



Republic of the Philippines
Supreme Court

Manila

EN BANC

WILLIAM C. DAGAN,
Petitioner,

G.R. No. 184083

Present:

-versus-

SERENO, C. J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, JJ.

OFFICE OF THE OMBUDSMAN,
represented by **HON. ROGELIO A. RINGPIS,** Graft Investigation and
Prosecution Officer II, **JAIME DILAG Y AGONCILLO,**
EDUARDO JOSE Y BAUTISTA,
VERGEL CRUZ Y AQUINO,
EDUARDO DOMINGO Y
COSCULLUELA, ROGELIO
TANDIAMA Y ARESPACOHAGA,
REYNALDO FERNANDO Y
GALANG, AND ROMEO
BUENCAMINO Y FRANCISCO,
Respondents.

Promulgated:

NOVEMBER 19, 2013

X ----- X

DECISION

PEREZ, J.:

Assailed in this petition are the twin Resolutions of the Court of Appeals dated 28 April 2008¹ and 6 August 2008,² respectively in CA-G.R.

¹ Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Jose Catral Mendoza (now an Associate Justice of this Court) and Arturo G. Tayag, concurring. *Rollo*, pp. 39-42.
² *Id.* at 44.

SP No. 103150, dismissing petitioner William C. Dagan's appeal from the Decision and Order of the Office of the Ombudsman (OMB) in OMB-C-A-05-0263-F, exonerating respondents Jaime A. Dilag (Dilag), Eduardo B. Jose (Jose), Vergel A. Cruz, Eduardo C. Domingo, Rogelio A. Tandiana, Reynaldo G. Fernando and Romeo F. Buencamino from administrative charges.

The antecedent facts follow.

Petitioner is the owner of several racehorses that participated in horse races at the Philippine Racing Club, Inc. and Manila Jockey Club, Inc., while respondents were the former Chairman and Commissioners of the Philippine Racing Commission (Philracom).

Petitioner filed a complaint-affidavit before the Office of the Ombudsman against respondents for violation of Anti-Graft and Corrupt Practices Act; malversation; violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards of Public Officials and Employees; falsification of public document; dishonesty and grave misconduct. Petitioner made the following averments in his complaint-affidavit:

1. Under Philracom-sponsored races, Philracom undertakes the payment of all prizes for the race to the winning horses or owners thereof, less the allotted horse owner's prize of the day with the understanding that either Philippine Racing Club, Inc. or Manila Jockey Club, Inc. shall advance the same. Petitioner accuses Philracom, through respondents, of overpaying the Philippine Racing Club, Inc. and Manila Jockey Club, Inc. by ₱28,624,235.00 when it failed to deduct the allotted horse owner's prize of the day.
2. On the day of the race, petitioner's horses were denied participation and were scratched out from the race, as per order of Philracom.
3. Respondent Dilag purchased various medicines for his personal use and benefit, amounting to ₱13,346.00.
4. Respondent Dilag caused the disbursement of funds of Philracom allegedly as reimbursement for promotional expenses without specifying the nature of such promotion and without the necessary public bidding and prior approval of Philracom.



5. Respondent Jose had owned and appears to still own at least 11 racehorses in gross violation of the Philracom rules and policies.

6. Respondent Dilag entered into a contract for the purchase of the uniforms of Philracom employees in the amount of ₱400,000.00 which amount was taken from the uniform allowance of the employees, without their consent.

7. Respondent Dilag purchased equipment and medicines purportedly to be used in the implementation of the commission's policy to conduct a Coggins Test on all race horses, which purchases reportedly amounted to more than ₱200,000.00 per release.

8. Respondent Dilag and the rest of the commissioners have repeatedly failed and refused without any lawful justification to implement the compulsory drug testing for possible use of prohibitive substances on all race horses.³

Thus, the assailed Decision of the Office of the Ombudsman dealt with the following administrative charges:

1. overpayment
2. improper hiring of media consultant
3. oppressive scratching [out] of racehorses
4. malversation/illegal use of funds
5. unlawful purchases of employees' uniform and Coggins tests equipment and medicines
6. conflict of interest and non-divestment of business interest, and
7. refusal to implement the law on drug-testing.⁴

On 30 September 2005, the Office of the Ombudsman's Preliminary Investigation and Administrative Adjudication Bureau rendered a Decision absolving respondents of charges of grave misconduct, oppression, dishonesty, serious irregularities and violation of laws.⁵ With respect to the charge of overpayment, the Office of the Ombudsman held that under the Memorandum of Agreement (MOA), Philracom obligated itself to reimburse the prize money and there was nothing in the MOA which supported petitioner's contention that the horse owner's prize of the day should be deducted or withheld by Philracom. On the charge of improper hiring of

³ See Complaint-Affidavit. Id. at 45-55.

⁴ Id. at 287-291.

⁵ Id. at 325.

media consultant, the Office of the Ombudsman dismissed the same for failure of petitioner to submit a copy of the contract. The Office of the Ombudsman justified the removal from a race of petitioner's two racehorses as a penalty for not submitting the horses for a Coggins Test. The Office of the Ombudsman found it premature to make an administrative case because the questioned reimbursements were still being subjected to a post-audit by the Resident Commission on Audit (COA) Auditor of Philracom. The issue of unauthorized promotional expenses was disproved by the fact that the Department of Budget and Management had been providing funds for promotional expenses and the Philracom Chairman was the rightful officer to disburse said funds. Regarding the unlawful purchases of employees' uniform and equipment and medicines to implement the Coggins Test, the Office of the Ombudsman accepted the explanation of respondents that the purchase of uniforms was a private transaction between the employees and the awarded supplier. The denial by respondents of any purchase made for equipment and medicines for the Coggins Test was likewise accepted. Anent the charge of conflict of interest, the Office of the Ombudsman ruled that respondent Jose is not covered by the prohibition under Republic Act No. 6713 which is "to own, control manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law" because respondent does not appear to be connected, in any capacity, with racing clubs. Neither is he covered by the requirement of divestment of business interest as provided in Section 9 of Republic Act No. 6713 because he merely served in an honorary capacity. Finally, the OMB disregarded the charge of neglect in implementing the law on drug testing because petitioner failed to show that it was respondents' principal duty to implement such drug testing.⁶

Petitioner filed a motion for reconsideration/reinvestigation but on 25 November 2005, the Office of the Ombudsman denied the motion for lack of merit.⁷

Petitioner elevated the case to the Court of Appeals via a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. On 28 April 2008, the appellate court issued a Resolution dismissing the petition for failure of petitioner to avail of the correct mode of appeal. Citing *Fabian v. Hon. Desierto*,⁸ the appellate court ruled that since the assailed issuances of the Ombudsman are administrative in nature, the proper remedy is through a

⁶ Id. at 308-324.

⁷ Id. at 353.

⁸ 356 Phil. 787 (1998).

petition for review under Rule 43 of the 1997 Rules of Civil Procedure. Petitioner sought the reconsideration of the Resolution but it was denied on 6 August 2008.⁹

Thus, the present recourse. Petitioner argues that the Court of Appeals erred in dismissing his petition for *certiorari*. He contends that the *Fabian* case applies only to a situation where the decision of the Office of the Ombudsman is that of conviction. In case of exoneration, petitioner asserts that under Section 27 of Republic Act No. 6770 or the Ombudsman Act, the decision is final, executory and unappealable. Petitioner maintains that his only recourse to reverse and nullify the same is by way of a special civil action for *certiorari* under Rule 65. Petitioner cites *Barata v. Abalos, Jr.*¹⁰ to support his contention.

Petitioner also raises as a ground for review the factual findings of the Office of the Ombudsman. First, petitioner insists that the reimbursement to be made by Philracom should only be to the extent of the actual amount paid to race horse owners. Second, petitioner assails Philracom's policy of subjecting all race horses to the Coggins Test for being an undue and unreasonable restriction on his right to participate in the races. Third, petitioner claims that Chairman Dilag obtained reimbursement for the purchase of medicines but made it appear that the payment was for reimbursement of promotional expenses. Fourth, petitioner proffers that the "conflict of interest" provision applies to all businesses which may be opposed to or affected by the faithful performance of the duty of such official. Likewise, the rule applies to all public officials whether or not they are receiving compensation. Fifth, petitioner submits that Philracom is legally mandated to implement drug testing on all horses.

On behalf of the Office of the Ombudsman, the Office of the Solicitor General (OSG) filed a Comment defending the Court of Appeals' dismissal of the petition for *certiorari*. The OSG avers that our ruling in *Brito v. Office of the Deputy Ombudsman for Luzon*,¹¹ where we held that the decision of the Ombudsman may be reviewed by filing a petition for *certiorari* under Rule 65 before us, applies in this case. Also the OSG posits that the issues raised by petitioner involve questions of facts which are beyond the province of a petition for review.

⁹ *Rollo*, p. 44.

¹⁰ 411 Phil. 204, 211-212 (2001).

¹¹ 554 Phil. 112 (2007).

Respondents also filed their Comment and decry their continuous harassment by petitioner. Respondents maintain that *certiorari* could not be availed of before the appellate court because the Decision and Resolution of the Ombudsman have become final and executory. Moreover, respondents cite that Dilag was already dismissed from the service on 27 April 2006 as a consequence of a complaint filed by petitioner before the Presidential Anti-Graft Commission, which fact, according to respondents, demonstrates petitioner's propensity to mislead the Court under the guise of being deprived of due process.

We rule in favor of respondents.

Section 27 of Republic Act No. 6770 or otherwise known as "The Ombudsman Act of 1989," provides:

SEC. 27. Effectivity and Finality of Decisions. – (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

- (1) New evidence has been discovered which materially affects the order, directive or decision;
- (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: provided, that only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman, when supported by substantial evidence, are conclusive. **Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.**

x x x x

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied).

The above-quoted provision logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and



unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable.

This inference is validated by Section 7,¹² Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman), to wit:

SEC. 7. Finality 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 and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770. (Emphasis theirs).

It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) 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.¹³

In the instant case, the respondents were absolved of the charges against them by the Office of the Ombudsman. Such decision is final and unappealable.

However, petitioner is not left without any remedy. In *Republic v. Francisco*,¹⁴ we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion,

¹² The latest amendment to this section reads:

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 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.

¹³ *Office of the Ombudsman v. Alano*, 544 Phil. 709, 714 (2007).

¹⁴ 539 Phil. 433, 449 (2006).

the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for *certiorari* under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.¹⁵

That said, there still is the question which court has jurisdiction over a *certiorari* petition under Rule 65.

Citing *Barata*, petitioner argues that he correctly filed a petition for *certiorari* under Rule 65 before the Court of Appeals. The OSG countered that the petition for *certiorari* under Rule 65 must be filed before this Court pursuant to *Brito*.

In *Barata*, petitioner filed a petition for review under Rule 43 of the Rules of Court with the appellate court from the decision exonerating the respondent mayor of the administrative charge. The appellate court dismissed the petition on the ground that said decision was not appealable. We affirmed the appellate court's ruling and further ruled that while the decision absolving respondent from the charge was final and unappealable, the complainant was not deprived of a legal recourse by *certiorari* under Rule 65 of the Rules of Court and the correct recourse was to the Court of Appeals.¹⁶

The Court, in *Brito*, deviated from the foregoing doctrine. Complainant elevated the administrative aspect of the Ombudsman's order imposing upon respondent government employees the penalty of reprimand to the Court of Appeals *via* petition for *certiorari* under Rule 65. The Court held that complainant should have filed the *certiorari* petition directly with the Supreme Court. The Court sourced its holding from *Francisco*. *Francisco* cemented the rule that the Court of Appeals has no appellate jurisdiction to review, rectify or reverse certain decisions of the Ombudsman that are final and unappealable and that decisions of quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law.¹⁷ However, there was no categorical pronouncement in *Francisco* vesting exclusive jurisdiction on the Supreme Court over a *certiorari* petition under Rule 65 challenging a decision absolving a respondent from an administrative charge.

¹⁵ Id. at 450 citing *De Guzman v. Commission on Elections*, G.R. No. 159713, 31 March 2004, 426 SCRA 698, 707-708.

¹⁶ *Barata v. Abalos, Jr.*, supra note 10 at 212-213.

¹⁷ *Republic v. Francisco*, supra note 14 at 450.

Considering that a special civil action for *certiorari* is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, such petition should be initially filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. We reiterated in *Heirs of Teofilo Gaudiano v. Benemerito*,¹⁸ that concurrence of jurisdiction should not be taken to mean as granting parties seeking any of the writs an absolute and unrestrained freedom of choice of the court to which an application will be directed. It is an established policy that a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special, important and compelling reasons, clearly and specifically spelled out in the petition.¹⁹

In view of the foregoing disquisition, we abandon the procedural rule enunciated in *Brito*. The legal outcome of said case is not necessarily affected because petitioner therein nonetheless failed to adduce evidence that the Deputy Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in his joint order.

In the same vein, while petitioner employed the correct mode of review in this case, *i.e.*, a special civil action for *certiorari* before the Court of Appeals, petitioner failed to show grave abuse of discretion committed by the Office of the Ombudsman. Hence, the petition must fail.

Petitioner's rehashed arguments seek to refute the factual findings of the Office of the Ombudsman.

Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.²⁰

¹⁸ 545 Phil. 311 (2007).

¹⁹ *Id.* at 319-320.

²⁰ *Tolentino v. Loyola*, G.R. No. 153809, 27 July 2011, 654 SCRA 420, 434.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner - which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law – in order to exceptionally warrant judicial intervention.²¹

There is no showing that the assailed Decision is tainted with grave abuse of discretion. The Office of the Ombudsman's Decision exonerating respondents from the administrative charges discussed at length and resolved all issues raised by petitioner. Furthermore, the Office of the Ombudsman, in its Order denying petitioner's Motion for Reconsideration, repeatedly addressed *seriatim* the arguments raised in the motion. On the charge of overpaying the Philippine Racing Club, Inc. and the Manila Jockey Club, Inc., the Office of the Ombudsman maintained that there is nothing in the law or in the memorandum cited by petitioner which requires retention of the horseowner's prize of the day. The Office of the Ombudsman declared that petitioner failed to establish the culpability of respondents for the alleged arbitrary exclusion of his horses. On the matter of alleged malversation of funds, the Office of the Ombudsman reiterated that it is premature to file an administrative case in view of the ongoing post-audit being conducted by the Resident COA auditor. With regard to conflict of interest, the Office of the Ombudsman clearly stated that Jose holds his position as Philracom commissioner in an honorary capacity, thereby exempting him from the required divestment of financial or business interest. The Office of the Ombudsman dismissed the charge of alleged neglect to enforce drug testing as unsubstantiated. On the unlawful purchase of employees' uniform, the Office of the Ombudsman restated that it was a private transaction between the employees and the supplier. Essentially, then, the Office of the Ombudsman, in a proper exercise of discretion, found the evidence adduced by petitioner as wanting to support the administrative charges brought against respondents.

WHEREFORE, based on the foregoing, the instant petition is **DENIED** for lack of merit.



²¹ *Casing v. Ombudsman*, G.R. No. 192334, 13 June 2012, 672 SCRA 500, 508.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

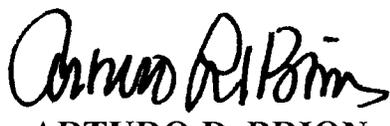
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice

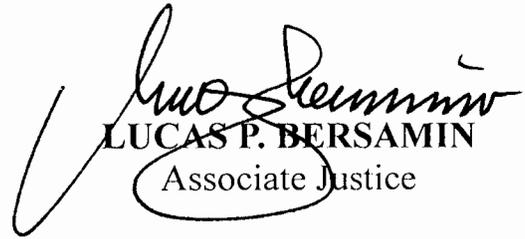

PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

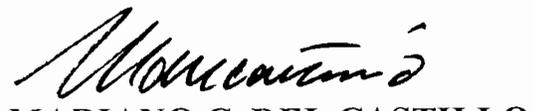

ARTURO D. BRION
Associate Justice



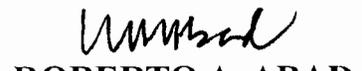
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Associate Justice



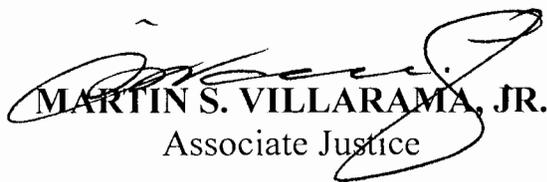
LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

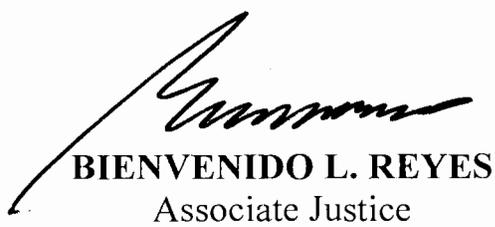


ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

(No Part)
JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

