

GENERAL BANK AND TRUST COMPANY (GBTC); WORLDWIDE INSURANCE AND SURETY COMPANY (WORLDWIDE); MIDLAND INSURANCE CORPORATION (MIDLAND); AND STANDARD INSURANCE CO., INC. (STANDARD), ...

G.R. No. 125440. January 31, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court that seeks to annul and set aside the Ombudsman Resolution dated May 15, 1995 in OMB-CRIM-0-93-1597 which dismissed the complaint filed by petitioners against respondent Assistant Solicitor General (ASG) Magdangal M. de Leon, and the Ombudsman Order dated March 13, 1996 denying the Motion for Reconsideration of petitioners.

Petitioners General Bank and Trust Company (GBTC), Worldwide Insurance and Surety Company (Worldwide), Midland Insurance Corporation (Midland) and Standard Insurance Co., Inc. (Standard) filed a complaint against respondent ASG de Leon on July 5, 1993. Docketed as OMB-CRIM-093-1597, the complaint accused respondent ASG de Leon of violating Section 3 (e) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act), for allegedly—

x x x causing undue injury to the Government of the Republic of the Philippines and the GBTC Stockholders in giving Lucio Tan unwarranted benefit or advantage in the discharge of his official functions by protecting and defending the interest of Lucio Tan and the Central Bank relative to (sic) verbatim adoption of the Lucio Tan Bid as the Liquidation Plan of GBTC under Monetary Board Resolution No. 677, March 29, 1977.[1]

and charged respondent administratively with malfeasance in office, for his alleged—

x x x deliberate and adamant refusal to comply with his statutory duty to protect and defend the interest of the Government of the Republic of the Philippines as against the interest of Lucio Tan and the Central Bank relative to the verbatim adoption of the Lucio Tan Bid as the Liquidation Plan of GBTC under Monetary Board Resolution No. 677, March 29, 1977.[2]

OMB-CRIM-093-1597 was assigned to respondent Raul E. Totanes, Ombudsman Graft Investigation Office II, Evaluation and Preliminary Investigation Bureau (EPIB). Respondent Totanes dismissed the criminal case against respondent ASG de Leon in the assailed Resolution dated May 15, 1995, the dispositive portion of which reads:

WHEREFORE, premises considered, the undersigned investigator respectfully recommends that the above-entitled case be forthwith DISMISSED for lack of sufficient evidence to hold respondent CRIMINALLY liable for the acts complained of in the instant complaint.

SO RESOLVED.[3]

Petitioners then filed a Motion for Reconsideration on July 10, 1995 that was denied in an Order dated March 13, 1996. Hence, this petition.

The relevant facts as summarized by the Office of the Ombudsman are:

On March 27, 1977, the Monetary Board of the Central Bank passed Resolution No. 677 to the effect that GBTC is insolvent and therefore has to stop its banking business operations. It designated a Liquidator and approved a Liquidation Plan whereby (sic) Lucio Tan Group shall purchase all the assets and assume all the liabilities of GBTC;

On April 07, 1977, the Central Bank of the Philippines and Arnulfo B. Aurellano in his capacity as the Monetary Board of the Central Bank Liquidator of GBTC filed through the Office of the Solicitor General (OSG) a Petition with the Court of First Instance of Manila, seeking the court's assistance in the liquidation of GBTC. The Court docketed the said petition as Spec. Proc. No. 107812, entitled "Petition for Assistance in the Liquidation of GBTC";

On May 05, 1982, three minority stockholders of GBTC, namely, Worldwide, Midland and Standard through their counsel, ATTY. ANGEL C. CRUZ, filed an intervention in the said case, praying for the annulment of the closure and liquidation of GBTC by the Monetary Board of the Central Bank as these were allegedly done arbitrarily and in bad faith. Later, GBTC itself joined and adopted the intervention of its aforesaid three minority stockholders;

Assistant Solicitor General Ruben E. Agpalo, to whose Team the said case was assigned by Solicitor General Estelito P. Mendoza, re-assigned the said case from Solicitor Juan C. Nabong to the herein respondent in view of Juan C. Nabong's appointment as RTC Judge;

From that time on, all the pleadings, filed with the Liquidation Court RTC of Manila, were signed by Assistant Solicitor General Ruben E. Agpalo and the herein respondent in behalf of the Office of the Solicitor General (OSG).

What prompted petitioners to file a complaint against respondent ASG de Leon with the Ombudsman is the alleged "inconsistent position" of said respondent in Spec. Proc. No. 107812 and in Civil Case No. 0005 filed with Sandiganbayan.

Civil Case No. 0005 is an ill-gotten wealth case filed by the Presidential Commission on Good Government (PCGG) through the OSG on July 17, 1987. This case was instituted against Lucio Tan, former President Ferdinand Marcos, Imelda R. Marcos, et. al.

Petitioners point out that in Civil Case No. 0005, the first of the causes of actions therein as stated in Par. 14 (a)-(1) to (3) alleges that:

(A)

The Marcos-dominated Central Bank Closure of GBTC under MB Resolution, March 25, 1977 ;

(B)

The LUCIO TAN'S (sic) takeover of GBTC under MB Resolution, March 29, 1977 ;

are illegal, fraudulent and arbitrary, made thru conspiracy with and taking advantage of the close relationship between the LUCIO TAN Group and the deposed President and Wife, other CB officials, with the help and manipulation of then CB Governor Gregorio S. Licaros and former PNB President Panfilo O. Domingo xxx.[4]

The charge that respondent ASG de Leon espoused conflicting interests rests on the contention of petitioners that said respondent's act of defending the legality of the Central Bank closure of GBTC amounts to defending the interest of Lucio Tan and the Central Bank.[5] Petitioners maintain that the position taken by the OSG represented by respondent ASG de Leon in Spec. Proc. No. 107812 is "against the 'interest of the Government of the Republic

of the Philippines' as contained in the statement of ultimate facts set forth in Par. 14 (a)-(1) to (3) of EDSA-SDB Civil Case No. 0005, ANNEX "C".[6]

On December 16, 1992, counsel of petitioners wrote respondent ASG de Leon that he inhibit himself from appearing in Spec. Proc. No. 107812 and to defend the interest of the Government of the Philippines as against the interest of Lucio Tan in Civil Case No. 0005.[7]

When respondent ASG de Leon for OSG continued to represent the Central Bank in Spec. Proc. No. 107812, petitioners then filed the complaint against respondent with the Office of the Ombudsman.

In dismissing the case, the Office of the Ombudsman held:

Thus, the records of this case convincingly show that, whenever the herein respondent Assistant Solicitor General appears in court or signs any pleading in the aforesaid case, he is doing so not in his personal capacity but in his official capacity as one of the lawyers in the OSG, which is headed by the Solicitor General.

Everything stated in the pleadings filed by the OSG in the aforesaid case is not the personal stand or opinion of the herein respondent but the official stand or opinion of the OSG. Hence, OSG as counsel of the Central Bank of the Philippines in the aforesaid case is defending its client, the Central Bank. It is not defending the interest of Lucio Tan. The fact that, under the Liquidation Plan approved by the Monetary Board of the Central Bank, the Lucio Tan Group purchased the assets and assumed the liabilities of GBTC, is merely incidental. What is at issue in the aforesaid case, which is now before the Court of Appeals, is whether or not the Monetary Board of the Central Bank acted arbitrarily or in bad faith in its actions, leading to the closure and liquidation of GBTC.

As regards the complaint in the Sandiganbayan, docketed as Civil Case No. 0005, which is an action for the recovery of the alleged ill-gotten wealth against Lucio Tan, et. al., the same was signed by Presidential Commission on Good Government (PCGG) Chairman Ramon Diaz and Solicitor General Francisco Chavez. While it is true that, the said case is in the name of the Republic of the Philippines, yet it was filed by the PCGG which is the only agency involved in that case. The said PCGG case has nothing to do with Spec. Proc. No. 107812 (CA-G.R. CV No. 39939) which involves the issue of validity of the closure and liquidation of GBTC. Neither the Central Bank nor GBTC Liquidator Arnulfo B. Aurellano of the Central Bank, petitioners-appellants in the said CA G.R. CV No. 39938, are parties in the said Sandiganbayan Civil Case No. 0005.

With the Motion for Reconsideration of the Resolution having been denied, petitioners filed this petition raising the following issues:

I.

THAT RESPONDENT OMB AND RESPONDENT INVESTIGATION OFFICER RAUL E. TOTANES COMMITTED OUTRAGEOUSLY WRONG FINDINGS (A) THAT THE OSG "IS NOT DEFENDING THE INTEREST OF LUCIO TAN" IN SPEC. PROC. NO. 107812, NOW CA-G.R. NO. 39939, AND (B) THAT THE EDSA CASE SANDIGANBAYAN CIVIL CASE NO. 0005 HAS NOTHING TO DO WITH SPEC. PROC. NO. 107812, NOW CA-G.R. NO. 39939, ARE DIRECTLY CONTRADICTED BY THE FACTS ON RECORD.

II.

THAT RESPONDENT OMBUDSMAN COMPLETELY ERRED IN NOT CONSIDERING THAT THERE IS NO CONSTITUTIONAL NOR ANY LEGAL PROVISION NOR ANY DECISIONAL AUTHORITY NOR ANY PRESIDENTIAL AUTHORITY VESTING UPON OSG THE RIGHT AND OR DUTY TO REPRESENT INTEREST "IN CONFLICT OR OPPOSED" TO THE INTEREST OF THE REPUBLIC OF THE PHILIPPINES, OF WHICH OSG IS THE CHIEF COUNSEL, IN ANY ILL-GOTTEN WEALTH CASE

SUCH AS THAT ARISING FROM THE ILLEGAL AND FRAUDULENT CB CLOSURE AND LUCIO TAN'S TAKEOVER OF GBTC, AS SET FORTH IN PAR. 14 (a)-(1) TO (3), EDSA-SDB CIVIL CASE NO. 0005, ANNEX "C".

III.

THAT RESPONDENT OMB IS TOTALLY WRONG IN NOT FINDING THAT A PRIMA FACIE CASE EXISTS AGAINST RESPONDENT FOR VIOLATION OF SECTION 3 (e), RA No. 3019, AS AMENDED CONSIDERING THAT THE EVIDENCE ON RECORD, BEING DOCUMENTARY, IS SO CLEAR AND SO PLAIN.[8]

The petition must be dismissed. Not only are the charges against respondent ASG de Leon baseless, they are also misplaced.

In accusing respondent ASG de Leon of malfeasance and violation of Section 3 (e) of RA 3019, petitioners would like this Court to believe that respondent ASG de Leon, in representing the Central Bank in Spec. Proc. 107812 (now CA-GR CV No. 39939) is also defending the interest of Lucio Tan. Considering that Sandiganbayan Civil Case No. 0005 is a complaint against Lucio Tan filed by the PCGG through the OSG and includes averments pertaining to the alleged illegal and arbitrary closure of GBTC, petitioners are convinced that respondent ASG de Leon must be held personally liable for the alleged inconsistent interest or position taken by the OSG in these two cases.

To be criminally liable under Section 3 (e) of RA 3019, these elements must be present: (1) That the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[9]

Respondent ASG de Leon, in representing the Central Bank in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 was acting in his official capacity as Assistant Solicitor General.[10] As Assistant Solicitor General, respondent was a member of the legal staff of the OSG tasked to represent the Central Bank, an agency of the Government, in Spec. Proc. No. 107812/CA-GR CV No. 39939. Based on the records, the case was originally assigned to Solicitor Nabong, but was re-assigned to respondent who at the time was a Solicitor, in view of the appointment of Nabong as RTC judge.

In defending the validity of the closure of GBTC, respondent ASG de Leon was merely acting in the interest of the Central Bank, which is the client of OSG. It may be true that a successful defense of the interest of the Central Bank in said case would also inure to the benefit of the Lucio Tan group. However, such benefit would just be an incidental result of the position that the government has taken in justifying the closure of said bank because the approved Liquidation Plan for GBTC provided that the Lucio Tan group shall purchase all the assets and assume all the liabilities of GBTC and such Liquidation Plan would be in force upon a judgment upholding the legality of the closure of GBTC. [11] Whatever benefit the Lucio Tan group would reap upon a favorable judgment in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 is but a natural consequence of a successful defense of the actions of the Central Bank in closing GBTC. Certainly, it cannot be deemed as an act of causing undue injury to a party by giving it unwarranted benefits or advantage.

We affirm the finding that respondent ASG de Leon cannot be held criminally liable for violating Section 3 (e) of RA 3019. In defending the Central Bank, respondent was performing his legal duty to defend the interest of the Government and was merely pursuing the position taken by it. Whatever legal services respondent ASG de Leon

rendered in favor of the Central Bank in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 were made in his official capacity as a member of the legal staff of the OSG. We note that in all of the pleadings filed by the OSG in Spec. Proc. No. 107812/CA-G.R. CV No. 39939, the signature of respondent ASG de Leon appeared therein as Solicitor and later on as Assistant Solicitor General. However, it must be noted that these pleadings also bore the signatures of the Solicitor General and other members of the legal staff of the Office of the Solicitor General.[12]

Hence, the acts of respondent ASG de Leon had the imprimatur of the OSG which had consistently defended the interest of the Central Bank in Spec. Proc. No. 107812/CA-G.R. CV No. 39939. Four Solicitor Generals, Estelito Mendoza, Sedfrey Ordoñez, Frank Chavez and Raul I. Goco have maintained the policy of defending the closure of GBTC by the Central Bank and respondent ASG de Leon merely acted with the other officials of the OSG in representing the State.

To be liable under Section 3 (e) of RA 3019, the five aforementioned elements must concur. In the absence of proof that respondent ASG de Leon acted with manifest partiality in pursuing the official stand of the OSG in Spec. Proc. No. 107812/CA-G.R. CV No. 39939, respondent ASG de Leon cannot be liable under Section 3 (e) of RA 3019. Thus, the failure of petitioners to prove the fifth element is fatal to their cause.

Petitioners harp on the alleged conflicting positions of respondent ASG de Leon in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 and in Sandiganbayan Civil Case No. 0005. However, the records fail to disclose the nature and extent of respondent ASG de Leon's participation in Sandiganbayan Civil Case No. 0005. What has been set in detail is the participation of respondent ASG de Leon in Spec. Proc. No. 107812/CA-G.R. CV No. 39939. Assuming *arguendo* that respondent ASG de Leon participated in these two cases, this Court cannot hold him personally liable. The perceived inconsistent positions are the official positions taken by his office as the principal law office and legal defender of the Government.[13]

Petitioners have already raised the issue of "inconsistent positions" of the OSG in Spec. Proc. No. 107812 and Sandiganbayan Civil Case No. 0005 with the Court of Appeals in CA-G.R. CV No. 033642 (Appeal of the Central Bank from the decision of the RTC of Manila, Branch IV in Spec. Proc. No. 107812).

In CA-G.R. CV No. 033642, petitioners sought to have then Solicitor General Francisco Chavez cited in contempt and subjected to disciplinary action for said inconsistency. In upholding the position of Solicitor General Chavez, the Court of Appeals stated in its Resolution dated July 19, 1988:

The second ground in support of the motion for contempt may have some basis *per se*, that is, appellant's counsel espouses two inconsistent positions or interests: the first, in favor of Central Bank and Lucio Tan, which is the position taken in the case at bar, and the second, in favor of the Republic but against Lucio Tan and his cohorts in the Civil Case before the Sandiganbayan. The situation of the appellant's counsel may therefore be likened to one whose choice is between the devil and the deep blue sea.

Still and all, we are not ready to condemn appellant's counsel because of the fix in which he found himself. On the contrary, we might commiserate with him. He is under the payroll of the State and he represents the State sometimes through its instrumentality like the Central Bank and its officials, as in the instant case. In other words, the State in both cases has knowingly allowed counsel to represent it, and for this reason, the latter may not be held in contempt and subjected to any disciplinary action.[14]

This Court agrees that even the Solicitor General cannot be personally liable for the predicament he found himself in Spec. Proc. No. 107812 and Sandiganbayan Civil Case No. 0005. Basic to a prosecution under Section 3 (e) of RA 3019 is that public officers must have acted with manifest partiality, evident bad faith or gross inexcusable negligence in performing his legal duty. We find no reason to disturb the ruling of respondent Totanes that there was no *prima facie* case against respondent ASG de Leon. The perceived conflict of interest or position

undertaken by the OSG in Spec. Proc. No. 107812/CA-G.R. CV No. 39939 and in Sandiganbayan Civil Case No. 0005 should be addressed to the OSG or the Solicitor General in particular.

Furthermore, in *Ocampo, IV vs. Ombudsman*, we ruled that the "courts cannot interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation if the complaint is, in his view, in due and proper form."^[15]

The power of the Ombudsman to determine the merits of a complaint is mandated by the Constitution and courts should not interfere in the exercise thereof. There is also a practical reason behind this rule, to wit:

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 courts will be grievously hampered by innumerable petitioners assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same was that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.^[16]

IN VIEW OF THE FOREGOING, the petition is DISMISSED.

SO ORDERED.

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

[1] Records, ANNEX "1", pp. 208-209.

[2] Ibid.

[3] Ibid., ANNEX "A", p. 31.

[4] Ibid., p. 6.

[5] Ibid., p. 14.

[6] Ibid.

[7] Ibid.

[8] Ibid., p. 4.

[9] *Ingco vs. Sandiganbayan*, 272 SCRA 563 (1997), p. 574.

[10] § 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 provides that:.....The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers.

[11] *Supra* note 1, p. 224.

[12] The brief of the Central Bank in CA-G.R. CV No. 03642 was signed by Solicitor General Mendoza,

Assistant Solicitor General Agpalo and respondent Solicitor Magdangal M. de Leon.

The Motion for Reconsideration and a Supplemental Motion for Reconsideration of the Central bank in the same case was signed by Solicitor General Sedfrey Ordoñez, Assistant Solicitor General Carlos Ortega and respondent Solicitor Magdangal M. de Leon.

When the case reached the Supreme Court, the Central Bank's comment on the petition was signed by Solicitor General Francisco Chavez, Assistant Solicitor General Ortega and respondent Solicitor Magdangal M. de Leon.

When the case was remanded to the Regional Trial Court, the memorandum for the Central Bank was signed by Assistant Solicitor General Ortega and respondent, as Assistant Solicitor General.

When the Central Bank appealed the adverse decision in CA-GR CV No. 39939, the appellant's brief dated October 6, 1993 was signed by Solicitor General Raul I. Goco, respondent ASG de Leon and Solicitor Irahlyn S.Lariba.(Emphasis ours)

[13] Supra note 10, § 34:The Office of the Solicitor General shall be headed by the Solicitor General, who is the principal law officer and legal defender of the Government. He shall have the authority and responsibility for the exercise of the Office's mandate and for the discharge of its duties and functions, and shall have supervision and control over the Office and its constituent units.

[14] Supra note 1, p. 102.

[15] 225 SCRA 725 (1993), pp. 729-730.

[16] Ibid., p. 730.

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