

**MOISES S. SAMSON, PETITIONER, VS. OFFICE OF THE OMBUDSMAN,
EVALUATION AND PRELIMINARY INVESTIGATION BUREAU, NORMA
SANCHEZ AND LEONITO L. CATARROJA, RESPONDENTS.**

G.R. No. 117741. September 29, 2004

Ponente: CORONA, J.

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CORONA, J.:

This petition for certiorari and mandamus seeks the reversal of public respondent Office of the Ombudsman Evaluation and Preliminary Investigation Bureau's: [1] joint resolution dated May 27, 1994 ("joint resolution") [1] which dismissed petitioner Moises S. Samson's complaint (docketed as OMB-0-93-0920) against private respondents Dr. Leonito L. Catarroja and Norma Sanchez for allegedly printing and issuing health certificates sans serial numbers and official receipts to applicants without prior medical examination, in violation of RA 3019 (the Anti-Graft and Corrupt Practices Act), as well as private respondents' counter-charges against petitioner for libel, falsification and perjury (docketed as OMB-0-93-3107), and [2] order dated August 26, 1994 [2] which denied petitioner's motion for partial reconsideration of said joint resolution.

On April 21, 1993, petitioner Moises S. Samson, on behalf of unidentified complainants, charged private respondents Dr. Leonito L. Catarroja and Norma Sanchez, Chiefs of the Quezon City Health Sanitation and Food and Drugs Divisions, respectively, with violation of paragraphs (b), (e) and (h) of Section 3 of RA 3019, essentially, as follows:

- That respondent Leonito Catarroja caused the printing of health certificates without serial numbers at his own expense and thereafter, he sold and parted with the said blank and already signed health certificates at P20.00 each to co-respondent Norma Sanchez and likewise to an unnamed employee of the Business Permits and Licenses Office (BPLO), Office of the Mayor, Quezon City, who then re-sold the same to fixers. In turn, the said fixers disposed of the health certificates to applicants for P70.00 each without official receipts;
- That on February 10, 1993, respondent Catarroja signed and issued twenty (20) health certificates to employees of the Max restaurant even without the required physical and medical examinations and immunizations, in consideration of the amount of P400.00 which was paid by Pons Sepulveda for and in behalf of said employees;
- That likewise on the same date aforestated, respondent Catarroja issued health certificate No. 15595-93 to one Alberto de Jesus without the required physical and medical examination and immunization, after the latter had paid an additional and unreceipted amount of P50.00 demanded by one of the staff in the office of respondent Catarroja. However, the said health certificate is not recorded in the official logbook of his office for duly issued health certificates.[3]

Section 3, paragraphs (b), (e) and (h) of RA 3019 provides:

SEC. 3. Corrupt practices of public officers. – xxx

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or

for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

xxx xxx xxx

(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 offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

Private respondents counter-alleged that petitioner had neither the personality to sue nor personal knowledge of the veracity of the complaint, which was mere hearsay, not having been supported by any affidavit from the purportedly affected, if not fictitious, health certificate applicants or sanitary inspectors. Also, petitioner did not present any of his witnesses before the investigating committee created by then Quezon City Mayor Ismael Mathay. Thus, private respondents filed counter-charges against petitioner for libel, falsification and perjury.[4]

On May 27, 1994, public respondent, through Graft Investigation Officer Lamberto G. Sagum, issued a joint resolution dismissing the cases filed by both parties:

WHEREFORE, premises considered, there being no probable cause to justify further inquiry into the instant charges and counter-charges embodied in the above-entitled cases, let these cases be, as the same are, hereby recommended, DISMISSED.

SO RESOLVED.[5]

Mr. Raul R. Arnau and Assistant Ombudsman Abelardo L. Aportadera, Jr. reviewed and later on endorsed the aforesaid joint resolution to Overall Deputy Ombudsman Francisco A. Villa, who approved it on June 22, 1994.

The public respondent, in its August 26, 1994 order, approved by Overall Deputy Ombudsman Villa on September 9, 1994,[6] denied petitioner's motion for partial reconsideration of the joint resolution with respect to the dismissal of OMB-0-93-0920.

Hence, this petition imputing grave abuse of discretion on the part of public respondent for dismissing OMB-0-93-0920, a supposedly prima facie graft case against private respondents.

The petition must be dismissed for lack of merit. The public respondent did not act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed joint resolution and order. Neither can it be compelled by mandamus to reverse its findings and dispositions.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. In other words, the power of discretion is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty and a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[7]

In this case, we do not find any grave abuse of discretion on the part of public respondent in dismissing OMB-0-93-0920 for lack of evidence to establish a probable cause against private respondents.

Petitioner's complaint was predicated on his assertion that the possession of pre-printed and non-serialized health certificates by the applicants manifests that they secured them after paying the fees without undergoing the usual physical and medical examination and immunization.

Nonetheless, public respondent found that:

[T]he charge and allegations set forth in the complaint-affidavit taken in juxtaposition with the controverting statements of answering respondents on record, negate the adverse specifications embodied in the said complaint-affidavit to the effect that respondents Leonito Catarroja and Norma Sanchez have violated the provisions of the Anti-Graft Law (R.A. 3019, as amended). As has been above elucidated by their respective counter-statements, it appears that the evidence on record failed to substantiate the alleged anomalies perpetrated by the herein respondents. In the first place, complainant was not able to present evidence disclosing the fact that there are other health certificates which were printed personally by respondent Catarroja. Upon the other hand, the Special Committee which investigated the alleged anomalies in the Sanitation Division of the Quezon City Health Department, came up with the findings that the health certificate issued to Alberto de Jesus alias Celerino dela Cruz, was printed and issued officially by the Quezon City Health Department. On this score, no rebutting evidence whatsoever, was submitted regarding the pre-printed and un-serialized health certificates. Indeed, as put forth by the respondents, complainant did not mind presenting the sworn statements of any of the alleged complaining witnesses mentioned in his complaint-affidavit to support the naked statements against the respondents.

To this extent, we are hard put to see how the provisions of the Anti-Graft Law have been violated by the respondents. For one thing, respondents did not cause undue injury to the alleged complaining witnesses and much less, to the alleged applicants. Neither, did respondents give any private party any unwarranted benefits, advantage or preference in the discharge of their official functions. At any rate, the Special Committee having been tasked to investigate the denunciations of complainant Councilor Moises Samson which relate to the same factual issues as in the instant case, found no sufficient evidence to warrant further investigation against respondent Leonito Catarroja. In the same manner, the said Committee also failed to uncover any iota of evidence against respondent Norma Sanchez. (See: the Committee Report, pp. 313-343, Records).

All of the above, taken together are more than sufficient to disprove the assertions that anomalies were perpetrated in the Sanitation Division of the Quezon City Health Department bearing on the issuances of health certificates.

There can, therefore, be no other conclusion other than the charge and its specifications are devoid of legal and factual justifications and that for all intents and purposes, the instant case is a mere product of an unfounded suspicion of complainant herein.[8]

In its August 26, 1994 order, public respondent also squarely and thoroughly passed upon the issues raised in petitioner's motion for partial reconsideration:

[T]he factual and legal issues raised therein had been already amply passed upon, dealt with and considered painstakingly to the extent that the Resolution merited the unqualified approval of the Honorable Overall Deputy Ombudsman. To consider them again on the basis of the same representations and rationalization after they had been shown to be untenable, would perforce, result in the same conclusion and recommendation.

As it were, the essence of the ground remains the same. However, just to set forever at rest the actual and legal issues re-raised in this motion, we shall nevertheless, take them up once again.

Re the alleged printing of other health certificates by respondent Catarroja, let it be said pointedly in this case, that from the testimonies of the employees of the Quezon City Health Department and other offices including complainant's witness, Alberto de Jesus, the Special Committee which investigated the anomalies supposedly perpetrated by some personnel in the Sanitation Division failed to uncover evidence or documents that tended

to show or prove that there are other health certificates which had been printed personally by respondent Catarroja. In fact, per logbook, the health certificate issued to Alberto de Jesus alias Celerino dela Cruz was printed and issued officially by the Quezon City Health Department. Further, the said committee during the course of its investigation had found that the Administrative Division procures sufficient health forms needed by the said Department including health certificates and that there was no evidence presented or turned up which showed that there are fake or unauthorized health certificates (See pp. 138-139, Records).

As regards the assertion of complainant that twenty (20) unserialized health certificates bear the signatures of respondent Catarroja and hence, it would stand to show that respondent Catarroja did its printing personally as the said samples are more than enough to establish the fact of printing.

On this score, suffice it to state that the investigating Committee also noted that from the testimony of witness Mrs. Montojo it is disclosed that she encountered applicants who were already holders of health certificates. However, the same witness expressed her doubts as to the authenticity of the signature of respondent Catarroja. Moreover, respondent Catarroja puts it correctly when he contended that complainant did not witness the transaction between the fixers and the applicants who allegedly bought health certificates without allegedly having undergone the usual physical and medical examinations and immunization and so, he is not a competent witness to testify on the authenticity of the said health certificates as he was not privy to the alleged illegal transaction.

Likewise, respondent Catarroja asseverated that complainant failed to present competent witness before the said special Committee which conducted the fact-finding investigation. Neither, did he present the sworn statements of any of the alleged complaining witnesses mentioned in his complaint-affidavit to substantiate the bare statements against the respondents.[9]

For private respondents to be held criminally liable under paragraph (b) of Section 3 of RA 3019, they must have requested or received, directly or indirectly, any gift or benefit for themselves or for another public officer who has to intervene in any contract or transaction with the government. Under paragraph (e), they must have given unwarranted benefits with evident bad faith, gross inexcusable negligence or manifest partiality. Under paragraph (h), they must have had a financial interest, directly or indirectly, in any transaction in which they took part in their official function or in any transaction in which they were prohibited by the Constitution or any law from having any interest therein.

Yet, petitioner failed to present any proof that there was probable cause to hold private respondents liable under any of the aforestated provisions. Sufficient proof of guilt of the private respondents should have been adduced by petitioner so that when the case is eventually tried, the trial court may not be compelled, as a matter of law, to order an acquittal. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such finding, unless clothed with grave abuse of discretion. Otherwise, the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings by the Ombudsman with regard to complaints filed before it. In much the same way, the courts will be swamped with cases if they will have to review the exercise of discretion by fiscals or prosecuting attorneys each time the latter decide to file an information in court or dismiss a complaint by a private complainant.[10]

The Constitution and RA 6770 (the "Ombudsman Act of 1989") endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence. Section 13(1), Article XI of the 1987 Constitution provides:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1)

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.

Section 15(1), RA 6770 states:

SEC. 15. Powers, Functions and Duties. – xxx

(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 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.

Furthermore, the calibration of evidence to asses whether a prima facie graft case exists against private respondents is a question of fact. The Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of certiorari where neither questions of fact nor law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[11]

Finally, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken, unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station, or [b] that such court, officer, board or person has unlawfully excluded the petitioner from the use and enjoyment of a right or office to which he is entitled.[12] Mandamus will lie to compel an officer to perform a ministerial duty but not to compel the performance of a discretionary duty requiring the exercise of judgment,[13] as in this case.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Carpio Morales, JJ., concur.

[1] Penned by Graft Investigation Officer II Atty. Lamberto G. Sagum, endorsed by EPIB Head Raul R. Arnau, reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr., and approved by Overall Deputy Ombudsman Francisco A. Villa on June 22, 1994; Rollo, p. 214.

[2] Penned by Graft Investigation Officer II Atty. Lamberto G. Sagum, endorsed by EPIB Head Raul R. Arnau, reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr., approved by Overall Deputy Ombudsman Francisco A. Villa on September 9, 1994; Rollo, p. 228.

[3] Rollo, pp. 208-209.

[4] Rollo, pp. 209-212.

[5] Rollo, p. 214.

[6] Rollo, p. 228.

[7] Amado G. Perez, et. al v. Office of the Ombudsman, et. al, G.R. No. 131445, 27 May 2004 citing People v. Januario, 335 Phil. 268 (1997).

[8] Rollo, pp. 211-212.

[9] Rollo, pp. 226-228.

[10] Amado G. Perez, et. al v. Office of the Ombudsman, et. al, G.R. No. 131445, 27 May 2004.

[11] Cruz, Jr. v. People, G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[12] Rule 65, Section 3, Revised Rules of Court.

[13] Lim v. Sabarre, L-22002, 20 July 1968, 24 SCRA 76; Gonzales v. Serrano, L-25791, 23 September, 1968, 25 SCRA 64; Sy Ha v. Galang, 117 Phil. 798 (1963); Mata v. San Diego, G.R. No. L-30447, 21 March 1975, 63 SCRA 170.

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