

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**JONATHAN G. MONTERDE and  
ROY C. CONAG,**  
*Petitioners,*

**G.R. No. 214102**

Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
HERNANDO,  
INTING,  
GAERLAN, and  
DIMAAMPAO, JJ.

- versus -

**BAYANI H. JACINTO,** in his  
capacity as Graft Investigation and  
Prosecution Officer III, **GERARD  
A. MOSQUERA,<sup>1</sup>** in his capacity  
as Deputy Ombudsman for Luzon,  
**CONCHITA CARPIO-  
MORALES,** in her capacity as  
Ombudsman of the Philippines,  
and **EVELYN A. CONAG,**  
*Respondents.*

Promulgated:

FEB 14 2022

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**DECISION**

**HERNANDO, J.:**

This is a Petition<sup>2</sup> for *Certiorari* under Rule 65 of the Rules of Court, assailing the February 22, 2013 Decision,<sup>3</sup> the June 19, 2013 Order,<sup>4</sup> and the

<sup>1</sup> Erroneously indicated as “Mosqueda” in the Petition (*rollo*, p. 5).  
<sup>2</sup> *Rollo*, pp. 4-12.  
<sup>3</sup> Id. at 13-21. Penned by Graft Investigation and Prosecution Officer III Bayani H. Jacinto and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.  
<sup>4</sup> Id. at 22-25. Penned by Graft Investigation and Prosecution Officer III Bayani H. Jacinto and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

March 24, 2014 Order<sup>5</sup> rendered by the Office of the Deputy Ombudsman for Luzon (Ombudsman), in OMB-L-A-11-0576-I. Essentially, petitioners are assailing the Ombudsman's refusal to stay the execution of its earlier decision which found them guilty of simple neglect of duty and imposed upon them the penalty of fine, on the ground that they can no longer be administratively disciplined due to their subsequent re-election.<sup>6</sup>

**Antecedents:**

The case stemmed from the administrative complaint<sup>7</sup> filed by Evelyn A. Conag (Conag) in 2011 against the vice mayor and the members of the *sangguniang bayan* of Esperanza, Masbate (local government officials), for Gross Negligence, and violation of the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>8</sup> The complaint was grounded on the local government officials' failure to respond to the request of a certain organization for an ordinance establishing a marine reserve and fish sanctuary in Masbate.<sup>9</sup> Jonathan G. Monterde and Roy C. Conag (petitioners) are among the members of the *sangguniang bayan* impleaded in the complaint.<sup>10</sup>

In its February 22, 2013 Decision<sup>11</sup> (assailed Decision), the Ombudsman found merit in the complaint and held that the local government officials were indeed remiss in their duties.<sup>12</sup> The Ombudsman thus imposed upon them the penalty of suspension for six months, *viz.*:

**WHEREFORE**, premises considered, we find that there is substantial evidence that respondents REBEKAH O. YAP, JOSEPHINE P. GUIZ, LILIA B. ESPENILLA, FRANQUILINO B. BONDESTO, ERNIE L. ANTIPOLLO, JONATHAN G. MONTERDE, ALDRIN B. JAO, ROY C. CONAG, NICOLAS B. BAGUIO, MODESTO P. LISTONES JR. AND ESTELA H. MONINO are **GUILTY** of violation of Section 5 of R.A. 6713 and Simple Neglect of Duty and hereby order their **SUSPENSION** for **SIX (6) MONTHS WITHOUT PAY**. In case

<sup>5</sup> Id. at 26-29. Penned by Deputy Ombudsman for Luzon Gerard A. Mosquera. The order was erroneously referred to as the March 17, 2014 Order in the Petition (*rollo*, p. 5).

<sup>6</sup> Id. at 9. Notably, the Petition contains many inaccuracies such as (1) in the "Nature of the Petition" portion, petitioners incorrectly referred to the March 24, 2014 Order as the March 17, 2014 Order; (2) in the "Prayer" portion, petitioners erroneously referred to the June 19, 2013 Order as the June 10, 2013 Order; (3) in the "Nature of the Petition" portion, petitioners indicated the subject of the Petition to be the February 22, 2013 Decision and the June 19, 2013 and March 24, 2014 Orders, but in the "Prayer" portion, petitioners only prayed for the nullification of the June 19, 2013 and March 24, 2014 Orders; and (4) petitioners incorrectly referred to Deputy Ombudsman for Luzon Gerard A. Mosquera as Gerard A. Mosqueda (*rollo*, pp. 4-12). These inaccuracies reflect carelessness on the part of Atty. Honesto A. Villamor (the signatory to the pleading) which should not be countenanced. He is therefore reminded of his duty to serve his clients with competence and diligence under Canon 18 of the Code of Professional Responsibility.

<sup>7</sup> Records, Vol. 1, unpaginated.

<sup>8</sup> *Rollo*, p. 13.

<sup>9</sup> Id. at 13-14.

<sup>10</sup> Id. at 13.

<sup>11</sup> Id. at 13-21.

<sup>12</sup> Id. at 16-18.

the respondents are already retired from government service or if the principal penalty cannot be enforced *for any reason*, the alternative penalty of FINE equivalent to SIX (6) MONTHS SALARY is hereby imposed upon them which shall be paid to this Office.

The Honorable Secretary of the Department of Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 7, as amended, in relation to OMB Memorandum Circular No. 1, Series of 2006, dated 11 April 2006, and to promptly inform this Court of the action taken hereon.

Further, the instant case is REFERRED to the Field Investigation Unit (FIU) of the Office of the Deputy Ombudsman for Luzon for a fact-finding investigation relative to possible violations of Article 271 (2) and (4) of the RPC, Section 3 (e) of R.A. No. 3019 and applicable issuances of the Bureau of Fisheries and Aquatic Resources (BFAR).

**SO DECIDED.**<sup>13</sup>

Aggrieved, the local government officials, including petitioners, filed two separate motions for reconsideration, arguing in common that the assailed Decision has no basis in fact and law, and that the suspension was too harsh a penalty.<sup>14</sup> The Ombudsman partially granted the motions in its May 1, 2013 Order, and reduced the penalty to a fine equivalent to three-months' salary.<sup>15</sup>

In the meantime, petitioners were re-elected during the May 13, 2013 elections.<sup>16</sup>

Unsatisfied with the reduction of the penalty, Conag moved to reconsider the Ombudsman's May 1, 2013 Order.<sup>17</sup> However, this was denied by the Ombudsman for lack of merit in its June 19, 2013 Order<sup>18</sup> (first assailed Order), *viz.*:

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<sup>13</sup> Id. at 20.

<sup>14</sup> Records, Vol. 1, unpaginated; see *rollo*, p. 78.

<sup>15</sup> Id. The *fallo* reads:

**WHEREFORE**, respondents' Motion for Reconsideration is **PARTIALLY GRANTED**. The *Decision* dated 22 February 2013 is hereby **MODIFIED** by reducing the penalty to FINE equivalent to **THREE (3) MONTHS' SALARY** *to be paid to this Office*.

Let a copy of this *Resolution* be furnished to the Honorable Secretary of the Department of Interior and Local Government (DILG) for his information and appropriate action. Further, he is hereby directed to inform this office of the action taken hereon within ten (10) days from notice.

**SO ORDERED.**

<sup>16</sup> Records, Vol. 1, unpaginated; see *rollo*, p. 9.

<sup>17</sup> Id.; see *rollo*, p. 22.

<sup>18</sup> *Rollo*, pp. 22-25.

**WHEREFORE**, complainant's Motion for Reconsideration is hereby **DENIED** for utter lack of merit.

**SO ORDERED.**<sup>19</sup>

Thereafter, the local government officials filed a Motion to Stay Execution<sup>20</sup> of the Ombudsman's assailed Decision as modified by its May 1, 2013 Order (modified assailed Decision), grounded, among others, on the application of the condonation doctrine.<sup>21</sup>

Acting on such motion, the Ombudsman rendered its March 24, 2014 Order<sup>22</sup> (second assailed Order), holding that the condonation doctrine does not apply in petitioners' case because the decision that found them guilty of the offense had already become executory even before their re-election.<sup>23</sup> Thus, it denied the motion, *viz.*:

**WHEREFORE**, respondents' Motion to Stay Execution dated 17 March 2014 is hereby **DENIED**.

**SO ORDERED.**<sup>24</sup>

Undeterred, petitioners filed the instant petition,<sup>25</sup> arguing that the assailed Decision and the assailed Orders should be nullified for being rendered with grave abuse of discretion.<sup>26</sup> Petitioners insist that they can no longer be administratively disciplined following their re-election.<sup>27</sup>

In its comment,<sup>28</sup> the Office of the Solicitor General (OSG) argued that (1) petitioners availed the wrong remedy and thus the petition should be dismissed;<sup>29</sup> (2) the doctrine of condonation should be abandoned;<sup>30</sup> and (3) in any event, the doctrine is not applicable to petitioners because they were merely fined and not removed from office, and further because the assailed decision was rendered before their re-election.<sup>31</sup>

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<sup>19</sup> Id. at 25.

<sup>20</sup> Records, Vol. 1, unpaginated; see *rollo*, pp. 26-27.

<sup>21</sup> *Rollo*, p. 27.

<sup>22</sup> Id. at 26-29.

<sup>23</sup> Id. at 28-29.

<sup>24</sup> Id. at 29.

<sup>25</sup> Id. at 4-12.

<sup>26</sup> Id. at 5.

<sup>27</sup> Id. at 9.

<sup>28</sup> Id. at 75-87.

<sup>29</sup> Id. at 79.

<sup>30</sup> Id. at 80-82.

<sup>31</sup> Id. at 82-84.

Conag also filed a comment<sup>32</sup> and opined that the petition has no basis in fact and in law because the case was already decided before petitioners' re-election.<sup>33</sup> Petitioners and the OSG further filed separate memoranda,<sup>34</sup> reiterating their arguments in their earlier pleadings.<sup>35</sup>

### Issue

Did the Ombudsman act with grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the assailed Decision and the assailed Orders?

### Our Ruling

The petition should be dismissed.

It is well-settled that appeals from the decisions of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.<sup>36</sup> As held by the Court in *Fabian v. Desierto*:<sup>37</sup>

As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, **appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.**<sup>38</sup> (Emphasis supplied)

Such ruling has been reiterated in many subsequent cases,<sup>39</sup> and has been later on incorporated in the first paragraph of Section 7, Rule III of the Ombudsman's Rules of Procedure,<sup>40</sup> viz.:

**SECTION 7. Finality and Execution of Decision.** — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements**

<sup>32</sup> Id. at 73.

<sup>33</sup> Id.

<sup>34</sup> Id. at 187-203, unpaginated.

<sup>35</sup> Id.

<sup>36</sup> *Fabian v. Desierto*, 356 Phil. 787, 808 (1998).

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> *Crebello v. Office of the Ombudsman*, G.R. No. 232325, April 10, 2019; *Lanting v. Ombudsman*, 497 Phil. 424, 431 (2005); *Coronel v. Desierto*, 448 Phil. 894, 902 (2003); *Barata v. Abalos, Jr.*, 411 Phil. 204, 212 (2001); *Namuhe v. Ombudsman*, 358 Phil. 781, 788 (1998).

<sup>40</sup> Ombudsman Administrative Order No. 07 (1990), as amended by Ombudsman Administrative Order No. 17-03, entitled, "Amendment of Rule III Administrative Order No. 07" (2003).

**and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration. (Emphasis supplied)**

Accordingly, A.M. No. 99-2-02-SC<sup>41</sup> instructs that any appeal by way of petition for review from a decision, final resolution, or order of the Ombudsman in administrative cases, or by way of special civil action relative to such decision, resolution, or order, must be denied or dismissed, respectively.<sup>42</sup>

In view thereof, and insofar as it seeks to nullify the assailed Decision and the first assailed Order which are both final issuances, the instant petition should be dismissed.

As to the second assailed Order, which is an interlocutory order, even though the special civil action of *certiorari* may be the proper remedy, petitioners still violated the hierarchy of courts when they filed the petition directly to this Court without citing any exception to the rule.<sup>43</sup> Thus, the petition deserves to be dismissed on this ground.

Besides, even if we consider petitioners' arguments on the merits, the Court still finds no grave abuse of discretion on the part of the Ombudsman when it refused to implement the modified assailed Decision. Significantly, decisions of the Ombudsman in administrative disciplinary cases are required to be executed as a **matter of course**, *viz.*:

*Section 7. Finality and execution of decision. — x x x x*

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.<sup>44</sup>

<sup>41</sup> With subject, "Denial of Appeal from Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order" (1999).

<sup>42</sup> *Id.*

<sup>43</sup> See *Dy v. Bibat-Palamos*, 717 Phil. 776, 782-783 (2013), where we explained that under the principle of hierarchy of courts, direct recourse to the Court is improper because the Supreme Court is a court of last resort and must remain to be so for it to satisfactorily perform its constitutional functions. Nonetheless, the invocation of the Court's original jurisdiction may be allowed to issue writs of *certiorari* in certain instances on the ground of special and important reasons, **which must be clearly stated in the petition.**

<sup>44</sup> RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule III, Section 7, as amended by Ombudsman Administrative Order No. 17-03 (2003).

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In fact, not even the filing of a motion for reconsideration or a petition for review can stay the immediate implementation of Ombudsman decisions, resolutions, or orders in administrative disciplinary cases.<sup>45</sup> Only a temporary restraining order or a writ of preliminary injunction, duly issued by a court of competent jurisdiction, can produce such effect as stated in Ombudsman Memorandum Circular No. 01, Series of 2006,<sup>46</sup> viz.:

Section 7 Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

**The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.**

**Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions. (Emphasis supplied)**

Hence, the Ombudsman cannot be considered to have acted with grave abuse of discretion in denying petitioners' motion to stay execution. It was merely doing its duty as required by law. Accordingly, insofar as it assails the second assailed Order, the petition ought to be dismissed.

In fine, the petition should be set aside because petitioners availed the wrong remedy and violated the rule on hierarchy of courts, and further because decisions of the Ombudsman in administrative disciplinary cases are required to be executed as a matter of course.

**WHEREFORE**, this Court resolves to **DISMISS** the petition.


<sup>45</sup> The second paragraph of the amended Section 7, Rule III of the Ombudsman Rules of Procedure states that "[a]n appeal shall not stop the decision from being executory." As further provided in Ombudsman Memorandum Circular No. 01, series of 2006, "[t]he filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions." See *Quisimbing v. Ochoa*, G.R. No. 214407, March 3, 2021, where the Court noted that regardless of the availment of remedies from decisions of the Ombudsman in administrative cases, the execution of such decisions shall proceed as part and parcel of standard procedure.

<sup>46</sup> Ombudsman Memorandum Circular No. 01, with subject, "Immediate Implementation of Decisions, Orders or Resolutions Issued by the Office of the Ombudsman in Administrative Disciplinary Cases" (2006).

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*




**ATTESTATION**

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.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**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.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*