x

Contrary to the allegation of the complainant that the

awardee, St. Martha's Trading and General Contractor was not qualified to undertake the project being classified under "Category C", respondent submitted a xerox copy of a letter dated 05 January 1999 of Jaime Martinez, OIC-Engineer DPWH, Trece Martirez City stating that St. Martha's Trading & General Contractor is classified under "Category A". He likewise submitted a certification dated 06 April 1999 issued by Carolina C. Saunar, Supervising TIDS of the Philippine Contractors Accreditation Board to the effect that St. Martha's Trading & General Contractor is a holder of Contractor's License No. 24109 originally issued on 18 December 1997 with Category "A" and classification of General Building and General Engineering. x x x.

After a thorough study and evaluation of the records of the case as well as after the conduct of an actual ocular investigation, this Office finds the defenses interposed by the respondent to be meritorious."

A judgment bars a subsequent action, with the concurrence of the following requirements: (a) the first judgment must be a final one; (b) the court rendering the judgment must have jurisdiction over the subject matter and over the parties; (c) it must be a judgment or order on the merits; and (d) there must be between the two cases, identity of parties, identity of subject matter and identity of action.

The order of dismissal in OMB-1-98-2365 should operate as a bar to OMB-C-A-05-0032-A. There is no question that the order dismissing the charges in OMB-1-98-2365, is a judgment on the merits, by a court having jurisdiction over the subject matter and over the parties, and had attained finality. There is, between OMB-1-98-2365 and OMB-C-A-05-0032-A, an identity of parties, an identity of subject matter and an identity of action. While it may be argued that there was no absolute identity of parties, a shared identity of interest by the parties in both cases is sufficient to invoke the coverage of the principle. The substitution of parties will not remove the case from the doctrine of *res judicata*; otherwise, the parties could renew the litigation by the simple expedient of substitution of parties.

WHEREFORE, the petition is hereby **GRANTED**. The 30 May 2005 order of the Office of the Ombudsman in OMB-C-A-05-0032-A is hereby **SET ASIDE**.^[13]

On January 18, 2006, the Office of the Deputy Ombudsman for Luzon filed a Motion for Reconsideration^[14] on the above decision, but the same was denied in the assailed Resolution dated May 3, 2006.

On June 26, 2006, the Office of the Deputy Ombudsman for Luzon and the General Investigation Bureau-A of the said office, through the OSG (petitioners), filed the instant petition, praying for the reversal of the adverse rulings of the Court of