

**MORONG WATER DISTRICT, PETITIONER, VS. OFFICE OF THE
DEPUTY OMBUDSMAN, WIFRED L. PASCASIO, RAUL R. ARNAU,
ABELARDO L. APORTADERA, JR., FRANCISCO VILLA, EDGARD STA.
MARIA AND EMM...**

G.R. No. 116754. March 17, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Assailed in this petition for certiorari is the Resolution[1] dated 28 March 1994 of the Office of the Ombudsman which dismissed the case for violation of R.A. 3019, the Anti-Graft and Corrupt Practices Act, and Article 217 of the Revised Penal Code filed against private respondents Edgard Sta. Maria and Emma Censon by herein petitioner Morong Water District. Likewise assailed is the Order[2] dated dated 27 May 1994 denying petitioner's motion for reconsideration.

The facts of the case are as follows:

Private respondent Edgard Sta. Maria, was the former General Manager of petitioner Morong Water District in San Pedro, Morong, Rizal. Private respondent Emma Censon was the advisor of the Local Water Utilities Administration assigned to petitioner Morong Water District. Respondents Wilfred L. Pascasio, Raul R. Arnau, Abelardo L. Aportadera, Jr. and Francisco Villa are officials of the Office of the Ombudsman who are included as respondents in their official capacities as the public officers who promulgated the questioned resolution and order.

On 3 August 1993, Edgard Sta. Maria, while still the General Manager of MOWAD, received from petitioner a cash advance of P33,190.73[3] representing an initial release of funds for the design and execution of the Wawa pipeline extension project in Morong, Rizal.

On 5 August 1992, as shown by a journal voucher[4] issued by petitioner, Sta. Maria submitted a partial liquidation of expenses amounting to P15,000.00 against the cash advance of P33,190.73. Respondent Sta. Maria allegedly used the money as payment for the design, including the pipelaying scheme, service connection detail, and the interconnection detail, of the Sitio Wawa Pipeline Extension. The liquidation report was supported by a Reimbursement Expense Receipt[5] indicating that the P15,000.00 was paid to and received by a certain Engineer Ricardo Reyes.

On 10 November 1992, Sta. Maria made a final liquidation of expenses amounting to P16,790.40. The amount was used for the Paglabas Pipeline Extension in compliance with the request of the Municipal Mayor. As indicated in the journal voucher[6] supporting the transaction, the diversion of funds was authorized by the Board of directors in a Board Meeting held on 9 October 1992.

On 14 December 1992, Sta. Maria was ousted as General Manager of petitioner Morong Water District.

On 24 September 1993, Maximo San Diego, petitioner's officer-in-charge, filed a complaint[7] before the Office

of the Ombudsman-Luzon against private respondents Sta. Maria and Censon for alleged violations of R.A. 3019, the Anti-Graft and Corrupt Practices Act and Article 217 of the Revised Penal Code on malversation of public funds.

The complaint stated that respondents Sta. Maria and Censon confederated with one another and took advantage of their official positions as General Manager and Advisor, respectively, of the Morong Water District in taking from the funds of the said office the amount of P33,190.75 for the purpose of paying for the design of MOWAD Wawa, San Juan, Morong project. The complaint alleged that no such design was made, and that respondents made it appear that the amount of P15,000.00 was given to a certain Engineer Ricardo Reyes when in fact, they personally pocketed the aforesaid amount and the rest was spent in installing the water connections of the new market site of Morong, Rizal. As proof, petitioner attached the joint affidavit[8] of its Bookkeeper, Cashier and Finance Manager and a certification[9] from the Local Water Utilities Administration that no person by the name of engineer Ricardo Reyes has ever been employed by their agency.

Respondents denied the charges in their respective counter-affidavits.

In her counter-affidavit, respondent Emma Censon denied receiving the amount of P15,000.00 as charged. She claimed that she was not the custodian of petitioner's funds and that she did not have any participation in the preparation and execution of disbursement vouchers covering the release of funds.[10]

For his part, respondent Edgard Sta. Maria stated in his counter-affidavit that he was forcibly ousted as petitioner's General Manager on 14 December 1992 due to the criminal and administrative complaints he lodged against some members of petitioner's Board of directors. In view of their subsequent indictment, the said officials vowed to get even with him by filing various complaints against him. With respect to the design for the Wawa Project, he claimed that he sent a letter dated March 29, 1993 to the Chairman of the Board, Mr. Aniceto Mateo, informing him that the original detailed design plans and drawings of the project were left at petitioner's office. He likewise averred that the present complaint is closely interrelated with another case, docketed as Civil Case No. 492-M, pending with the Regional Trial Court of Morong, Rizal.[11]

On March 28, 1994, public respondent, through Graft Investigation Officer Aleu A. Amante, issued the questioned Resolution dismissing the complaint. The resolution stated that "(a)fter a meticulous examination of the records of the case, there is no sufficient evidence to establish a probable cause for malversation or violation of RA 3019." [12]

On 6 May 1994, petitioner filed a motion for Reconsideration[13] of the above Resolution.

On May 27, 1994, public respondent, through Graft Investigation Officer Wilfredo L. Pacasio, issued the questioned Order dismissing the Motion for Reconsideration. The Order first noted that the motion for reconsideration did not raise any new issues and did not adduce any newly discovered evidence. Instead of dismissing the motion outright on this ground, the Office of the Ombudsman made an extended discussion of the issues raised by petitioner. It was emphasized that the evidence on record, particularly the "journal voucher" and "reimbursement expense receipt", indubitably disclosed that the sum allegedly misappropriated had, in fact, been duly liquidated by the respondents. Moreover, the Ombudsman stated that the version of the respondents was more logical, natural and believable. Finally, public respondent states that the allegation of conspiracy had not been fully substantiated and thus, the inclusion and joinder of respondent Emma Censon had no legal justification. Public respondent thus dismissed the motion for reconsideration and affirmed its Resolution dated 28 March 1994.

Petitioner now comes to us by way of the instant Petition for Certiorari. Petitioner grounds the instant petition on

the following allegation:

"(The) Hon. Office of the Deputy Ombudsman acted arbitrarily, whimsically and with grave abused (sic) of discretion and authority dismissed OMB Case No. 0-93-2579 when in the conduct of the preliminary investigation Respondents biasely (sic) disregarded the evidence in the record which clearly established a prima facie case of malversation as supported by the facts, the law and existing jurisprudence." [14]

There is no merit in the petition.

At the outset, a reading of the petition shows that the issues raised refer primarily to the findings of fact made by the respondent public officials. On this point, it must be stressed that any appeal or application for remedy against a decision or finding of the Office of the Ombudsman may only be entertained by the Supreme Court, on pure question of law. [15] Section 14 of Republic Act No. 6770, the Ombudsman Act of 1989, provides that "(n)o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on pure question of law." Moreover, Section 27 of the said Act provides further that "(f)indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive."

A thorough examination of the questioned Order and Resolution of the Office of the Ombudsman and the records of the case reveal that the findings of fact made by the Ombudsman are supported by substantial evidence on record.

Petitioner's main contention in its complaint before the Office of the Ombudsman is that private respondents conspired with each other in withdrawing the amount of P33,190.75 from the coffers of petitioner and then pocket P15,000.00 for their own personal use. [16] On this point, we note with approval the following pronouncement of the Office of the Ombudsman:

"After a meticulous examination of the records of the case, the undersigned finds that there is no sufficient evidence to establish a probable cause for malversation or violation of R.A. 3019 for that matter, and that respondents are probably guilty thereof. There is no question that respondent Edgard Sta. Maria is the payee of Cash Voucher No. 3150 dated August 3, 1992. On the face of the said cash voucher, it is disclosed that it was prepared by the Bookkeeper, certified as to the availability of funds by the Finance Officer and the check prepared by the Cashier. It is also disclosed by the same document that the cash advance was to be used for the design and execution of Project Wawa Pipeline Extension. As regards, therefore, to the participation of respondent Emma Censon it is very clear that she has nothing to do with the cash advance of P33,190.73. With respect to respondent Edgard Sta. Maria, obviously he has the duty to liquidate the said cash advance. However, complainant's Annex "B" which is a general ledger of account, disclose that the amount of P16,790.40 was diverted to Paglabas Pipeline Extension, but which diversion was authorized by the Board of Directors as per Board Meeting of October 9, 1992. It is worthy to note that this general ledger was signed by complainant's witnesses, the Bookkeeper and the Finance Manager, in the same manner that they affixed signatures on the cash voucher, together with the cashier.

Going back to respondent Sta. Maria's duty to liquidate or account for the said cash advance, the evidence of complainant also shows that the P16,790.40 was duly receipted by the Filacon Enterprises for the amount of 4 rolls of P.S. Tubing (32 pieces) 1 x 100 cm. It cannot be said therefore, that the amount of P16,790.40 was misappropriated by respondent Sta. Maria for his personal benefit. As to the remaining balance of P15,000.00 which allegedly was pocketed by respondent instead of using the same in payment in payment of the design for the Wawa project, there also appears a reimbursement expense receipt which is attached by the complainant as its Annex "D." The same was signed by a certain civil engineer Ricardo Reyes. The latter attested that he received the amount as partial payment for the design. Complainant's claim that Ricardo Reyes is a fictitious person is based on the certification from the Local Water Utilities Administration that he is not an employee therein. The reimbursement expense receipt did not however state that Engineer Ricardo Reyes is an employee

of LWUA. Hence, the certification of said agency will not be conclusive evidence of Ricardo Reyes being a fictitious person, as there was no representation of said fact in the reimbursement receipt." [17]

The above-quoted portion of the questioned resolution clearly shows that the findings of the Office of the Ombudsman regarding the liability of private respondents are supported by substantial evidence. The conclusion that the amounts allegedly malversed by private respondents were actually liquidated by them finds support not only in the evidence of private respondents but even in the evidence submitted by petitioner in its complaint. Such factual findings of the Office of the Ombudsman deserve due respect from the Supreme Court and should not be disturbed on appeal. [18]

Despite a clear showing that the issues involved in the instant petition are factual, petitioner, nonetheless, invokes the power of the court to reverse the decision of the Ombudsman by alleging that the Office of the Ombudsman acted with grave abuse of discretion and authority. Petitioner claims that the public respondents acted arbitrarily and whimsically in disregarding the evidence on record which allegedly clearly show a prima facie case for malversation.

We have closely examined the issues raised in the present petition, the arguments in support thereof, as well as the comments of the respondents thereon and the reply thereto and we find that the petition fails to show a grave abuse of discretion or any act without or in excess of jurisdiction on the part of private respondents. The public respondent's act of dismissing the complaint against herein private respondents is neither whimsical or capricious. In fact, the complaint of petitioner was taken up by the Office of the Ombudsman in two extended discussions. Such fact virtually dispels any allegation that arbitrariness or abuse of discretion attended the resolution of petitioner's complaint.

The act of the Ombudsman in dismissing the complaint is an exercise of the Ombudsman's powers based upon constitutional mandate and the courts should not interfere with such exercise. [19] The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it.

One final point. Petitioner likewise contends that the Office of the Ombudsman erred in stating that demand from the Commission on Audit to settle or liquidate the amount is needed before a case for malversation can mature. Citing the case of *U.S. vs. Saberon*, [20] the petitioner argues that demand need not be made by the Commission on Audit as it is sufficient that there is a law or regulation requiring the public officer to render an accounting.

There is merit in petitioner's contention although his reliance on the cited case is misplaced. The *Saberon* case is not applicable as it deals with a violation of Article 218 of the Revised Penal Code for failure of accountable officers to render accounts. On the other hand, the instant case involves a violation of Article 217 of the Revised Penal Code for malversation of public funds and property which is entirely separate and distinct from Article 218. Petitioner should have cited the case of *People vs. Tolentino* [21] which held that previous demand is not necessary for violation of article 217 in spite of the last paragraph of the said provision. The last paragraph of article 217 provides only for a rule of procedural law. More recently, in the case of *Nizurtado vs. Sandiganbayan*, [22] the Court stated in this regard that "(d)emand merely raises a prima facie presumption that missing funds have been put to personal use. The demand itself, however, is not an element of, and not indispensable to constitute, malversation."

Be that as it may, this is still no reason to overturn the assailed Order and Resolution of the Office of the Ombudsman. The holding of the Office of the Ombudsman that no demand was made by the Commission on

Audit is not the main reason why petitioner's complaint was dismissed. As stated previously, the Office of the ombudsman dismissed the complaint as it found that there was no sufficient evidence to establish probable cause against private respondents for malversation or violation of R.A. 3019.

In sum, the order and the Resolution of the Ombudsman are based on substantial evidence. In dismissing the complaint of petitioner, we cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of our supervisory powers over him. This court is not a trier of facts. As long as there is substantial evidence in support of the Ombudsman's decision, that the decision will not be overturned.[23]

WHEREFORE, premises considered, the instant petition is DISMISSED. The Resolution dated March 28, 1994 and the Order dated May 27, 1994 of the Office of the Ombudsman are hereby AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Rollo, pp. 35-39.

[2] Rollo, pp. 45-51.

[3] Rollo, p. 21-22.

[4] Rollo, p. 32.

[5] Rollo, p. 33.

[6] Rollo, p. 23.

[7] Docketed as OMB Case No. 0-93-2579.

[8] Rollo, pp. 19-20.

[9] Rollo, p. 34.

[10] Rollo, p. 36.

[11] Rollo, pp. 36-37.

[12] Rollo, p. 37.

[13] Rollo, pp. 40-44.

[14] Rollo, p. 7.

[15] Hagad vs. Gozo-dadole, 228 SCRA 718.

[16] Rollo, p. 17.

[17] Resolution dated March 28, 1994, pp. 3-4; Rollo, pp. 37-38.

[18] Young vs. Office of the Ombudsman, 225 SCRA 718.

[19] Ocampo, IV vs. Ombudsman, 225 SCRA 725.

[20] 19 Phil. 391.

[21] 69 Phil. 715.

[22] 239 SCRA 33.

[23] Tan vs. Office of the Ombudsman, 295 SCRA 315.

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