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THIRD DIVISION

[G.R. NO. 134887. July 27, 2006]

PHILIPPINE AGILA SATELLITE, INC. REPRESENTED BY MICHAEL C. U. DE GUZMAN,PETITIONER, VS. SEC. JOSEFINA TRINIDAD LICHAUCO AND THE HON. OMBUDSMAN,RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

On June 6, 1994, a Memorandum of Understanding[1] (MOU) was entered into by a consortium of private telecommunications carriers and the Department of Transportation and Communications (DOTC) represented by then Secretary Jesus B. Garcia, Jr. relative to the launching, ownership, operation and management of a Philippine satellite by a Filipino-owned or controlled private consortium or corporation.

Pursuant to Article IV of the MOU, the consortium of private telecommunications carriers formed a corporation and adopted the corporate name Philippine Agila Satellite, Inc. (PASI), herein petitioner.

By letter[2] dated June 28, 1996, PASI president Rodrigo A. Silverio (Silverio) requested the then DOTC Secretary Amado S. Lagdameo, Jr. for official government confirmation of the assignment of Philippine orbital slots 161″E and 153″E to PASI for its AGILA satellites.

In response to Silverio's letter, Secretary Lagdameo, by letter[3] dated July 3, 1996, confirmed the government's assignment of Philippine orbital slots 161″E and 153″E to PASI for its AGILA satellites.

PASI thereupon undertook preparations for the launching, operation and management of its satellites by, among other things, obtaining loans, increasing its capital, conducting negotiations with its business partners, and making an initial payment of US$ 3.5 million to Aerospatiale, a French satellite manufacturer.

Michael de Guzman (de Guzman), PASI President and Chief Executive Officer (CEO), later informed Jesli Lapuz (Lapuz), President and CEO of the Landbank of the Philippines, by letter[4] of December 3, 1996, of the government's assignment to PASI of orbital slots 161″E and 153″E and requested the bank's confirmation of its participation in a club loan in the amount of US$ 11 million, the proceeds of which would be applied to PASI's interim satellite.

It appears that Lapuz sent a copy of De Guzman's letter to then DOTC Undersecretary Josefina T. Lichauco, (Lichauco) who, by letter[5] of December 5, 1996, wrote Lapuz as follows:

1. Kindly be informed that there is simply no basis for Michael de Guzman to allege that the DOTC has assigned two (2) slots to PASI. He conveniently neglected to attach as another annex, in addition to Sec. Lagdameo's letter of 3 July 1996 (Annex "A") the letter of 28 June (Annex "B") in response to which the July 3rd letter had been sent to PASI. Annex "B" precisely provides that one slot (153º E, to which the interim satellite was supposed to migrate) was to be used for the migration of the Russian satellite in time for the APEC Leaders" Summit. This particular endeavor was not successful. The interim satellite "Gorizont" never moved from its orbital location of 130ºE Longitude. Annex "C" is a letter from an official of the Subic Bay Satellite Systems Inc., with its attachments, addressed to me stating that as of the 13th of November, no such voyage to 153ºE orbital slot had been commenced. In fact DHI hid this fact from me, and in fact stated that Gorizont had already moved and was on its way to 153ºE.

   Since this timely migration did not happen in time for the APEC Leaders Meeting on 24 November, this 153ºE Longitude slot can no longer be assigned to PASI.

   The other slot 161ºE Longitude is the one that can be made available for PASI's eventual launch, in 1998 most likely, in exchange for one free satellite transponder unit utilization, for all requirements of Government. These have yet to be embodied in a contract between PASI and the DOTC.

2. I understand from my meeting with DHI/PASI this morning, and from the de

Guzman letter you sent to me, that the latter are still interested in pursuing their "interim satellite project" and are applying for a loan with your bank. Of course they can always pursue this as a business venture of DHI/PASI which is their own corporate business decision. The DOTC supports this venture but they will be getting only one orbital slot for both the Interim Satellite Project and for the Launch Project. I understand from today's meeting with them that this is technically feasible.

3. As regards the use of the name "Agila", Mr. de Guzman's allegation that DHI/PASI has registered "Agila" as a "corporate alias/trademark" is FALSE. There is no such thing as registration of a "corporate alias". Nor for that matter can the trade name of a satellite be registered for just any satellite, where it was the President who chose the name for the first Philippine satellite in orbit. No one else coined that name but he. He has therefore given the name "Agila I" to the Mabuhay satellite now in orbit at 144ºE, being the first Philippine satellite in orbit. He made this announcement in the presence of all the APEC Heads of State just before the presentation to him of the Manila Action Plan for APEC. (Underscoring supplied)

Lichauco subsequently issued, in December 1997, a Notice of Offer[6] for several orbital slots including 153ºE.

PASI, claiming that the offer was without its knowledge and that it subsequently came to learn that another company whose identity had not been disclosed had submitted a bid and won the award for orbital slot 153ºE, filed on January 23, 1998 a complaint[7] before the Regional Trial Court (RTC) of Mandaluyong City against Lichauco and the "Unknown Awardee," for injunction to enjoin the award of orbital slot 153ºE, declare its nullity, and for damages.

PASI also filed on February 23, 1998 a complaint before the Office of the Ombudsman against Secretary Josefina Trinidad Lichauco. In his affidavit-complaint, de Guzman charged Lichauco with gross violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, reading:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest

> partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of officers or government corporations charged with the grant of licenses or permits or other concessions.

The complaint was docketed as OMB Case No. 0-98-0416. The Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman, by Evaluation Report[8] dated April 15, 1998, found the existence of a prejudicial question after considering that "the case filed with the RTC involves facts intimately related to those upon which the criminal prosecution would be based and that the guilt or the innocence of the accused would necessarily be determined in the resolution of the issues raised in the civil case." It thus concluded that the filing of the complaint before the Ombudsman "is premature since the issues involved herein are now subject of litigation in the case filed with the RTC," and accordingly recommended its dismissal. Then Ombudsman Aniano A. Desierto approved on April 24, 1998 the recommendation of the EPIB.

PASI moved to reconsider[9] the dismissal of the complaint, but was denied by Order[10] dated July 17, 1998.

In the meantime, a motion to dismiss the civil case against respondent was denied by the trial court. On elevation of the order of denial to the Court of Appeals, said court, by Decision dated February 21, 2000, ordered the dismissal of the case. This Court, by Decision dated May 3, 2006, ordered the reinstatement of the case, however.[11]

PASI is now before this Court via petition for review on certiorari, arguing that the Ombudsman erred in dismissing the complaint.

In issue are 1) whether there exists a prejudicial question and, if in the affirmative, 2) whether the dismissal of the complaint on that account is in order.

Section 7, Rule 111 of the Rules on Criminal Procedure provides:

> Section 7. *Elements of prejudicial question*. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The rationale for the principle of prejudicial question is that although it does not conclusively resolve the guilt or innocence of the accused, it tests the sufficiency of the allegations in the complaint or information in order to sustain the further prosecution of the criminal case.[12] Hence, the need for its prior resolution before further proceedings in the criminal action may be had.

PASI concedes that the issues in the civil case are similar or intimately related to the issue raised in the criminal case. It contends, however, that the resolution of the issues in the civil case is not determinative of the guilt or innocence of Lichauco, it arguing that even if she is adjudged liable for damages, it does not necessarily follow that she would be convicted of the crime charged.

To determine the existence of a prejudicial question in the case before the Ombudsman, it is necessary to examine the elements of Section 3(e) of R.A. 3019 for which Lichauco was charged and the causes of action in the civil case.

Section 3(e) of R.A. 3019 which was earlier quoted has the following elements:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and
4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.[13]

The civil case against Lichauco on the other hand involves three causes of action. The first, for injunction, seeks to enjoin the award of orbital slot 153ºE, the DOTC having previously assigned the same to PASI; the second, for declaration of nullity of award, seeks to nullify the award given to the undisclosed bidder for being beyond Lichauco's authority; and the third, for damages arising from Lichauco's questioned acts.

If the award to the undisclosed bidder of orbital slot 153ºE is, in the civil case, declared valid for being within Lichauco's scope of authority to thus free her from liability for damages, there would be no **prohibited act** to speak of nor would there be basis for **undue**

injury claimed to have been suffered by petitioner. The finding by the Ombudsman of the existence of a prejudicial question is thus well-taken.

Respecting the propriety of the dismissal by the Ombudsman of the complaint due to the pendency of a prejudicial question, PASI argues that since the Rules of Procedure of the Office of the Ombudsman is silent on the matter, the Rules of Court, specifically Section 6, Rule 111 of the Rules of Court, which now reads:

> SECTION 6. *Suspension by reason of prejudicial question*. – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (Underscoring supplied),

applies in a suppletory character.

The Ombudsman, on the other hand, argues that the above-quoted provision of the Rules of Court applies to cases which are at the preliminary or trial stage and not to those, like the case subject of the present petition, at the evaluation stage.

The Ombudsman goes on to proffer that at the evaluation stage, the investigating officer may recommend any of several causes of action including dismissal of the complaint for want of palpable merit or subjecting the complaint to preliminary investigation, and the evaluation of the complaint involves the discretion of the investigating officer which this Court cannot interfere with.

While the evaluation of a complaint involves the discretion of the investigating officer, its exercise should not be abused[14] or wanting in legal basis.

Rule II, Section 2 of the Rules of Procedure of the Office of the Ombudsman reads:

> SECTION 2. *Evaluation*. – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:
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> a) dismissed outright for want of palpable merit;
> b) referred to respondent for comment;

c) indorsed to the proper government office or agency which has jurisdiction over the case;
d) forwarded to the appropriate office or official for fact-finding investigation;
e) referred for administrative adjudication; or
f) subjected to a preliminary investigation. (Underscoring supplied)

From the above-quoted provision, a complaint at the evaluation stage may be dismissed outright only for want of palpable merit. Want of palpable merit obviously means that there is no basis for the charge or charges. If the complaint has *prima facie* merit, however, the investigating officer shall recommend the adoption of any of the actions enumerated above from (b) to (f).[15]

When, in the course of the actions taken by those to whom the complaint is endorsed or forwarded, a prejudicial question is found to be pending, Section 6, Rule 111 of the Rules of Court should be applied in a suppletory character.[16] As laid down in *Yap v. Paras,*[17] said rule directs that the proceedings may only be **suspended**, not dismissed, and that it may be made **only upon petition**, and not at the instance of the judge alone or as in this case, the investigating officer.

To give imprimatur to the Ombudsman's dismissal of petitioner's criminal complaint due to prejudicial question would not only run counter to the provision of Section 6 of Rule 111 of the Rules of Court. It would sanction the extinguishment of criminal liability, if there be any, through prescription under Article 89 vis a vis Articles 90 and 91 of the Revised Penal Code which respectively read:

ART. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment;
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;

7. By the marriage of the offended woman, as provided in Article 344 of this Code. (Underscoring supplied)

ART. 90. *Prescription of crimes.* – Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second, and third paragraphs of this article. x x x

ART. 91. *Computation of prescription of offenses*. – The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such **proceedings terminate** without the accused being convicted or acquitted, **or are unjustifiably stopped for any reason not imputable to him.**

x x x x (Emphasis and underscoring supplied)

WHEREFORE, the Order dated July 17, 1998 of respondent Ombudsman dismissing OMB Case No. 0-98-0416 against respondent then Secretary Josefina Trinidad Lichauco is **SET ASIDE.**

The Ombudsman is **ORDERED** to **REINSTATE** to its docket for further proceedings, in line with the foregoing ratiocination, OMB Case No. 0-98-0416.

SO ORDERED

Quisumbing, (Chairman), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur

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[1] Ombudsman records, pp. 9-15.

[2] Id. at 16.

[3] Id. at 17.

[4] Id. at 18-22.

[5] Id. at 31-32.

[6] Id. at 38-40.

[7] Id. at 41-50.

[8] Id. at 55-56.

[9] Id. at 57-63.

[10] Id. at 67-69.

[11] *Philippine Agila Satellite Inc. and Michael C. V. de Guzman v. Josefina Trinidad-Lichauco,* G.R. No. 142362, May 3, 2006.

[12] *Marbella-Bobis v. Bobis,* 391 Phil. 648, 653 (2000).

[13] *Quibal v. Sandiganbayan,* 314 Phil. 66, 75-76 (1995).

[14] *Acop v. Office of the Ombudsman,* G.R. No. 120422, Sept. 27, 1995, 248 SCRA 566, 589.

[15] *Duterte v. Sandiganbayan,* 352 Phil. 557, 575 (1998).

[16] Rule V, Section 3 of the Ombudsman Rules reads that in all matters not provided, the Rules of Court shall apply in suppletory character, or by analogy whenever practicable and convenient.

[17] G.R. No. 101236, January 30, 1992, 205 SCRA 625, 629.

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