

EN BANC

[G.R. No. 166658, April 30, 2008]

EUSTAQUIO B. CESA PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND COMMISSION ON AUDIT-REGION VII, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

This petition for review on certiorari assails the December 20, 2004 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 77359 affirming with modification the Decision^[2] dated August 16, 2001 and Order^[3] dated October 21, 2002 of the Office of the Ombudsman-Visayas in OMB-VIS-ADM-98-0150. The Office of the Ombudsman suspended Cebu City Treasurer Eustaquio B. Cesa for six months without pay for tolerating illegal practices relative to the granting of cash advances to paymasters.

Here are the facts, culled from the records:

On March 5, 1998, government auditors conducted a surprise audit at the Cash Division of Cebu City Hall. Getting wind of the surprise audit, paymaster Rosalina G. Badana hurriedly left her office and, since then, never returned. From September 20, 1995 to March 5, 1998, Badana had cash advances of more than P216 million fraudulently incurred by presenting cash items such as payrolls and vouchers already previously credited to her account to cover the balance or shortage during cash counts. Her unliquidated cash advances were more than P18 million. The government auditors discovered that Badana had an average monthly cash advance of P7.6 million in excess of her monthly payroll of P5.7 million, and was granted more advances without liquidating previous advances.

On March 13, 1998, then City Mayor Alvin B. Garcia administratively charged Badana before the Office of the Ombudsman-Visayas (Ombudsman).^[4]

On April 3, 1998, the Ombudsman impleaded Cesa and other city officials.^[5] Affirming the audit team's report, graft investigators concluded that the city officials' failure to observe relevant laws^[6] and rules^[7] governing the grant, utilization and liquidation of cash advances facilitated, promoted, and encouraged the defalcation of public funds. The irregularities could not have happened without the officials' acts and omissions, as they failed to exercise the diligence of a good father of a family to prevent losses of funds and efficiently supervise the paymasters.^[8]

Cesa argued before the Ombudsman that he could not grant cash advances as the authority belongs to a higher officer and that he signed the cash advance vouchers not as approving officer but because his signature was required therein. He further

argued that Badana's cash advances were legal and necessary for city workers' salaries and that the matter could be resolved by the city accountant. He also emphasized that since he had under him five department heads, he was not expected to review the work of some 370 workers under them, by virtue of division of labor and delegation of functions.^[9]

On August 16, 2001, the Ombudsman found Cesa and the other city officials guilty of neglect of duty and meted to them the penalty of six months suspension without pay.^[10] Cesa filed a motion for reconsideration but it was denied.

Before the Court of Appeals, Cesa argued that there was lack of due process because the complaint filed against him was not verified. He also argued in his petition for review^[11] that the Ombudsman had no power to directly suspend him and that there was no legal and factual basis to suspend him.

On December 20, 2004, the Court of Appeals upheld the findings and conclusions of the Ombudsman, but declared that the imposable penalties therein were merely recommendatory and should be directed to the proper officer or authority concerned for enforcement. The dispositive portion of the decision states:

WHEREFORE, the instant Petition is partly GRANTED in that the assailed Decision and Order of the Ombudsman (Visayas), in administrative case OMB-VIS-ADM-98-0150, which are hereby AFFIRMED, but MODIFIED in so far as the penalties imposable therein are hereby DECLARED only recommendatory and should be directed to the proper officer or authority concerned, in the City of Cebu, for their enforcement and implementation. No pronouncement as to costs.

SO ORDERED.^[12]

The Court of Appeals dismissed Cesa's gripe that there was lack of due process as the Ombudsman can undertake criminal or administrative investigations *sans* any complaint. It ruled that procedural infirmities, if any, were cured when petitioner was present during the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration. It found Cesa negligent for tolerating the illegal practices on cash advances because he approved the paymasters' requests for cash advances based on pieces of paper without any particulars and without diligent supervision over them. The Court of Appeals ruled that the *Arias* ruling^[13] where this Court held that heads of offices have to rely to a reasonable extent on their subordinates, is inapplicable to this case for it had not been alleged that Cesa conspired with Badana. What was proven was that his negligence in carrying out his duties as city treasurer contributed to giving Badana the opportunity to malverse more than P18 million in public funds.

Hence, this petition.

On January 21, 2005, the Ombudsman filed a Motion for Partial Reconsideration^[14] of the Court of Appeals' ruling that it is precluded from enforcing administrative sanctions. The court deferred its ruling on the motion because of this petition.

Before us, Cesa submits the following issues for our resolution:

I.

WHETHER, AS The court of appeals ruled IN ITS ASSAILED DECISION DATED DECemBER 20, 2004, the power of the ombudsman to *motu proprio* conduct investigations as provided in section 13, article xi of the 1987 constitution and IN section 15 ^[1] of the ombudsman act (RA 6770) effectively dispenses with PETITIONER'S fundamental right of due process and to be sufficiently informed of the cause and nature of the accusation against him.

II.

WHETHER, IN THE LIGHT OF HIS POWER TO *MOTU PROPRIO* CONDUCT INVESTIGATIONS AS PROVIDED IN SECTION 13, ARTICLE XI OF THE 1987 CONSTITUTION AND IN SECTION 15^[1] OF THE OMBUDSMAN ACT (RA 6770), The OMBUDSMAN CAN VALIDLY REQUIRE A RESPONDENT IN AN ADMINISTRATIVE CASE TO SUBMIT COUNTER-AFFIDAVITS OR COUNTERVAILING EVIDENCE WITHOUT FURNISHING HIM A COPY OF THE COMPLAINT AND THE AFFIDAVITS OR EVIDENCE THAT NEEDED TO BE COUNTERED.

III.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE RIGHT TO DUE PROCESS IN AN ADMINISTRATIVE CASE IS LIMITED to the opportunity to air one's side AND to seek reconsideration or includes the right to be sufficiently informed of the nature and cause of accusation against him and the right to be peNalized only on the basis of the original act complained of.

IV.

whether, as the court of appeals ruled in its assailed decision dated december 20, 2004, the ombudsman accorded petitioner due process when the ombudsman penalized him for negligence when the complaint against badana did not include an accusation for negligence.

V.

whether, as the court of appeals ruled in its assailed decision dated december 20, 2004, the doctrine that a head of office has the right to rely on his subordinates and to presume regularity in the subordinate's performance of official functions applies only in criminal cases involving conspiracy and not in cases of alleged negligence.^[15]

In gist, the issues to be resolved are (1) Was Cesa's right to due process violated when he was suspended for six months as city treasurer? and (2) Did the Court of Appeals err in ruling that the *Arias* ruling is inapplicable to this case?

Cesa stresses that the original administrative complaint, backed by his own affidavit,

[16] was filed only against Badana. He was impleaded based only on an order which did not specify any charges, required to submit his counter-affidavit when there was no affidavit, formal charge or complaint against him, and the evidence against him was not divulged to him. These circumstances allegedly violate the Ombudsman Rules of Procedure in administrative cases. He argues that since his employment is his livelihood, which partakes of a constitutionally protected property right, he can only be penalized based on specific acts charged, and the Ombudsman is duty-bound to inform him of the cause or nature of the specific accusation against him.

Cesa also argues that since the accusations and evidence kept on evolving and mutating, he was not properly accorded his right to be informed. He points out that even after a formal offer of exhibits by the original complainant and after the Ombudsman resolved the criminal aspect of the case, the Ombudsman continued to receive new accusations and even required him to submit countervailing evidence, violating his constitutional right to be informed of the nature and cause of the accusation against him and to be informed of the specific acts or omissions upon which he was sought to be penalized.

Invoking *Arias*, Cesa insists he could rely on his subordinate, the head of the cash division, who performed her functions well, and that no inference of negligence can be drawn from the act of relying on subordinates as government operates by division of labor and delegation of functions.

The Ombudsman and the Commission on Audit counter that Cesa was accorded due process as he was amply heard in the proceedings; administrative due process simply means reasonable opportunity to present a case, not a trial-type proceeding; the evidence overwhelmingly established Cesa's guilt for neglect; and findings of fact of the Ombudsman deserve great weight and must be accorded full respect and credit.[17]

After carefully considering the parties' submissions, we find no cogent reason to reverse the appellate court's ruling.

On the first issue, *Ang Tibay v. The Court of Industrial Relations*[18] outlines the basic due process requirements in administrative cases. Foremost are the rights to a hearing and submit evidence in support of one's case.[19] Its essence: opportunity to explain one's side or seek a reconsideration of the ruling.[20]

The standard of due process of administrative tribunals allows certain latitude as long as the element of fairness is practiced. There is no denial of due process if records show that hearings were held with prior notice to adverse parties. Even without notice, there is no denial of procedural due process if the parties were given the opportunity to be heard.[21] Due process in administrative proceedings simply means an opportunity to seek a reconsideration of the order complained of and it cannot be fully equated with that in strict jurisprudential sense. A respondent is not entitled to be informed of the preliminary findings and recommendations of the investigating agency; he is entitled only to a fair opportunity to be heard and to a decision based on substantial evidence. No more, no less.[22] In fine, Cesa had no right to be notified of the auditing team's preliminary report while graft investigators were reviewing it. His contention that he was required to file a counter-affidavit *sans*