

LAURA Z. VELASCO, PETITIONER, VS. HON. MANUEL CASACLANG, AS DEPUTY OMBUDSMAN FOR AFP AND COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 111130. August 19, 1998

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PURISIMA, J:

Before the court is a petition for Certiorari and Prohibition to annul the Order[1] dated June 29, 1993 of the Deputy Ombudsman for AFP in OMB Case No. 0-90-0296, denying petitioner's motion to quash, and the Order[2] dated July 13, 1993, denying petitioner's Motion for Reconsideration,[3] both of which Orders are attacked for having been issued with grave abuse of discretion.

The antecedent facts that matter can be culled, as follows:

By virtue of Assignment Order No. 89-846 dated June 5, 1989 of the Commission on Audit, COA Audit Examiners Priscilla G. Cruz and Virginia G. Pantoja conducted a special audit of selected transactions of the Armed Forces of the Philippines (AFP) Logistics Command, covering the period from January 1988 to May 1989.

In their Memorandum Report,[4] dated March 13, 1990, to the Chairman of the Commission on Audit, the said COA audit examiners reported their findings, as follows:

“x x x

6. The propriety of the procurement of 28,432 pieces of meat can (stainless steel) amounting to P3,502,432 were [sic] of doubtful validity. The transaction cycle from preparation of purchase orders to acceptance of delivered items were [sic] all completed in just one day - December 29, 1988 and the three winning bidders have [sic] common incorporators. Furthermore, while stainless can are [sic] for distribution to CAFGU at P126 per unit, previous orders of P5 million were for aluminum can at P89/can intended to regular military units. Under the case, CAFGU expense was more than P1 million.

On December 15, 1989, the approved Procurement Directive No. QM-0156-88 was issued for the purchase of 28,432 pieces of Meat Can, Austenitic Steel (Stainless Steel), local manufacture and brand new for the use of CAFGU. On December 27, 1988, the public bidding was held at Camp Aguinaldo with nine participating bidders. The sequence of events cast doubt on the propriety of the claim. Consider:

a) December 21, 1988 - the bids were opened.

b) December 27, 1988 - the date the Bidder Tender Sheets were submitted by the participating bidders.

The stamped date showed that the bids were opened six days before the submission of the bids.

The result of the bidding showed that four suppliers had the same lowest bid for P126 per unit of meat can, hence the required 28,432 pieces of meat can were divided between the four winning bidders at P895,608 per supplier.

c) The transaction cycle of procuring meat cans from four suppliers were completed in just one day -

December 29, 1988, the last working day of the year. Analysis shows the following

Transaction Mitrick Int Pinky's Michelle- Mark

Marketing Mfg. Inc. V Mfg. & Roche Int.

Co. Trading Inc.

PO#AFPLC-QM

DA

546 D 88 12-29-88

547 D 88 12-29-88

548 D 88 12-29-88

549 D 88 12-29-88

PO was received

by supplier 12-29-88 12-29-88 12-29-88

Sales Invoice #

010,404,080, &

1095, resp. 12-29-88 12-29-88 12-29-88 12-29-88

AFP Logistic

Command Inspection Report

(Property Inspector) 12-29-88 12-29-88 12-29-88 12-29-88

Transaction Mitrick Int Pinky's Michelle- Mark

Marketing Mfg. Inc. V Mfg. & Roche Int.

Co. Trading Inc.

Technical Inspection Report

of Supplies &

Equipment

(Inspection and Acceptance Committee)

12-29-88 12-29-88 12-29-88 12-29-88

Ocular/Physical

Inspection

Report 12-29-88 12-29-88 12-29-88 12-29-88

Voucher No

88126796 12-29-88

88126800 12-29-88

88126798 12-29-88

88126797 12-29-88

Payments were all made on April 28, 1989.

Confirmation with the Securities and Exchange Commission (SEC) revealed that the three winning suppliers namely: Pinky's Mfg. Inc., Mark Roche, Int., Inc. and Mitrick Int. Marketing Inc. have common incorporators as shown below:

Pinky's Mfg. Mark Int. Mitrick Int.

Inc/ Roche Inc. Mktg. Co.

Date Registered April 18, May 11, Aug. 23,

1985 1988 1988

Type Corporation Corporation Partnership

Capital P8,000,000 P1,000,000 P500,000

Incorporators/ Laura Laura Elizabeth

Partners Velasco Velasco Muscon

Susan V. Eduardo Susan Dayot

Dayot Dayot

Nathaniel Susan V.

Velasco Dayot

Felicidad Elizabeth L.

Zaguirre Velasco

Clarita Clarita

Robianes Robianes

Address 34 Pat 248 Del 149

Senador St. Monte Tolentino St.

San Francis- Avenue San Francis- co del Monte Quezon City co del Monte

Quezon City Quezon City

The fourth meat can supplier, Michelle-V Mfg. and Trading is not registered with the SEC.

Tabulation also show that the capital of Mitrick is only P500,000 whereas the PO issued to it amounted to P895,800.

While the foregoing data showed that the procurement of 28,432 pieces of stainless steel meat can was

urgently needed as indicated in the speedy processing of documents, records however, showed that 24,640 meat cans were issued to various Military Support Points (MSPs) only on May 9, 1989 or four months after delivery, thus belying its urgency.

Analysis also shows that two more Purchase Orders were issued to Trojan Manufacturing and Marketing Inc. for the procurement of 51,568 and 7,485 meat cans on October 7, 1988 and December 16, 1987, respectively. Both Pos were for aluminum meat cans with AFP marking at P89 per unit totaling to P4,589,552 and P666,165, respectively. The provision of stainless meat cans for CAGFU instead of aluminum meat cans intended for regular military service units resulted to additional expenses of P1 million arrived as follows:

Unit Cost - Stainless Can - P 126

Unit Cost - Aluminum Can - 89

Price Difference 37

Quantity Ordered [x] 28,432

Total Additional Expenses for AFP - P 1,051,984[5] ”

On May 6, 1993, the same audit examiners filed with the Office of the Ombudsman a Joint Affidavit-Complaint[6] deploring the aforesaid transactions dubbed as anomalous and highly irregular.

On May 27, 1993, respondent Deputy Ombudsman for the Military issued an Order[7] in OMB Case No. 0-90-0296, entitled Commission on Audit, et al. vs. BGen. Buenaventura Tabo, et al., to wit:

“It appearing from the affidavit-complaint dated 6 May 1993 filed by complainant/s to be sufficient in form and substance, respondent/s is/are hereby directed to file within ten (10) days from receipt hereof his/her/their counter-affidavit/s and other controverting evidence with proof of service upon complainant/s who may file his/her/their reply/ies within ten (10) days from receipt of the same. Failure of the respondent/s to do so shall be construed as a waiver of his/her/their right/s to be heard and the preliminary investigation of this case shall proceed accordingly, thereafter, the same shall be deemed submitted for resolution. (Underscoring, supplied)

SO ORDERED.”

On June 6, 1993, petitioner Laura Velasco presented to respondent Deputy Ombudsman a motion to direct the complainants to particularize the offenses charged in OMB Case No. 0-90-0296.

On June 17, 1993, the respondent Deputy Ombudsman, without a word from the COA, issued an Order[8] stating that petitioner was being charged with a violation of Section 3, subparagraphs (e) and (g) of R.A. 3019.[9]

On June 25, 1993, petitioner interposed a Motion To Quash[10] theorizing that the complaint and its annexes did not charge an offense. But on June 29, 1993, without any opposition from COA, the respondent Deputy Ombudsman denied petitioner’s Motion to Quash, ratiocinating that Administrative Order No. 07, Section 4 (d) of the Ombudsman, does not allow such a motion.[11] With the denial of her unopposed Motion for Reconsideration,[12] petitioner found her way to this Court via the instant Petition; contending, that:

I.

RESPONDENT OMBUDSMAN IS ACTING WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER IS CHARGED UNDER SECTION 3 (e) and (g) OF R.A. 3019 AND IN DENYING THE MOTION TO QUASH;

II.

PETITIONER HAS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW EXCEPT THE PRESENT PETITION.

The Petition is not impressed with merit.

In her Reply,[13] petitioner Laura Velasco questioned the authority of respondent Deputy Ombudsman to conduct preliminary investigation, arguing that pursuant to Section 11, par. (4), subpar. (a) of R.A. 6770, the Office of the Special Prosecutor is vested with the power and authority to conduct preliminary investigation and to prosecute criminal cases falling within the jurisdiction of the Sandiganbayan and Section 17 of P.D. 1630 provides that the Office of Tanodbayan (now Office of the Special Prosecutor) has the exclusive authority to conduct preliminary investigation in all cases cognizable by the Sandiganbayan.

Under Section 2, Rule 112 of the 1985 Rules of Criminal Procedure, as amended:

“The following may conduct preliminary investigation:

- (a) Provincial or city fiscals and their assistants;
- (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
- (c) National and Regional state prosecutors; and
- (d) Such other officers as may be authorized by law.”

On the other hand, Section 15, paragraph (1) of R.A. 6770, otherwise known as “The Ombudsman Act” , provides:

“The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office, or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has a primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.”

In light of the aforequoted provisions of law in point, it is beyond cavil that the Ombudsman and his Deputies are, within legal contemplation, “other officers authorized by law” to conduct preliminary investigation.

In *Enrique Zaldivar vs. Sandiganbayan*,[14] this Court succinctly ruled, that :

“Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to:

“Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust improper, or inefficient.” (Sec. 13, par. 1)

The Constitution likewise provides that:

“The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its power as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.” (Article XI, Section 7) [Underscoring, supplied].

Now then, in as much as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of

criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.

Under the present Constitution, the Special Prosecutor...is a mere subordinate of the Tanodbayan (Ombudsman) and can investigate and prosecute cases only upon the latter's authority or order... Even his original power to issue subpoena, which he still claims under Section 10 (d) of PD 1630, is now deemed transferred to the Ombudsman, who may, however, retain it in the Special Prosecutor in connection with the cases he is ordered to investigate." [Underscoring, supplied]

So also, Section 3 of Administrative Order No. 07, otherwise known as "The Rules of Procedure of the Office of the Ombudsman," published in the May 1, 1990 issue of Manila Bulletin, states that:

"Preliminary investigation may be conducted by any of the following:

- 1) Ombudsman Investigators;
- 2) Special Prosecuting Officers;
- 3) Deputized Prosecutors;
- 4) Investigating Officials authorized by law to conduct preliminary investigation;
- 5) Lawyers in the government service, so designated by the Ombudsman." (Underscoring, supplied)

Neither can we discern any tenability in petitioner's reliance on Section 17 of P.D. 1630.[15] Said law, which took effect on July 18, 1979, was deemed abrogated by Section 7, Article XI of the 1987 Philippine Constitution, which reads:

"The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now and hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution."

(Underscoring supplied)

The powers, functions and duties of the Office of the Ombudsman are clearly provided in Section 13, Article XI of the 1987 Charter, as follows:

- (1) [to] investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) [to] direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

x x x "

In line with the aforestated constitutional provisions, then President Corazon C. Aquino signed Executive Order No. 244[16] limiting the Special Prosecutor's authority, thus:

"Section 2. — The Office of the Special Prosecutor shall exercise powers presently exercised by the Tanodbayan except those conferred on the Office of the Ombudsman under the Constitution." (Underscoring, supplied)

Then, too, while Section 17 of P.D. No. 1630 provides, that:

“The Office of Tanodbayan (now, Office of the Special Prosecutor) shall have the exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan...;”

Section 11, subparagraph 4 (c) of R.A. No. 6770,[17] states, that:

“The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan.

x x x”

Unmistakably, the exclusive authority of the Office of the Tanodbayan (now Office of the Special Prosecutor) under P. D. No. 1630 to conduct preliminary investigation was not included in Section 11, subparagraph 4 (a) of R.A. No. 6770. Consequently, the irresistible conclusion that can be drawn unerringly from the aforementioned statutory amendments is that the exclusive authority of the Office of Special Prosecutor to conduct preliminary investigation has become a thing of the past, and the Office of the Ombudsman has the power to investigate and to conduct preliminary investigation.

Corollary to the investigative power of the Office of the Ombudsman is the authority to lay down its own rules of procedure, as gleanable from the following provisions of Section 13, subparagraph (8), Article XI of the 1987 Constitution:

“The Office of the Ombudsman shall have the ... power ...[to]:

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.” and Section 18 of R.A. No. 6770:

“Rules of Procedure - (1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties.”

All things studiously considered, we are therefore of the opinion, and so rule, that the respondent Deputy Ombudsman has the power and authority to conduct preliminary investigation under the attendant facts and circumstances.

Similarly untenable is petitioner’s contention that respondent Deputy Ombudsman could not, on his own initiative, determine what offense or offenses subject Joint Affidavit-Complaint and its annexes charge.

With the vast powers vested in him by law, respondent Deputy Ombudsman is definitely with authority and competence to look into and find out *motu proprio* the nature of the accusation embodied in the said Joint Affidavit-Complaint endorsed to him for the indictment of the herein petitioner and her co-respondents under Rep. Act 3019 otherwise known as The Anti-Graft and Corrupt Practices Act.

In accordance with Section 15, subparagraph (10) of R.A. No. 6770, the powers, functions and duties of the Ombudsman may be delegated to his Deputies, to ensure effective exercise of his powers. Embraced in the broad powers of the Ombudsman is the discretionary power to define, supervise and control the methodology and procedure his office may adopt in connection with its investigative power.[18] Conformably, the respondent Deputy Ombudsman has the authority to decide what offense or offenses to charge on the basis of the evidence before him.

Section 1, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, defines preliminary investigation as “an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a

well-grounded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.”

To be sure, the respondent Deputy Ombudsman has direct supervision and control over the preliminary investigation conducted by him. Absent any grave abuse of discretion tainting it, his action is not subject to judicial review.

The propriety of endowing the Ombudsman with wide latitude of ministerial and discretionary powers emanates from the vitality and importance of his constitutional duty and function - “to protect the people from inefficiency, red tape, mismanagement, fraud, and corruption in the government.”[19]

It bears stressing that the determination of the existence or absence of a sustainable basis and ground for holding the respondent (petitioner here) for trial is within the primary jurisdiction of the Ombudsman to undertake.[20]

Taking into account the same Affidavit-Complaint dated May 6, 1993, together with the auditors’ Memorandum Report and findings sent to him by the Commission on Audit, the respondent Deputy Ombudsman cannot be faulted for conducting the requisite preliminary investigation against petitioner Laura Velasco and the other respondents in OMB Case No. 0-90-0296. Sufficient basis therefor has been duly laid.

Neither is the Court persuaded by petitioner’s imputation to respondent Deputy Ombudsman of grave abuse of discretion in denying her motion to quash and motion for reconsideration.

Section 4 (d) of Administrative Order No. 07, reads:

“Procedure — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

x x x

(d) No motion to dismiss shall be allowed except for lack of jurisdiction.”

While Section 3, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, provides:

“Procedure - Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

x x x

(f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Verily, the respondent Deputy Ombudsman erred not in denying the motion to quash and motion for reconsideration interposed by petitioner in the said case. He acted thereupon according to applicable provisions of

the Revised Rules of Court and Administrative Order No. 07 of the Ombudsman. Section 4 (d) of said administrative order disallows a motion to quash (or dismiss) except on the ground of lack of jurisdiction. Here, no absence of jurisdiction is perceived.

Following Section 3 of Rule 112 supra, petitioner was ordered to submit her counter-affidavit within ten (10) days from service of the subpoena upon her.

The constitutional prescript of promptness of action patently foremost in his mind, respondent Deputy Ombudsman must have been impelled to afford the case against petitioner speediest resolution possible. To the fore is Section 12, Article XI of the 1987 Philippine Constitution, to wit:

“The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government owned and controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.” (Underscoring, supplied)

The aforecited constitutional provision directs the Ombudsman and his Deputies to act promptly on complaints. The forms of the complaint or manner of bringing the same should not deter action thereon with dispatch and sense of urgency.

It is noteworthy and significant, however, that notwithstanding several proddings and warnings, petitioner preoccupied herself with the filing of a motion to quash the Complaint in lieu of her counter-affidavit, so much so that respondent Deputy Ombudsman had no alternative but to declare the waiver of petitioner’s right to be heard and to preliminary investigation.

What is more, petitioner had a plain, speedy and adequate remedy by the simple expedient of sending in her counter-affidavit. Irrefutably, a counter-affidavit would have been a plain, speedy and adequate remedy since petitioner could have sought in that pleading the quashal of the complaint against her, and could have also stated therein her theory and protestation of innocence. Such an approach would have been a more expeditious and effective remedy as within ten (10) days from submission of petitioner’s counter-affidavit, the respondent Deputy Ombudsman would have been duty bound to “determine whether or not there is sufficient ground to hold the respondent (petitioner in this case) for trial.”[21]

WHEREFORE, for want of merit, the Petition at bar is hereby DISMISSED, and the assailed Orders, dated June 29, 1993, and July 13, 1993, respectively, in OMB Case No. 0-90-0296 UPHELD.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez and Quisumbing, JJ., concur.

Regalado, J., on official leave.

[1] “Annex D,” Petition; Rollo, p. 64.

[2] “Annex F,” Petition; Rollo, p. 77.

[3] “Annex E,” Petition; Rollo, p. 66.

[4] “Annex A-2,” Petition; Rollo, pp. 31-36.

[5] “Annex - A-2,” Petition; Rollo, p. 36.

- [6] “Annex A-1,” Petition; Rollo, pp. 26-30.
- [7] “Annex A,” Petition; Rollo, p. 25.
- [8] “Annex B,” Petition; Rollo, p. 56.
- [9] Otherwise known as “Anti-Graft and Corrupt Practices Act.”
- [10] “Annex C,” Petition; Rollo, p. 57.
- [11] “Annex D,” Petition; Rollo, p. 65.
- [12] “Annex E,” Petition; Rollo, p. 66.
- [13] Rollo, pp. 118-130.
- [14] 160 SCRA 843 [1988]; see: Republic vs. Sandiganbayan, 200 SCRA 667 [1991]; Chief Supt. Romeo Acop, et al. vs. The Office of the Ombudsman, et al. G.R. No. 120422, and P/Chief Supt. Panfilo M. Lacson, et al. vs. BGen. Manuel B. Casclang, et al., G.R. No. 120428, September 27, 1995, 248 SCRA 566 [1995] .
- [15] R.A. 1630: “Further Revising P.D. No. 1487, as Revised by P.D. No. 1607, Creating the Office of Tanodbayan.”
- [16] E.O. 244 - “Declaring the Effectivity of the Creation of Office of the Special Prosecutor As Provided for in the 1987 Constitution.” Signed by President Corazon C. Aquino on July 24, 1987.
- [17] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes.”
- [18] Included is the authority to promulgate rules of procedure, Supra, p. 13.
- [19] Section 13, subparagraph (7), Article XI, 1987 Philippine Constitution.
- [20] Republic vs. Sandiganbayan, 200 SCRA 667 [1991] ; Zaldivar vs. Sandiganbayan, 160 SCRA 843 [1988].
- [21] Section 3 (f), Rule 112, Revised Rules of Court.

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