



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OFFICE OF THE
OMBUDSMAN,

G.R. No. 221296

Petitioner, Present:

- versus -

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
PERLAS-BERNABE,* and
LEONEN, JJ.

NICASIO A. CONTI,

Promulgated:

Respondent.

22 FEB 2017

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DECISION

MENDOZA, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by the Office of the Ombudsman (*Ombudsman*) seeks to review and set aside the May 19, 2015 Decision² and the October 28, 2015 Resolution³ of the Court of Appeals (*CA*), in CA-G.R. SP No. 126698, entitled *Nicasio A. Conti v. Office of the Ombudsman*. The CA issuances reversed the August 26, 2011 Decision and the May 25, 2012 Order of the Ombudsman, finding respondent Nicasio A. Conti (*Conti*) guilty of Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service.

* Per Special Order No. 2416-P dated January 4, 2017.

¹ *Rollo*, pp. 9-23.

² *Id.* at 27-43. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Magdangal M. De Leon, and Nina G. Antonio-Valenzuela, concurring.

³ *Id.* at 44-45.

The Antecedents

This case stemmed from the filing of a complaint by the Field Investigation Office (*FIO*) of the Ombudsman against Chairman Camilo L. Sabio and Commissioners Narciso S. Nario, Teresito L. Javier, Ricardo M. Abcede, and Conti of the Presidential Commission on Good Government (*PCGG*), for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The complaint alleged that Resolution No. 2007-010,⁴ which was issued and signed by the abovementioned PCGG Commissioners, resolved to lease five new vehicles from a leasing company and gave way to two lease agreements in 2007 and 2009 between PCGG and the United Coconut Planter's Bank (*UCPB*). FIO asserted that the said resolution was in violation of existing laws and administrative issuances which required the availability of appropriation of funds and the conduct of public bidding as prerequisites for the validity of a government contract.⁵

On April 5, 2010, the Ombudsman ordered the PCGG Commissioners to file their respective counter-affidavits. All but Conti complied with the directive. Subsequently, two (2) criminal Informations against all of them were filed before the Sandiganbayan for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.⁶

⁴ RESOLUTION NO. 2007-010

WHEREAS, due to wear and tear, the existing official vehicles of the Commission have become prone to mechanical problems that regular repairs thereto unnecessarily drain the meager funds of the Commission;

WHEREAS, under the circumstances, it is for the best economic interest of the Commission to acquire new vehicles in order to effectively discharge its functions;

WHEREAS, due to fiscal constraints, the Commission can only afford to lease five (5) vehicles to meet the transportation needs of the Chairman and the commissioners;

WHEREAS, funds are available to cover the lease for five (5) vehicles;

NOW, THEREFORE, BE IT RESOLVED, as it is hereby RESOLVED, that five (5) new vehicles be leased from a reputable leasing company, the make and model thereof, subject to the individual preference and approval of the Chairman and the Commissioners;

RESOLVED, FURTHER, that COMMISSIONER TERESO L. JAVIER, is authorized, as he is hereby AUTHORIZED, to negotiate and sign and all contracts or agreements pertaining to the lease of the vehicles above-mentioned.

RESOLVED, FINALLY, that the Finance and Administration Department, in consultation with Commissioner Javier is hereby DIRECTED to take necessary steps for the immediate implementation of this Resolution.

⁵ *Rollo*, pp. 28-30.

⁶ *Id.* at 31-32.

On August 26, 2011, the Ombudsman found all five (5) PCGG Commissioners administratively liable for Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service. Thus:

WHEREFORE, this Office finds respondents CAMILO L. SABIO, RICARDO M. ABCEDE, TERESIO L. JAVIER, NARCISO S. NARIO and NICASIO CONTI guilty of **DISHONESTY, MISCONDUCT, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE**. Had they remained in the service, they would have been meted the penalty of **SUSPENSION** for **six (6) months and one (1) day** pursuant to Section 52 (B) (2) and (A) (20), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. They are ordered to pay a **FINE** equivalent to their **salary for six (6) months**, to be deducted from their retirement benefits.

SO ORDERED.⁷

The Motion for Reconsideration of Conti

On April 2, 2012, Conti moved for reconsideration of the Ombudsman decision. Claiming that he was denied due process, he sought the reversal of the findings of the Ombudsman. He averred that he only learned of the filing of the cases before the Sandiganbayan for the first time through news reports; that he searched online and found a report on the website of ABS-CBN; that he was shocked and surprised by the filing of the cases because he was never informed and he never received any *subpoena* from the Ombudsman; that on February 16, 2012, he secured a photocopy of the records of the criminal cases from the Sandiganbayan where it appeared that his copy of the decision was sent to “30 Bituan St., North Araneta Avenue, Quezon City” on February 1, 2012 as shown in the registry receipt; that the said address used to be his address and he had since moved to #1 F. Sevilla St., Sevilla Townhomes, Barangay Pedro Cruz, San Juan City, in 2006; that he could not have received any notice even if it was sent to the PCGG office because he was already separated from the service as of August 2008; and lastly, that he never received any notice, *subpoena* or order from the Ombudsman during the conduct of the administrative and criminal investigation.⁸

⁷ Id. at 27-28.

⁸ Id. at 32-33.

On May 25, 2012, the Ombudsman denied Conti's motion for reconsideration.⁹

Aggrieved, Conti filed a petition for review before the CA.

The Ruling of the CA

In its May 19, 2015 Decision, the CA *granted* Conti's petition. It found that Conti was indeed deprived of due process as he did not receive a copy of the Ombudsman's order requiring him to file a counter-affidavit; that such denial of due process was not cured by the filing of his motion for reconsideration as it was filed precisely to raise the issue of the violation of his right to due process; that he was not even furnished copies of the affidavits and other pieces of evidence considered by the Ombudsman; and that, hence, he was deprived of a fair opportunity to squarely and intelligently answer the accusations hurled against him.¹⁰

In the same decision, the CA ruled that Conti could not be held administratively liable for dishonesty, misconduct, and conduct prejudicial to the best interest of the service. It noted that nothing in Resolution No. 2007-010 would show that Conti intended to defraud, lie or make a false statement; that the decision to avail of new vehicles through lease was justified by the unavailability of funds; that the FIO did not present countervailing evidence to prove that Conti, in so acting, was predisposed to lie, cheat, deceive, or defraud; and that under the prevailing circumstances, the burden to prove by substantial evidence that Conti had the intent to commit a wrong was not satisfied. As far as misconduct was concerned, the CA opined that Conti's reliance on the long standing practice in the PCGG to lease vehicles militated against any wrongful intention to transgress any rule as it displayed good faith on his part. There being good faith, no misconduct could be attributed to him. Finally, the CA concluded that he did not commit acts prejudicial to the best interest of the service as it was not shown that false statements were made in the resolution or that there was any misappropriation of public funds.¹¹ Thus:

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. The Decision dated 26 August 2011 and Order dated 25 May 2012 both rendered by the Office of the Ombudsman in OMB-C-A-10-0123-B, *insofar as Petitioner Nicasio A. Conti is concerned*, are **REVERSED** and **SET ASIDE**.

⁹ Id. at 33.

¹⁰ Id. at 35-37.

¹¹ Id. at 40-42.

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Accordingly, the administrative complaint for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service filed by the Field Investigation Office-Office of the Ombudsman against *Petitioner Nicasio A. Conti* is **DISMISSED**.

SO ORDERED.¹²

On October 28, 2015, the CA denied the Ombudsman's motion for reconsideration.

Hence, this petition.

ISSUES

- I. **THE HONORABLE COURT OF APPEALS (12TH Division) GRIEVOUSLY ERRED IN RULING THAT RESPONDENT NICASIO A. CONTI WAS DENIED DUE PROCESS IN OMB-C-A-10-0123-B.**
- II. **THE HONORABLE COURT OF APPEALS (12th Division) GRIEVOUSLY ERRED IN FINDING THAT RESPONDENT NICASIO A. CONTI IS NOT LIABLE FOR DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.**¹³

The Ombudsman, through the Office of the Solicitor General (*OSG*), argues that Conti was not denied his right to due process and as he was served notices at the addresses that he stated in his employment records at the PCGG and provided by the latter to the Ombudsman. The Ombudsman would not have known of his address other than what could be found in the employment records. The fact of Conti's receipt of a copy of the complete case records from the Ombudsman, although belatedly, showed no deprivation of due process.

The OSG cites the case of *Ruivivar v. Office of the Ombudsman*¹⁴ (*Ruivivar*) where it was held that there was no denial of due process when a party received copies of the affidavits, which were never controverted. It stresses that the Ombudsman considered Conti's motion for reconsideration where the latter controverted the allegations against him and even presented evidence to support his position; and that it re-evaluated the evidence and reviewed the records of the case for months before issuing the order affirming his administrative liability. The OSG points out that no grave

¹² *Id.* at 42-43.

¹³ *Id.* at 15-16.

¹⁴ 587 Phil. 100 (2008).

error of facts, laws or serious irregularities tainted the Ombudsman decision.¹⁵

In addition, the OSG assigns as an error the CA opinion that because no particular rule of action covered the lease agreement for vehicles, Conti could not be held administratively liable for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The OSG invites the attention of the Court to COA Circular No.85-55-A,¹⁶ dated September 8, 1985, which requires public bidding in the lease-purchase of equipment including service vehicles. Thus, the PCGG should have conducted a public bidding first before entering into a lease-purchase agreement as the wording of the above circular cannot be mistaken.¹⁷

The OSG further states that the decision of Conti and the rest of the members of the Commission to enter into the questioned vehicle lease contracts without public bidding cannot be justified by what they called the long standing practice¹⁸ of the PCGG as this would sanction a violation of R.A. No. 9184, otherwise known as the Government Procurement Reform Act. It also cited COA Circular No. 85-55-A,¹⁹ Article XVI of Art. IV of R.A. No. 9184²⁰ and Sec. 54.2 (b) of its Implementing Rules and

¹⁵ *Rollo*, pp. 16-17.

¹⁶ 4.0 REVISED RULES AND REGULATIONS ON CERTAIN TRANSACTIONS

4.3 LEASE PURCHASE

The national government may enter into an agreement for the lease purchase of equipment subject to public bidding, the approval of the Office of the Budget and Management, and to other pertinent accounting and auditing regulations. Details of the payment shall be indicated in the lease purchase agreement and accompanied with a certification of availability of equipment outlay authorized for the agency to cover the full contract cost. The lease purchase agreement may be entered into only for specialized equipment such as typewriters, adding machines and automobiles, the purchase price of which is at least P50,000.00. All lease purchase agreements of equipment the total value of which exceeds P200,000 shall be subject to the approval of the President.

¹⁷ *Rollo*, pp. 18-19.

¹⁸ *Id.* at 21.

¹⁹ COA Circular provides:

b. Emergency Purchase

Unless otherwise provided by law or the charter, agencies are authorized to make emergency purchase of supplies, materials, and spare parts to meet an emergency which may involve the loss or danger to life and/or property, or are to be used in connection with a project or activity which cannot be delayed causing detriment to the public service.

An emergency purchase, canvass of prices of items from at least three (3) bonafide reputable suppliers shall be required, except when the amount involved is less than P1000.00 or in case of repeat orders where the price is the same or less than the original price.

A supplier may be deemed a bonafide and reputable if it satisfies the following criteria:

- a. it should be duly licensed and registered with appropriate bodies;
- b. it is not "blacklisted" by any government agency at the time of canvass; and
- c. it should be in the business for at least six (6) months.

²⁰ R.A. No. 9184 provides:

Sec. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative and whenever justified by the conditions provided in this Act, the Procuring

Regulations (*IRR*)²¹ to show that even that “long standing practice” negates the defense of urgency.

As Resolution No. 2007-010 providing for the lease of vehicles to the PCGG in 2007 made no mention of any urgency to meet a need, the OSG argues that the defense of urgent necessity to lease the vehicles to restore vital public services was belatedly thought of only after the case had been filed. It stresses that the practice of the PCGG Commissioners and their predecessors of resorting to lease-purchase agreement failed to observe COA Circular No. 85-55-A, R.A. No. 9184 and its IRR, all of which intended to prevent the pernicious practice of giving undue favor or advantage to a contracting party to the detriment and prejudice of the government, and, thus, a transgression of some definite rule of action was clear. It adds that “[m]ore than a prejudice amounting to any monetary loss, the loss of faith in government service is a greater prejudice which this Honorable Court should guard against.”²²

Respondent Conti insists that he was deprived of his right to due process as there was nothing on record that showed he was even notified of the proceedings before the Ombudsman until it rendered a decision on the case. He emphasizes that “due process of law contemplates notice and opportunity to be heard before judgment is rendered.”²³ Conti also pleads

Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of procurement:

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(2) Negotiated Procurement. – a method of Procurement that may be resorted under extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

Sec. 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

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(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or restore vital public services, infrastructure facilities and other public utilities.

²¹ Sec. 18, 54.2 In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Section 48 to 53 of this IRR-A, the following shall apply:

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(b) For items (a) and (b) of Section 53, in the case of goods and infrastructure project entity shall draw up a list of three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed.

²² *Rollo*, pp. 21-22.

²³ *Id.* at 50-51.

that this Court consider the fact that, even in his motion for reconsideration, he never had the fair opportunity to squarely and intelligently answer nor refute the accusations against him and present any evidence in support of his defense as he was not furnished with, or had otherwise received affidavits, whether before or after the decision was rendered. According to him, all he had at the time he filed his motion for reconsideration was a copy of the Ombudsman decision and the two informations in the said case.

Ruling of the Court

*Conti was deprived of his
Constitutional Right to Due Process*

Section 1, Article III of the 1987 Constitution guarantees that:

No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.²⁴

In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. In *Ang Tibay v. Court of Industrial Relations*,²⁵ the Court stated that one of the requisites for due process compliance was that the decision must be rendered on the basis of the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a

²⁴ *Luzon Surety Co., Inc. v. Jesus Panaguiton*, 173 Phil. 355, 360 (1978).

²⁵ 69 Phil. 635 (1940).

violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.²⁶

In this case, Conti was never given an opportunity to air his side. He was not furnished with a copy of the Ombudsman order requiring him to file a counter-affidavit. This was admitted by the Ombudsman as the records bore that the notices were sent to the PCGG when he was no longer a Commissioner and to Conti's previous address in Araneta Avenue, Quezon City, which were returned unserved with a notation that the addressee moved and left with no forwarding address. This suffices as proof that Conti was not properly apprised of the cases against him.

The Court disagrees with the Ombudsman in citing the case of *Ruivivar* as Conti's situation was not similar to the cited case. In *Ruivivar*, the petitioner filed her motion for reconsideration and the Ombudsman acted on it, albeit belatedly, by issuing an Order that she be furnished with all the pleadings and other pertinent documents and allowing her to file, within ten (10) days from receipt, such pleading which she deemed fit under the circumstances. In the said case, however, the petitioner still failed to refute the charges against her.

Effect of such a Violation

The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard.²⁷ "The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the States right to due process raises a serious jurisdiction issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. Any judgment or decision rendered notwithstanding such violation may be regarded as a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head."²⁸

²⁶ *Estrada v. Office of the Ombudsman*, G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 57, citing *Ruivivar v. Ombudsman*, 587 Phil. 100 (2008).

²⁷ *Uy v. Court of Appeals*, 400 Phil. 25, 36 (2000).

²⁸ *People v. Duca*, 618 Phil. 154, 166 (2009), citing *Saldana v. Court of Appeals*, 268 Phil. 424, 431-432 (1990).

Consequently, such nullity not only applies to the entire judgment rendered by the Ombudsman but likewise nullifies the judgment rendered by the CA reversing the findings of the Ombudsman as to Conti's liability. With the violation of Conti's right to due process, it is therefore plain, that any judgment arising from it is void, whether the same be favorable to him or otherwise.

In sum, the CA was correct in decreeing that Conti was deprived of his constitutional right to due process. At that point, it should have ordered the remand of the case to the Ombudsman for appropriate action. The CA, however, also resolved the issues on the substantive merits of the case. It was an error because Conti was only questioning the violation of his right to due process. Although he also discussed the merits of the case, it was more of a precautionary action on his part. The CA should have been more prudent to refrain from rendering judgment and instead remand the case to the Ombudsman to provide Conti the opportunity that he was deprived of by officially furnishing him with the complete records of the case and allowing him to file the appropriate pleadings in his defense.

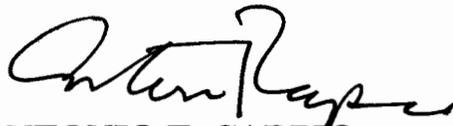
WHEREFORE, the petition is **PARTLY GRANTED**. The May 19, 2015 Decision and the October 28, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 126698 are reversed insofar as they touched on the merits of the case.

The case is **REMANDED** to the Ombudsman for appropriate action.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice