

THIRD DIVISION

[G.R. No. 175201, April 23, 2008]

**HONORABLE OMBUDSMAN SIMEON V. MARCELO, PETITIONER,
VS. LEOPOLDO F. BUNGUBUNG AND HON. COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, whereby petitioner Office of the Ombudsman (Ombudsman) prays for the reversal of the Decision^[1] dated 30 June 2006 and Resolution^[2] dated 26 October 2006 of the Court of Appeals in CA-G.R. SP No. 89689 which, in turn, reversed and set aside the Ombudsman's Orders dated 11 January 2005 and 28 April 2005 in OMB-ADM-0-01-0502. The Ombudsman found respondent Leopoldo F. Bungubung (Bungubung) administratively liable for grave misconduct, dismissing him from the service and imposing the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and his perpetual disqualification from reemployment in government service.

The Hon. Simeon V. Marcelo represented the Ombudsman, with powers and functions provided under Article XI, Section 13 of the 1987 Constitution and the provisions of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989.

Bungubung is the Manager of the Port District Office (PDO) of Manila, Philippine Ports Authority (PPA), South Harbor, Port Area, Manila. He is also the Chairman of the Ports District Security Bids and Awards Committee (PDSBAC) of the PPA.

On 24 September 2001, Roberto C. Doromal (Doromal), the President of Combat Security & Executive Protection Agency (CSEPA), a security agency that participated in the bidding for security services for the PPA, filed a Complaint-Affidavit^[3] dated 7 September 2001 against Bungubung before PPA Resident Ombudsman Manolo M. Mabini, alleging as follows:

3. That sometime in June 1995, my aforesaid wife was instrumental in negotiating and concluding a contract for Security Services with the Philippine Ports Authority (PPA), more particularly at the Port District of Manila (PDO-Manila) for two (2) years starting August 1, 1995;

x x x x

6. That after a service contract was signed by PPA and this agency on January 28, 1999, the Port District Manager of PDO-Manila, Mr. Leopoldo Bungubung and other PPA officials asked for certain amounts from my

said wife as "balato" for winning the award where (sic) the latter obliged herself to give;

7. That initially, Mr. Leopoldo Bungubung and other PPA officials demanded amounts ranging from P10,000 a month down to P2,000 for him (Bungubung) and his subordinates, respectively; and my wife directed our staff, particularly the Billing and Collection Clerk and Cashier to include in our records and books of account these disbursements as "Representation expense";

8. That when my late wife died on May 3, 2000, the same arrangement was pursued and carried over through the period that I was already the one dealing with PPA, and that, sometime in late April 2000, when the security force was increased to 184 Security guards at North Harbor-Special Take-Over Unit (STU), the amount demanded by Mr. Bungubung was also increased to P40,000 a month and sometimes P50,000;

x x x x

10. That sometime in late February, 2001, one of office staff received a telephone call from a certain Capt. Valenzuela of the Port Police Dept. of PPA and because I was not around, said Capt. Valenzuela left a message advising me to see Mr. Leopoldo Bungubung for some important matters;

11. That upon receipt of the advise (sic) from my office staff, I went to PPA, with my secretary, Ms. Evalyn Cruz, to see Mr. Leopoldo Bungubung at his office located at old PNR Bldg., South Harbor, Port Area, Manila and at the same time personally delivered a sum of money amounting to P50,000 as earlier requested by him (Bungubung).

12. That during the course of my conversation with Mr. Leopoldo Bungubung after giving the P50,000, he asked from me a vehicle, Mitsubishi Pajero (late model) van, to be due and delivered supposedly to him in the middle part of March 2001 while there is no award of the winning bidder yet; and that I asked the said Bid Committee Chairman, Mr. Bungubung to give me a grace period of two (2) months to produce what he was asking from me. Unfortunately, however, due to the expensive value of the said Pajero van, I was not able to deliver. Hence, on March 30, 2001, I was served a Notice of Award of the winning bidder which is STAR SPECIAL WATCHMAN & DETECTIVE AGENCY, INC. an agency comparatively smaller than mine;

13. That taking a cue from the Pajero van being asked, I instructed my men to conduct an investigation and there, they found a late model Pajero van with Plate No. WLA-674 parked in front of the residence of Mr. Leopoldo Bungubung and later verified to have been registered and transferred on 12 March 2001 under the name of Mr. Norman Vincent Bungubung, son of Chairman Bungubung at #45 Buencamino St., BF Homes, Paranaque City.^[4]

In support of the allegations in his Complaint-Affidavit, Doromal submitted an affidavit of his secretary Evalyn Cruz (Cruz) and an alleged "blue book" of CSEPA.

Cruz recounted in her affidavit another incident wherein she personally handed over the amount of P50,000.00 cash to Bungubung at his office on 16 January 2001. The CSEPA blue book purportedly detailed monthly *balato* or *payola* paid to PPA officials from July 2000 to February 2001, recorded therein as representation expenses. It was allegedly prepared by a certain Evalyn M. Eborá (Eborá), and approved by Doromal.

Thereafter, PPA Resident Ombudsman Mabini released a Memorandum/Investigation Report^[5] dated 25 September 2001, recommending the following:

- a. That criminal complaint be filed against Mr. Leopoldo F. Bungubung for violation of Section 3(b) of R.A. 3019; Section 7(d) of R.A. 6713 and Art. 211 of the RPC for demanding and receiving "*balato*" from COMBAT in the total amount of P320,000 more or less;
- b. That likewise, an administrative complaint be filed against Mr. Leopoldo F. Bungubung for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service arising from the above criminal act;
- c. That Mr. Leopoldo F. Bungubung be placed under Preventive Suspension for a period of six (6) months without pay pursuant to Section 24 of R.A. 6770.

From the foregoing, the following complaints were filed against Bungubung before the Ombudsman: (1) an administrative complaint for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, docketed as OMB-ADM-0-01-0502 (OMB-0-01-0793); and (2) a criminal complaint for violation of Section 3(b) of the Anti-Graft and Corrupt Practices Act, docketed as OMB-0-01-0793.

After the parties submitted the required pleadings, a preliminary conference was held on 21 February 2002 in OMB-ADM-0-01-0502, the administrative case. Bungubung manifested therein that he was submitting the case for resolution. Doromal, however, was still undecided on whether to opt for the conduct of a formal investigation or to submit the case for resolution at once. In a Manifestation filed on 25 February 2002, Doromal informed the Ombudsman that he was opting instead for the conduct of a formal investigation for purposes of submission of evidence and affidavits of witnesses.^[6]

Doromal's aforesaid manifestation notwithstanding, the Ombudsman, in an Order dated 6 March 2002, through Graft Investigation Officer II Joselito P. Fangon, ordered the submission of the case for resolution.

The parties were then required to submit their respective Memoranda.

On 28 November 2002, Graft Investigation Officer II Fangon drafted a Decision^[7] which recommended the dismissal of the administrative case against Bungubung, without prejudice to its re-filing.

However, Ombudsman Marcelo disapproved Graft Investigation Officer II Fangon's 28 November 2002 Decision, and issued another Order^[8] dated 11 January 2005 finding Bungubung liable for grave misconduct (which absorbed the lesser offense of conduct prejudicial to the best interest of the service) and ordering Bungubung's dismissal from service, together with the accessory penalties of cancellation of

eligibility, forfeiture of retirement benefits, and respondent's perpetual disqualification from reemployment in government service. The dispositive part of Ombudsman Marcelo's 11 January 2005 Order reads:

WHEREFORE, the 28 November 2002 Decision prepared by the former Administrative Adjudication Bureau (AAB), this Office, recommending the dismissal (without prejudice to its re-filing) of the administrative complaint against [Bungubung] is hereby DISAPPROVED.

Respondent LEOPOLDO F. BUNGUBUNG, Port District Manager, Manila Port District, Philippine Ports Authority, is hereby found liable for Grave Misconduct and, as such, is DISMISSED from the service. The penalty of dismissal shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and [Bungubung's] perpetual disqualification from reemployment in the government service.

In the interim, the Ombudsman issued an Order^[9] dated 10 September 2003 in OMB-0-01-0793, for the filing of the criminal complaint against Bungubung, after finding that there was probable cause to indict him for violation of Section 3(b) of the Anti-Graft and Corrupt Practices Act.^[10]

The Ombudsman took into consideration its aforementioned 10 September 2003 Order in OMB-0-01-0793, when it found in OMB-ADM-0-01-0502 that Bungubung took advantage of his position as Chairman of the PDSBAC of the PPA, using it as leverage in soliciting cash and a Mitsubishi Pajero van from the bidders as consideration for the award of the security contract. According to the Ombudsman, such actuations constitute conduct grossly prejudicial to the best interest of the service. It rejected Bungubung's denial and instead gave credence to the attestation of Cruz that she personally delivered the P50,000.00 to Bungubung.

Bungubung filed a Motion for Reconsideration^[11] of the 11 January 2005 Order of the Ombudsman in OMB-ADM-0-01-0502, but it was denied by the Ombudsman in another Order^[12] dated 28 April 2005, to wit:

WHEREFORE, the Motion for Reconsideration dated 21 January 2005 filed by respondent Leopoldo F. Bungubung is DENIED. The Order dated 11 January 2005 finding him liable for Grave Misconduct thereby ordering him dismissed from the service, together with its accessory penalties, is hereby AFFIRMED.

Bungubung then sought recourse to the Court of Appeals *via* a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 89689. He asserted therein that the Ombudsman erred in (a) holding that there was substantial evidence to make him liable for grave misconduct, resulting in his dismissal from service and imposition upon him of the accessory penalties; and (b) ordering him dismissed from the service, when the Constitution merely empowered said office to make a recommendation of dismissal. Pending resolution of CA-G.R. SP No. 89689 by the Court of Appeals, Bungubung filed therein a Motion for Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to enjoin the Ombudsman and the PPA General Manager from implementing the Order dated 11 January 2005 which dismissed him from service.^[13] The Court of Appeals granted the TRO on 3 June 2005.^[14]

In the meantime, Doromal executed an *Ex-Parte* Manifestation and Motion to Withdraw Complaint^[15] dated 18 August 2005 and an Affidavit of Desistance^[16] dated 23 August 2005, which he filed before the Ombudsman. In his *Ex-Parte* Manifestation and Motion to Withdraw Complaint and Affidavit of Desistance, Doromal expressed his desire to withdraw his Complaint-Affidavit against Bungubung and desist from the continuance of both OMB-ADM-0-01-0502 and OMB-0-01-0793. Doromal explicitly admitted in said documents that his allegations in the administrative and criminal complaints against Bungubung were all fabricated. He further confessed that Bungubung never demanded or received any *balato* from him or his wife in exchange for the award of the PPA security service contract; nor did Bungubung ask for a Mitsubishi Pajero van from him.

On 30 June 2006, the Court of Appeals issued a Decision in CA-G.R. SP No. 89689 ruling in Bungubung's favor, and reversing and setting aside the Orders dated 11 January 2005 and 28 April 2005 of the Ombudsman. It further absolved Bungubung from liability for the charge of grave misconduct, finding no substantial evidence that Bungubung committed the same.

According to the appellate court:

There is merit in the petition.

Indeed, there is absence of substantial evidence to hold [Bungubung] liable for grave misconduct.

To begin with, [Doromal] and his witness failed to appear at the preliminary conference on February 21, 2005 to attest to the truth of the contents of their affidavits. For such failure, their affidavits are inadmissible as they are hearsay evidence.

x x x x

By not appearing at the preliminary conference and affirming their affidavits, We can not readily conclude that the contents thereof are true. It is highly probable that [Doromal] is only sour graping for losing the PPA 2001 service contract. As early as January 18, 2001, the bids for the 2001 service contract were already opened and authenticated. Thus, it can not be said that the bids were manipulated or rigged to favour somebody.

While rules of procedure do not strictly apply to administrative cases as long as defendant's right to due process is not violated, its liberal application in administrative cases does not allow admission of hearsay evidence, i.e. affidavits not identified by affiants, as this would violate the constitutional right of petitioner to due process and his substantive right not to be adjudged guilty on the basis of hearsay evidence.

x x x x

In the instant case, [Bungubung], in denying the assertion of Evalyn Cruz in her affidavit that she gave him P50,000.00, and in describing her claim