# MA. CHONA M. DIMAYUGA, FELIPE T. AGUINALDO, AND NOEL C. INUMERABLE, PETITIONERS,VS. OFFICE OF THE OMBUDSMAN, RESPONDENT.

*G.R. NO. 129099. July 20, 2006*

Ponente: AZCUNA, J.

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**AZCUNA, J.:**

This is a petition for certiorari with a plea for temporary restraining order and writ of preliminary injunction. Petitioners, Ma. Chona M. Dimayuga, Felipe T. Aguinaldo and Noel C. Inumerable, seek to enjoin respondent, Office of the Ombudsman, from conducting a preliminary investigation and any further proceedings in OMB 0-95-0430. Petitioners likewise seek to annul the following: an order dated June 27, 1996, which denied a motion for the suspension of the preliminary investigation;[1] an order dated November 18, 1996, which denied a motion for reconsideration of the earlier order;[2] and an order dated March 13, 1997, which denied a letter-appeal questioning the last mentioned order.[3]

The factual antecedents are not in dispute:

> Petitioners Maria Chona Dimayuga, Noel Inumerable and Felipe Aguinaldo were employees of the Traffic Regulatory Board (TRB) of [the] Department of Public Works and Highways (DPWH). Petitioner Dimayuga used to be the TRB's executive director.
>
> In June 1992, an anonymous complaint was filed against petitioners concerning certain transactions of the TRB from 1989 to May 1992. Consequently, a special audit was conducted by the Special Audit Office (SAO) of the Commission on Audit (COA).
>
> The SAO report, detailing the audit of selected transactions of the TRB was finalized on November 4, 1994. As a consequence of said report, certain irregularities were uncovered, in which petitioners were implicated. It therefore recommended appropriate action against petitioners.
>
> Petitioners filed a motion for reconsideration of said report on February 28, 1995. The COA Chairman, however, denied the same on August 30, 1995. Undaunted, petitioners then filed a Notice of Appeal with a corresponding Motion for Extension of Time to File Memorandum on Appeal before the COA Chairman. In a letter addressed to petitioner Dimayuga, the COA Chairman acknowledged receipt of said documents and granted petitioners' request for extension of time to file their Memorandum on Appeal. Petitioners filed said Memorandum on Appeal on November 20, 1995.
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> Meanwhile, the audit report was forwarded to the DPWH Secretary, who then indorsed the same to respondent Ombudsman for appropriate action on February 16, 1995. Accordingly, petitioners were charged with violation of the Anti-Graft Law or Republic Act 3019, docketed as OMB 0-95-0430. On June 15, 1995, respondent Ombudsman required state auditors Eleanor M. Tejada and Jose Rey Binamira of the COA's Special Action Team to submit their sworn complaint on the basis of their report for purposes of initiating the preliminary investigation, which was set on June 28, 1995. In view of this, petitioners filed a Motion for Suspension of Preliminary Investigation on June 26, 1996 with the Evaluation and Preliminary Investigation Bureau of

> respondent. In said motion, petitioners argue that the SAO report was not yet final, considering that their appeal with the Commission had not yet been resolved.
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> Respondent, however, denied petitioners' motion for reconsideration on June 27, 1996 x x x.
>
> x x x
>
> Unsatisfied with the said Order, petitioners filed an "Omnibus Motion for Reconsideration" dated June 27, 1996, reiterating as ground therefor, the pendency of their appeal before the Comission. In arguing for the suspension of the preliminary investigation before respondent, petitioners cited the supposedly similar case of COA v. Gabor, OMB-0-93-0718. The COA on the other hand, through the Special Audit Office, filed a Manifestation with Motion dated September 9, 1996, concurring with the position of respondent Ombudsman, denying the previous Motion for Reconsideration of petitioners.
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> On November 18, 1996, respondent denied petitioners' Omnibus Motion x x x.
>
> x x x
>
> Subsequent to these Motions, petitioners likewise filed a "Letter-Appeal" dated December 5, 1996, addressed to Ombudsman Aniano Desierto, based on the same grounds stated in previous motions. Respondent denied said "Letter- Appeal" in an Order dated March 13, 1997 x x x.[4]

On May 27, 1997, petitioners filed this petition. This Court issued a temporary restraining order on August 20, 1997 enjoining respondent from conducting a preliminary investigation and any further proceedings in OMB 0-95-0430.[5]

Petitioners raise the following issues:

> I
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> THE INVESTIGATION OF THE CHARGES IN THE COMPLAINT FILED BY THE SAO-COA AGAINST PETITIONERS IS PREMATURE, BECAUSE THEIR APPEAL FROM THE FINDINGS OF THE SAO-COA IS STILL PENDING RESOLUTION BEFORE THE COMMISSION PROPER. IN THE EXACTLY SIMILAR CASE OF COA V. GABOR, OMB 0-93-0714, RESPONDENT OMBUDSMAN HAD DISMISSED AND CONSIDERED UNDOCKETED THE COMPLAINT ON THE SAME GROUNDS.
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> II
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> RESPONDENT OMBUDSMAN VIOLATED PETITIONERS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS, GUARANTEED UNDER SECTION 1 OF ARTICLE II OF THE CONSTITUTION, IN NOT AFFORDING PETITIONERS THE SAME RELIEF IT AFFORDED TO THE PUBLIC OFFICIAL INVOLVED IN COA V. GABOR, SUPRA.[6]

As to the first issue: In deference to the virtually unlimited investigatory and prosecutorial powers granted to the Ombudsman by the Constitution and by law, the Court has maintained a policy of non-interference with such powers. Sections 12 and 13, Article XI of the Constitution provide:

> Sec. 12. 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 or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof.
>
> 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.


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Section 15 of the Ombudsman Act of 1989 states:

> Sec. 15. Powers, Functions and Duties.-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 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;
>
> x x x.[7]

This Court in Quiambao v. Desierto[8] stated that:

> As a rule, we have consistently adopted a policy of non-interference in the conduct of preliminary investigations and provided sufficient latitude of discretion to the investigating prosecutor to determine what constitutes sufficient evidence as will establish probable cause. As we held in the case of The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto (418 Phil. 715; 362 SCRA 730, 735-736 [2001]):
> The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as R.A. 6770 has endowed it with a wide latitude of investigatory and prosecutor[ial] powers virtually free from legislative, executive or judicial intervention. This court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service.[9]

In Kara-an v. Office of the Ombudsman,[10] this Court further expounded, thus:

> x x x The consistent policy of the Court is not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers. We held in Alba v. Nitorreda that:
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> x x x this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutor[ial] powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.
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> The Court explained the rationale underlying its policy of non-interference in this wise:
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> x x x The rule is based not only upon respect for the investigatory and prosecutor[ial] 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 petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would 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.[11]

It is thus the practice of this Court to uphold the constitutionally conferred investigatory and prosecutorial independence of the Ombudsman. It is precisely this independence that allows the Office of the Ombudsman to achieve its constitutional purpose and objective.

Furthermore, although the Commission on Audit (COA) report may aid the Office of the Ombudsman in conducting its preliminary investigation, such report is not a prerequisite. Both the Constitution and the

Ombudsman Act of 1989 state that the Office of the Ombudsman may undertake an investigation on complaint or on its own initiative. Therefore, with or without the report from COA, the Ombudsman can conduct a preliminary investigation. This Court has declared that the findings in a COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of the Ombudsman in its determination of probable cause. In Cabrera v. Marcelo,[12] this Court declared:

> Petitioners cannot fault the Ombudsman for relying on the COA Audit Report, notwithstanding that it had not yet attained finality. The initial basis for the Ombudsman's investigation was not the COA Audit Report, but the complaints filed by Casanova. While the allegations in the complaint happened to be similar with those contained in the COA Audit Report, the Ombudsman could very well conduct an independent investigation based on the complaints for the purpose of whether criminal charges should be filed against the petitioners. The Ombudsman is reposed with broad investigatory powers in the pursuit and of its constitutional mandate as protector of the people and investigator of complaints filed against public officials. It is even empowered to request from any government agency such as the COA, the information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents.
>
> It should be borne in mind that the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable. In Ramos v. Aquino, the Court ruled that the fact that petitioners' accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation. Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA, but from the independent determination of the Ombudsman.[13]

Further, this Court in Aguinaldo v. Sandiganbayan[14] said:

> Therefore, as correctly stated by the Sandiganbayan in its order of April 12, 1996, while the COA may assist in gathering evidence to substantiate a charge of malversation, any determination made by it will not be conclusive as to whether adequate cause exists to prosecute a case. This is so because the Ombudsman is given the power to investigate on its own an illegal act or omission of a public official.[15]

And Layus v. Sandiganbayan[16] pronounced:

> The contention that a prior COA Report is necessary to determine LAYUS' culpability is without merit. Under R.A. No. 6770, the Ombudsman has the power to investigate and prosecute individuals on matters and complaints referred to or filed before it. Such power is plenary.
>
> We likewise disagree with LAYUS' reliance on the regularity of her COA Report. A COA approval of a government official's disbursement only relates to the administrative aspect of his accountability, but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which such official may be answerable. For, while the COA may regard a government official to have substantially complied with its accounting rules, this fact is not sufficient to dismiss the criminal case.[17]

Therefore, the investigation of the charges in the complaint filed by the Special Audit Office-COA against petitioners is not premature.

Regarding the second issue:

As stated, the Office of the Ombudsman has been granted virtually plenary investigatory powers by the Constitution and by law. Thus, as a rule, the Office of the Ombudsman may, for every particular investigation, whether instigated by a complaint or on its own initiative, decide how best to pursue each investigation. This power gives the Office of the Ombudsman the discretion to dismiss without prejudice a preliminary investigation

if it finds that the final decision of COA is necessary for its investigation and the future prosecution of the case. In another case with similar factual antecedents, it may pursue the investigation because it realizes that the decision of COA is irrelevant or unnecessary to the investigation and prosecution of the case. Since the Office of the Ombudsman is granted such latitude, its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws.

Thus, petitioners have not shown that respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction in denying their motions to dismiss the case or to suspend the proceedings.

WHEREFORE, the petition is DISMISSED and the prayer for a writ of preliminary injunction is DENIED. The temporary restraining order issued through the resolution dated August 20, 1997 is LIFTED and respondent Office of the Ombudsman may proceed with the preliminary investigation and/or any further proceedings in OMB 0-95-0430 entitled Commission on Audit v. Chona Dimayuga, et al.

No costs.

**SO ORDERED.**

Puno, (Chairperson), Sandoval-Gutierrez, and Garcia, JJ., concur.
Corona, J., no part.

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[1] Rollo, pp. 26-27.

[2] Id. at 28-31.

[3] Id. at 32-33.

[4] Id. at 31-34.

[5] Id. at 41.

[6] Id. at 13.

[7] Republic Act No. 6770.

[8] G.R. No. 149069, September 20, 2004, 438 SCRA 495.

[9] Id. at 509-510.

[10] G.R. No. 119990, June 21, 2004, 432 SCRA 457.

[11] Id. at 464-465.

[12] G.R. Nos. 157419-20, December 13, 2004, 446 SCRA 207.

[13] Id. at 215-216 (emphasis supplied).

[14] 332 Phil. 896 (1996).

[15] Id. at 911.

[16] 377 Phil. 1067 (1999).

[17] Id. at 1079.


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