

THIRD DIVISION

[G.R. No. 174826, April 08, 2008]

OFFICE OF THE OMBUDSMAN, Petitioner, vs. Engr. ALFONSO P. ESPIRITU, Respondent.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 85871 dated 5 January 2006 which annulled and set aside the Decision^[2] dated 16 January 2003 of petitioner Office of the Ombudsman finding respondent Alfonso P. Espiritu guilty of Conduct Grossly Prejudicial to the Best Interest of the Service, and its Resolution^[3] dated 21 September 2006 denying petitioner's motion for reconsideration.

The facts are not disputed.

Complainant Archie L. Huevos (Huevos) is a licensed building contractor doing business under the style A.H. Construction and General Services (A.H. Construction) while respondent is the City Engineer and Building Official of Marikina City.

After public bidding, a contract agreement^[4] was executed on 4 June 1997 between A. H. Construction and the Department of Health (DOH) for the construction of a three-storey dormitory and supply services building of the DOH-Amang Rodriguez Medical Center (DOH-ARMC) located in Marikina City.

After some adjustments with the plans, the DOH-ARMC applied for a demolition permit with the Office of the City Engineer which is headed by respondent. On 17 April 2000, a demolition permit for the structures still existing at the site of the proposed three-storey building was issued.

Subsequently, on 24 April 2000, an application for a building permit for the proposed project was filed by the DOH-ARMC with respondent's office. Huevos followed up the application for said permit via two letters dated 30 August 2000 and 4 September 2000.

In a letter dated 7 September 2000, respondent informed Antonio Lopez, Undersecretary of the DOH, that he did not act on the application for the building permit citing the following reasons: first, that four years ago A.H. Construction had built a structure in the same hospital without the requisite building permit and even when the structure violated the National Building Code or Presidential Decree No. 1096; second, the said illegal structure severely affected the road widening project of the city government and solicited numerous and continuous complaints from motorists and pedestrians, for which reason, it was ordered demolished but A.H.

Construction did not immediately comply with said order; third, the master plan for the construction project includes a waste water plant which will obstruct the roadway, and an incinerator which is not allowed in Marikina City; and fourth, the numerous violations committed by A.H. Construction caused it to be blacklisted by the city government.

A.H. Construction appealed the action of respondent before the Secretary of the Department of Public Works and Highways (DPWH). In a Decision dated 14 September 2001, DPWH Secretary Simeon Datumanong found the appeal meritorious, thus:

WHEREFORE, in the light of the foregoing discussion, and finding merit on the herein appeal, ARMC/Appellant is hereby advised to refile its application for Building Permit for the subject proposed 3-storey Dormitory and Support services building with the Office of the Building Official of Marikina, which office, **upon Applicant's full compliance with all the requirements**, shall, within the period prescribed by the National Building Code and its IRR, issue the Building Permit applied for.

[5] (Emphasis supplied.)

On 3 October 2001, the DOH-ARMC re-filed its application for the building permit. Respondent required the DOH-ARMC to also submit the business permit of the project contractor, A.H. Construction. In a letter dated 28 November 2001, the DOH-ARMC informed A.H. Construction of said requirement and advised it "x x x to submit to the City Engineer's Office (its) renewed Business Permit License for the immediate release of the x x x permits (applied for) x x x." [6]

In the meantime, upon learning of the decision of the DPWH Secretary, respondent sought its reconsideration. In a letter dated 13 February 2001, the DPWH Secretary denied the reconsideration sought for and said that unless restrained by higher authority, decision dated 14 September 2001, stands.

Despite being notified by the DOH-ARMC to submit its renewed business permit license to the City Engineer's Office, A.H. Construction failed to do so. On 4 June 2002, Huevos filed with petitioner Office of the Ombudsman a complaint-affidavit for Dishonesty and Conduct Prejudicial to the Best Interest of the Service against respondent. The case was docketed as OMB-CA-02-0235-F (OMB-CC-02-03387). [7]

In compliance with the order of petitioner, respondent filed a counter-affidavit [8] denying Huevos' allegations. He claimed that the denial of the application for the issuance of the building permit was with sufficient grounds and was not tainted with grave abuse of discretion.

After the parties submitted their respective memoranda, petitioner rendered its Decision dated 16 January 2003 finding respondent administratively liable for Conduct Grossly Prejudicial to the Best Interest of the Service and imposed the penalty of suspension for a period of six months and one day without pay. The dispositive portion of the Decision reads:

WHEREFORE, above premises considered, this Office finds respondent ALFONSO P. ESPIRITU guilty as charged and is hereby meted the penalty of SIX (6) MONTHS and ONE (1) DAY SUSPENSION WITHOUT PAY

pursuant to Section 22, par. 6 of Executive Order No. 292 otherwise known as the Administrative Code of 1987.

The Mayor, Marikina City, is hereby directed to implement the aforesaid decision in accordance with law and upon finality thereof and to inform this office of the action taken thereon within seven (7) days from its implementation.^[9]

The petitioner explained its Decision in this manner:

From the evidence presented by both parties, this Office believes that a substantial ground exists to hold respondent Espiritu administratively liable.

The alleged "blacklisting" of the complainant's construction company by the City Mayor of Marikina is not a sufficient reason to deny the issuance of the building permit. x x x.

x x x x

Thus, the act of the respondent in continuously denying the application for building permit sought by the complainant even after having been informed of the Decision of Secretary Datumanong is a showing of his manifest partiality against the applicant. It must be pointed out that the existence of the said DPWH Order for the respondent to issue the building permit left him no choice but to comply since the issuance becomes a mere ministerial act. In fact, under Section 307 of the National Building Code of the Philippines, the decision of the Secretary of DPWH is final subject only to review by the Office of the President. Thus, the respondent's continued defiance to the Order of the DPWH despite its finality is patently uncalled for and a clear defiance not only to superior authorities but also to the mandate of the law. x x x.

x x x x

Even assuming that the reasons cited by the respondent for denying the permit are true, the same are not ground/s for the non-issuance thereof under Section 306 of the National Building Code.

Apparently, by shifting from one reason to another in order to deny the permit only shows the bias of the respondent towards the complainant.

Also, the respondent had clearly shown his arbitrariness by whimsically denying the application for building permit and yet a demolition permit for the old administration building to be affected by the proposed building had already been secured. It is not disputed that the old administration building was demolished on August 8, 2000 and as such, there is no logic in approving the demolition and denying the application for the building permit.^[10]

Respondent filed a Motion for Reconsideration from the Decision which petitioner denied in an Order dated 21 January 2004.^[11]

Aggrieved, respondent appealed to the Court of Appeals *via* a Petition for Review praying that the petitioner's Decision and Order dated 16 January 2003 and 21 January 2004, respectively, be annulled and set aside.

On 5 August 2005, the Court of Appeals issued a Temporary Restraining Order enjoining petitioner and the Mayor of Marikina City from implementing the Decision in OMB-CA-02-0235-F (OMB-CC-02-03387).^[12]

On 5 January 2006, the Court of Appeals rendered a Decision favoring respondent. It granted the petition, annulled and set aside the assailed Decision and Order, and dismissed the complaint against respondent. In a Resolution dated 21 September 2006, the Court of Appeals denied the motions for reconsideration^[13] filed by the Office of the Ombudsman and Huevos.^[14]

In its Decision, the Court of Appeals ruled *inter alia* that it did not find substantial evidence to hold respondent guilty of conduct grossly prejudicial to the best interest of the service. It ratiocinated:

The issuance of building permits are subject to laws and regulations that have grown complex. While the National Building Code and its implementing rules primarily govern such matter, there are now provisions under the Local Government Code (RA 7160) affecting it. A discussion on this dynamics is relevant to this case for the main defense of petitioner is that he was merely enforcing the laws and rules governing issuance of building permits when he refused to act on the application of DOH-ARMC.

x x x x

Hence, in the processing of applications for building permit, the City Engineer cum Building Official will have to enforce the requirements of the National Building Code along with local policies, as petitioner did in this case.

Petitioner twice refused to act on the application of DOH-ARMC for a building permit. On the first occasion, petitioner cited as reasons for his inaction the past infractions of respondent, the latter's blacklisting with the City Government of Marikina, and the inclusion in the master plan of a waste treatment facility and incinerator, which are not allowed in Marikina City. The DPWH Secretary declared these grounds insufficient to warrant the non-issuance of the building permit. On the second occasion, however, petitioner's inaction was based on the failure of DOH-ARMC to attach the business permit of respondent.

Evidently, on both occasions, petitioner was merely enforcing local policies, along with the requirements of the National Building Code, in the matter of issuing building permits. During the first instance that he refused to act on the application, the Marikina City Government had raised objections to some aspects of the construction project of respondent which, although later found to be baseless by the DPWH and

the agency a quo, respectively, were genuine issues at that time. It was only to be expected that petitioner, as local Civil Engineer cum Building Official, refused to act on the application for building permit in seeming deference to the sentiment of his city government about the questioned project. It would have certainly seemed irregular had petitioner otherwise issued a building permit for a project that was being objected to by his employer, the Marikina City Government. Thus, on this occasion that petitioner refused to act on the application for building permit, the Court perceives no conduct prejudicial to the best interest of the service. On the contrary, petitioner exhibited prudence and loyalty by choosing not to act on the application for building permit but to await the outcome of the controversy between the City Government of Marikina and the project proponent and contractor.

On the second occasion that petitioner refused to act on the refiled application for building permit, several significant facts must be borne in mind. First is that, while the DPWH directed petitioner to issue the building permit, this was made subject to the condition that DOH-ARMC comply with all the requirements. Second, when DOH-ARMC refiled its application, it was found to lack the business permit of respondent, a deficiency that existed only when the second application was filed. Thus, when petitioner again refused to act on the application because of that deficiency, he could have hardly been flouting the final order of the DPWH. He could not have merely been shifting from one reason to another just to withhold the permit for that deficiency existed only then.

[15]

Not satisfied with the Decision of the Court of Appeals, petitioner is now before us *via* a Petition for Review on *Certiorari* arguing:

THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN ON THE ADMINISTRATIVE LIABILITY OF (RESPONDENT), AS WELL AS THE PENALTY IMPOSED, ARE IN ACCORDANCE WITH LAW AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The issue is: whether or not the non-issuance of the building permit applied for constituted Conduct Prejudicial to the Best Interest of the Service.

To our mind, in order to resolve this issue, we must answer the question: Were all the requirements for the issuance of the building permit complied with?

We rule in the negative.

The issuance of building permits is governed primarily by the National Building Code^[16] and its Revised Implementing Rules and Regulations (IRR). Section 301 of the National Building Code reads:

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.