

[G.R. No. 160657, December 17, 2004]

**CIVIL SERVICE COMMISSION, AND BUREAU OF INTERNAL
REVENUE, PETITIONERS, VS. NIMFA P. ASENSI, RESPONDENT.
SYNOPSIS.**

D E C I S I O N

TINGA, J.:

Before the Court is a *Motion for Reconsideration* filed by petitioner Civil Service Commission (CSC), of our Resolution dated 30 June 2004 dismissing the *Petition for Certiorari*. An extended disposition is warranted, if only to address the CSC's spirited insistence that its Office of Legal Affairs may, on its own, represent the CSC before this Court.

A brief recall of the factual antecedents is in order.

Earlier, the CSC imposed the penalty of dismissal against respondent Nimfa Asensi (Asensi), a Revenue District Officer of the Bureau of Internal Revenue in Lucena City. She was charged with falsifying entries in her 1997 Personal Data Sheet relative to her educational background.^[1] On 9 July 2003, the Court of Appeals Fourth Division promulgated a *Decision* holding that the dismissal of Asensi was not warranted. The appellate court denied the motion for reconsideration of that ruling in a *Resolution* dated 29 October 2003.

The Office of the Solicitor General (OSG) received a copy of the 29 October 2003 Resolution on 7 November 2003. On 21 November 2003, or one day before the deadline to file a petition for review on *certiorari* before this Court would elapse, the OSG filed a motion for extension until 22 December 2003 to file the petition for review. Said motion was granted in a Resolution dated 9 December 2003.

Nevertheless, on 25 November 2003, the CSC filed a *Manifestation to File its Own Petition for Review* signed by three lawyers from the Office of Legal Affairs of the CSC. Just two days later, or on 27 November 2003, the CSC through its Office of Legal Affairs, filed with this Court a *Petition for Certiorari* under Rule 65, assailing the 9 July *Decision* of the Court of Appeals.

On 22 December 2003, the OSG filed a *Manifestation and Motion* stating that considering the CSC's declared intent to file its own petition, the OSG had no recourse but to withdraw its earlier *Motion for Extension* and allow the CSC to actively pursue its own case. In the meantime, Asensi filed her own comment wherein she pointed out that the proper remedy for the CSC was not a special civil action for *certiorari* under Rule 65, but a petition for review under Rule 45.

The *Resolution* of this Court now for reconsideration declared that the CSC had indeed resorted to an improper remedy by pursuing a petition for *certiorari* and not a petition for review. The Court noted that the OSG well understood the proper procedure for review and had actually undertaken the initiatory step for the filing of the proper petition when it filed its *Motion for Extension*. Still, the CSC ignored such

Motion for Extension and employed an erroneous mode of review. Moreover, the Court calls attention to the lack of competence of the Office of Legal Affairs of the CSC to file the petition in behalf of the CSC, considering the well-established rule that it is the Office of the Solicitor General which has the primary responsibility to appear for the government in appellate proceedings, it being the principal law officer and legal defender of the government.

The CSC, through its Office of Legal Affairs, filed a *Motion for Reconsideration*, now subject of this *Resolution*. It argues that the Office of Legal Affairs is capacitated to file its own pleadings before the Court of Appeals or the Supreme Court, pursuant to Section 16(3), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987. The CSC likewise cited a Memorandum of Agreement dated 6 June 2002 entered into between the OSG and the CSC, Item 7 of which provides: "Should the motion for reconsideration be denied by the Court of Appeals, the OSG shall file the necessary motion for extension of time to file the appropriate appeal. During the period of appeal, the CSC and the OSG shall determine the appropriateness of pursuing the case to the Supreme Court." According to the CSC, it had informed the OSG, through Solicitor Arnold G. Frane, that it would be filing its own petition before this Court as it honestly believed it was in a better position to defend its assailed Resolutions. The CSC likewise alleged that it had not been furnished by the OSG with a copy of the latter's *Motion for Extension of Time*, and had it known about the same beforehand it would have refrained from filing any pleading related to the said case.

In view of the averments made in the CSC's *Motion for Reconsideration*, the Court required the OSG and Asensi to file their respective comments.^[2] The Court likewise required the OSG and the CSC to submit copies of the *Memorandum of Agreement* referred to by the CSC in its *Motion for Reconsideration*.

The OSG took exception to the CSC's claim that the latter would have refrained from filing had it known of the OSG's motion, asserting that the CSC had already made up its mind to file its own petition, it having previously informed the solicitor in charge of its intention to file the petition itself. The OSG characterized it as unfair for the CSC to point an accusing finger at the OSG for the unfavorable result of the case.^[3] Nevertheless, the OSG prayed that the *Motion for Reconsideration* be granted and that CSC's petition for certiorari be treated as a petition for review "in the higher end of justice."^[4]

In a Resolution dated 28 September 2004. Rollo, p. 169. Id. at 170.

The CSC's position that its Office of Legal Affairs could have filed the present petition before this Court certainly goes against the grain of established jurisprudence maintaining that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.^[5]

The Court, in *Gonzales v. Chavez*,^[6] traced extensively the statutory history of the OSG, which has existed in this jurisdiction as far back as 1901^[7]. Currently, the powers and functions of the OSG are defined under Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, which pertinently provides:

SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding,

investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government, and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; *represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party,* (italics supplied)

As noted in *Gonzales v. Chavez*:

In thus tracing the origins of the Office of the Solicitor General to gain a clear understanding of the nature of the functions and extent of the powers of the Solicitor General himself, it is evident that a policy decision was made in the early beginnings to consolidate in one official the discharge of legal functions and services in the government. These took the form mostly of representing the Government in various legal proceedings.

The rationale behind this step is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. Moreover, an official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).^[8]

The Court has explicitly declared that since only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines, "actions filed in the name of the Republic of the Philippines if not initiated by the Solicitor General will be summarily dismissed"^[9] *The rule has been extended to include actions filed in the name of agencies or instrumentalities of the Republic*^[10] such as the CSC. There is clearly all the justification in precedent for the Court to have dismissed the petition.

CSC's reliance on Section 16(3), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987 is not sufficient to justify the appearance of the Office of Legal Affairs before this Court. Said provision, as quoted by the CSC, reads:

[T]he Office of Legal Affairs shall provide the [CSC] Chairman with legal advise and assistance; render counseling services; undertake legal studies and researches; prepare opinions and rulings in the interpretation

and application in the Civil Service law, rules and regulations; prosecute violations of such laws, rules and regulations; and *represent the Commission before any Court or tribunal.* (italics not ours)

On its face, the provision seems to sanction the representation made by the Office of Legal Affairs for the CSC before this Court. But this provision has to be qualified by the earlier quoted provision (Section 35, Chapter 12, Title III, Book IV) of the same Administrative Code pertaining to the mandate of the Office of the Solicitor General, to "*represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof.* " Clearly, Section 35 finds more specific application in this case than Section 16(3), as the former pointedly governs the procedure pertinent to the representation of "the Government and its officers in the Supreme Court," "in all civil actions and special proceedings." Section 35 is also consistent with precedents and the established rule that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.^[11] Where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply.^[12] In this way, all the provisions are given effect.^[13]

Moreover, the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,^[14] which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220 of the Tax Reform Act of 1997 in asserting that its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government before the Supreme Court. The Court disagreed, stating that "Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic."^[15] The Court again cited *Gonzales v. Chavez* in holding that "from the historical and statutory perspectives, the Solicitor General is the principal law officer and legal defender of the government."^[16] Strikingly, the Tax Reform Act was a law enacted subsequent to the Administrative Code of 1987 and is more specific in application to tax cases. Yet these considerations were not sufficient for the Court to consider the powers granted to BIR legal officers under Section 220 of the Tax Reform Act as superseding those vested to the Solicitor General under the Administrative Code. All the more reason for this Court to assert the primacy of the OSG's mandate over the claimed prerogative of the Office of Legal Affairs.

Even the *Memorandum of Agreement* between the OSG and the CSC, which the CSC invokes, clearly indicates that it is the OSG which represents the constitutional commission in proceedings before the Court of Appeals and the Supreme Court. The "Whereas Clauses" assert the OSG's mandate "to represent the Government of the Philippines, its agencies and instrumentalities, and its officials and agents in any litigation, investigation or mat[t]er requiring the services of a lawyer."¹⁷ We quote the relevant provisions of the *Memorandum of Agreement*:

NOW, THEREFORE, in view of the foregoing premises, the parties hereto have agreed as follows:

2. When the CSC receives a Resolution from the Court of Appeals or the Supreme Court requiring the submission of comment on a petition regarding its decision, *the CSC shall immediately endorse the same to the OSG for its representation, specifying in its request the name and telephone number of the contact person of the CSC assigned to the case.*

In the meantime, the CSC shall make a Manifestation that it is seeking OSG's representation and shall request an extension of thirty (30) days on behalf of the OSG.

If the OSG is already furnished a copy of the Resolution, the CSC shall no longer make a Manifestation, but shall immediately forward the original records of the case to the OSG.

If the Resolution requires comment on a motion for reconsideration in a case where the CSC is already represented by the OSG, the OSG shall file said comment without waiting for further endorsement.

3. *In the event the OSG has reached a position adverse to the CSC, the OSG shall make a Manifestation in lieu of Comment (With Recommendation for Reversal of the Assailed Order/Ruling) within the period given to submit comment with a prayer that CSC be given a fresh period of thirty (30) days within which to file its own comment, furnishing the CSC with a copy of said Manifestation. The OSG shall immediately return the records of the case to the CSC. When the CSC files its own comment, the OSG shall be furnished with a copy of the said comment.*
4. The OSG shall, at all times, furnish the CSC with a copy of any Comment, Manifestation in Lieu of Comment, Memorandum or any other pleading filed by it with the Court of Appeals or Supreme Court in relation to cases where the CSC is a party.
5. *The CSC may request the OSG for representation as intervenor whenever a rule or policy of the CSC is being questioned. The issue on the appropriateness of filing a motion for intervention shall be jointly resolved by the CSC and OSG.*
6. *In case of adverse decision rendered by the Court of Appeals, the OSG shall file a motion for reconsideration. If the OSG decides not to file a motion for reconsideration, it shall inform the Division Chief of Action Office concerned by telephone on or before the seventh (7th) day of the reglementary period.*
7. *Should the motion for reconsideration be denied by the Court of Appeals, the OSG shall file the necessary motion for extension of time to file the appropriate appeal. During the period to appeal, the CSC and the OSG shall determine the appropriateness of pursuing the case to the Supreme Court.*^[18]
(italics supplied)

These provisions clearly evince that it is the OSG which initiates, prosecutes or defends the interests of the CSC in litigation before this Court. On the other hand,