

SECOND DIVISION

[G.R. No. 165012, September 16, 2008]

RACHEL BEATRIZ RUIVIVAR, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND DR. CONNIE BERNARDO, RESPONDENTS.

DECISION

BRION, J.:

Before us is the petition for review on *certiorari* under Rule 45 of the Rules of Court commenced by Rachel Beatriz Ruivivar (*petitioner*). It seeks to set aside:

- (a) the Decision of the Court of Appeals (CA)^[1] dated May 26, 2004^[2] dismissing the petition for *certiorari* filed by the petitioner and affirming the Decision dated November 4, 2002^[3] (*November 4, 2002 Decision*) and the Order dated February 12, 2003^[4] (*February 12, 2003 Order*) of the Office of the Ombudsman (*Ombudsman*); the Ombudsman's Decision and Order found the petitioner administratively liable for discourtesy in the course of official duties as Chairperson of the Land Transportation Office (LTO) Accreditation Committee on Drug Testing, and imposed on her the penalty of reprimand; and
- (b) the CA Resolution dated August 20, 2004^[5] which denied the petitioner's subsequent motion for reconsideration.

THE ANTECEDENTS

On May 24, 2002, the private respondent filed an Affidavit-Complaint charging the petitioner before the Ombudsman of serious misconduct, conduct unbecoming of a public official, abuse of authority, and violations of the Revised Penal Code and of the Graft and Corrupt Practices Act.^[6] The private respondent stated in her complaint that she is the President of the Association of Drug Testing Centers (*Association*) that conducts drug testing and medical examination of applicants for driver's license. In this capacity, she went to the Land Transportation Office (LTO) on May 17, 2002 to meet with representatives from the Department of Transportation and Communication (DOTC) and to file a copy of the Association's request to lift the moratorium imposed by the LTO on the accreditation of drug testing clinics. Before proceeding to the office of the LTO Commissioner for these purposes, she passed by the office of the petitioner to conduct a follow up on the status of her company's application for accreditation. While there, the petitioner -- without provocation or any justifiable reason and in the presence of other LTO employees and visitors -- shouted at her in a very arrogant and insulting manner, hurled invectives upon her person, and prevented her from entering the office of the LTO Commissioner. The petitioner also accused the private respondent of causing intrigues against her at the DOTC. To prove her allegations, the private respondent presented the affidavits

of three witnesses.^[7]

The Ombudsman furnished the petitioner a copy of the Complaint-Affidavit and required her to file her counter-affidavit. In her Counter-Affidavit, the petitioner denied the private respondent's allegations and claimed that she merely told the private respondent to bring her request to the LTO Assistant Secretary who has the authority to act on the matter, not to the DOTC.^[8] The petitioner also claimed that the private respondent also asked her to lift the moratorium and pressured her to favorably act on the private respondent's application for accreditation. To prove these claims, petitioner presented the affidavits of her two witnesses.^[9]

The Ombudsman called for a preliminary conference that the parties attended. The petitioner manifested her intent to submit the case for resolution. The Ombudsman then directed the parties to submit their respective memoranda. Only the petitioner filed a Memorandum where she stressed that the complaint is not properly substantiated for lack of supporting affidavits and other evidence.^[10]

The Office of the Ombudsman

The Ombudsman rendered the November 4, 2002 Decision based on the pleadings and the submitted affidavits. It found the petitioner administratively liable for discourtesy in the course of her official functions and imposed on her the penalty of reprimand.

The Ombudsman ruled that the petitioner's verbal assault on the private respondent was sufficiently established by the affidavits of the private respondent's witnesses who had not been shown by evidence to have any motive to falsely testify against petitioner. In contrast, the petitioner's witnesses, as her officemates, were likely to testify in her favor. Given that the incident happened at the LTO and that the petitioner had authority to act on the private respondent's application for accreditation, the Ombudsman also found that the petitioner's ascendancy over the private respondent made the petitioner's verbal assault more likely. The Ombudsman concluded that such verbal assault might have been caused by the private respondent's decision to air the LTO moratorium issue (on accreditation for drug testing centers) before the DOTC; this decision also negated the petitioner's defense that the case was filed to exert pressure on her to act favorably on private respondent's application for accreditation.

The petitioner filed a Motion for Reconsideration arguing that *she was deprived of due process because she was not furnished copies of the affidavits of the private respondent's witnesses.*^[11] In the same motion, petitioner questioned the Ombudsman's disregard of the evidence she had presented, and disagreed with the Ombudsman's statement that she has ascendancy over the private respondent.

The Ombudsman responded to the petitioner's motion for reconsideration by ordering that the petitioner be furnished with copies of the affidavits of the private respondent's witnesses. ^[12] The Ombudsman's order also contained the "*directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances.*"

Records show that the petitioner received copies of the private respondent's

witnesses' affidavits but she did not choose to controvert these affidavits or to file a supplement to her motion for reconsideration. She simply maintained in her Manifestation that her receipt of the affidavits did not alter the fact she was deprived of due process nor cure the irregularity in the November 4, 2002 Decision.

Under these developments, the Ombudsman ruled that the petitioner was not denied due process. It also maintained the findings and conclusions in its November 4, 2002 Decision, declaring them supported by substantial evidence.^[13]

The Court of Appeals

The petitioner's chosen remedy, in light of the Ombudsman ruling, was to file a petition for *certiorari* (docketed as CA-GR SP No. 77029) with the CA. In its Decision dated May 26, 2004, the CA dismissed the petition on the ground that the petitioner used the wrong legal remedy and failed to exhaust administrative remedies before the Ombudsman.^[14] The CA said:

"... as held in *Fabian v. Desierto*, a party aggrieved by the decision of the Office of the Ombudsman may appeal to this Court by way of a petition for review under Rule 43. As succinctly held by the Supreme Court:

'As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, **appeals from decision of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.**'

Even assuming, *argumentatis*, that public respondent committed grave abuse of discretion, such fact is not sufficient to warrant the issuance of the extraordinary writ of certiorari, as was held in *Union of Nestle Workers Cagayan de Oro Factory vs. Nestle Philippines, Inc.*:

'x x x .For certiorari to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, as alleged by petitioners. The requirement that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied. x x x'

Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent, in its Order dated January 17, 2003. Petitioner, therefore, had a speedy and adequate remedy, but she failed to avail thereof for reasons only known to her.

x x x

Moreover, instead of filing a petition for review under Rule 43, she filed the present petition for certiorari under Rule 65. In view of our above disquisition, We find no further reason to discuss the merits of the case.

Petitioner having resorted to the wrong remedy, the dismissal of the present petition is in order.^[15]

After the CA's negative ruling on the motion for reconsideration, the petitioner filed the present petition for review on *certiorari* with this Court, raising the following issues:

THE ISSUES

I. WHETHER OR NOT A PETITION FOR *CERTIORARI* UNDER RULE 65 IS THE PROPER AND ONLY AVAILABLE REMEDY WHEN THE PENALTY IMPOSED IN AN ADMINISTRATIVE COMPLAINT WITH THE OFFICE OF THE OMBUDSMAN IS CONSIDERED FINAL AND UNAPPEALABLE.

II. WHETHER OR NOT PETITIONER WAS DENIED OF (*sic*) THE CONSTITUTIONAL GUARANTEE TO DUE PROCESS WHEN SHE WAS DEPRIVED OF HER RIGHT TO CONFRONT THE EVIDENCE SUBMITTED AGAINST HER BEFORE THE DECISION OF THE OFFICE OF THE OMBUDSMAN WAS RENDERED.

On the first issue, the petitioner argued that the ruling in *Fabian v. Desierto*^[16] can only be applied when the decision of the Ombudsman is appealable. The ruling in *Fabian* is not applicable to the Ombudsman rulings under the express provisions of Section 27 of Republic Act (R.A.) No. 6770^[17] and Section 7, Rule III of Administrative Order (A.O.) No. 7^[18] since the penalty of reprimand imposed is final and unappealable. The appropriate remedy, under the circumstances, is not the appellate remedy provided by Rule 43 of the Rules of Court but a petition for *certiorari* under Rule 65 of these Rules.

On the second issue, the petitioner maintained that she was denied due process because no competent evidence was presented to prove the charge against her. While she was belatedly furnished copies of the affidavits of the private respondent's witnesses, this was done after the Ombudsman had rendered a decision. She posited that her belated receipt of the affidavits and the subsequent proceedings before the Ombudsman did not cure the irregularity of the November 4, 2002 Decision as she was not given the opportunity to refute the private respondent's evidence *before the Ombudsman's decision was rendered*. The petitioner advanced the view that on this ground alone, she should be allowed to question the arbitrary exercise of the Ombudsman's discretion.

The Ombudsman's Comment,^[19] filed through the Office of the Solicitor General, maintained that the proper remedy to assail the November 4, 2002 Decision and February 12, 2003 Order was to file a petition for review under Rule 43 as laid down in *Fabian*,^[20] and not the petition for *certiorari* that the petitioner filed. The Ombudsman argues further that since no petition for review was filed within the prescribed period (as provided under Section 4, Rule 43),^[21] the November 4, 2002 Decision and February 12, 2003 Order had become final and executory. The Ombudsman maintained, too, that its decision holding the petitioner administratively liable is supported by substantial evidence; the petitioner's denial of the verbal assault cannot prevail over the submitted positive testimony. The Ombudsman also