

NENITA R. ORCULLO, PETITIONER, VS. HON. MARGARITO P. GERVACIO, JR., IN HIS CAPACITY AS THE DEPUTY OMBUDSMAN FOR MINDANAO, DAVAO CITY, AND MRS. VIRGINIA YAP MORALES, RESPONDENTS.

G.R. No. 134104. September 14, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is a special civil action for certiorari with preliminary injunction or temporary restraining order assailing the orders of the Deputy Ombudsman for Mindanao,[1] which required petitioner, a city councilor of Davao City, to pay back wages amounting to P70,800.00, to private respondent, and directed a graft investigation officer to file with the Office of the Deputy Ombudsman for Mindanao a case for violation of Section 3 (e), R.A. No. 3019, against petitioner.

We grant the petition.

The facts are as follows:

Petitioner Nenita R. Orcullo was, at the times material hereto, a duly elected City Councilor of the Second District of Davao City (Sangguniang Panlungsod, Davao City). She was elected in the May 8, 1995 elections and was chair of the Committee of Women Welfare and Development of the Sangguniang Panlungsod, Davao City.

In September, 1995, the City Government of Davao City, represented by the Vice-Mayor, named respondent Virginia Yap Morales as team leader of a study group in the conduct of the Action Study Towards Policy Formulation on the Welfare and Development of Women, in aid of legislation.

However, in 1996, due to financial constraints, petitioner caused the suspension of the project.

On February 18, 1997, respondent Virginia Yap Morales wrote the Office of the Ombudsman for Mindanao "requesting for assistance" to collect back wages. She alleged that petitioner:

“* unceremoniously and without formal notice separated me as Coordinator of Research and Documentation Project of the CWWD in August 1996,

“* informed me of the unilateral closing down of any further dialogue and payment of additional services rendered for the period August to October 1996 in a hand written note received by me on September 11, 1996,

“* refusal to pay back wages due me for services duly rendered in 1995.”[2]

On March 20, 1997, petitioner having been furnished a copy of the above letter, replied thereto. She said that respondent Virginia Yap Morales was among women activists who volunteered to work for the codification of the Women Code, and she was endorsed to head the study team. Acting thereon, on September 15, 1995, the Vice Mayor of Davao City, appointed respondent team leader of a study group for an action study towards policy

formulation on women's welfare and development, in aid of proposed legislation. As there was no budget for the project, petitioner recommended her appointment as technical assistant in the City Council of Davao City. On October 24, 1995, respondent accepted the appointment and signed a contract of service with the City of Davao, represented by the Vice-Mayor, enforceable for the period October 1, 1995 to December 31, 1995, and upon expiration thereof, she was named as clerk II in the office of petitioner. She received all salaries due her even during the time the work was suspended for three months, until the suspension of the project due to financial constraints.

On February 5, 1998, respondent Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao,[3] issued an order directing petitioner to pay respondent Morales back wages, stating that:

“x x x

“The project undertaken by the Committee on Women Welfare and Development contracted out requester’s services as Team Leader of the Study Team for the duration of the project but she was not able to finish the project in its entirety due to financial and administrative setbacks. However, despite the written Contracts of Employment as Technical Assistant B and Clerk II, requester really worked on the project as its team leader/coordinator and as Consultant to the project in the aforementioned periods. It is to this latter positions that she should be compensated.

“WHEREFORE, the Honorable 2nd District City Councilor NENITA R. ORCULLO is ordered to pay the requester back wages in the amount of SEVENTY THOUSAND EIGHT HUNDRED PESOS (P70,800.00) less withholding tax thereon within five (5) days from receipt of this order.

“FAIL NOT UNDER PENALTY OF THE LAW.

“SO ORDERED.

“Davao City, Philippines, 05 February 1998.

“(s/t) MARGARITO P. GERVACIO, JR.

“Deputy Ombudsman for Mindanao”[4]

On March 2, 1998, petitioner filed with the Ombudsman for Mindanao a motion for reconsideration on the ground that the award of back wages was improper as there was no employer-employee relationship between her and respondent Morales, and that the office of the Ombudsman was without authority to issue such an order.

On March 23, 1998, respondent Deputy Ombudsman for Mindanao denied the motion for reconsideration.

On April 15, 1998, graft investigator Marilou B. Unabia issued a memorandum terminating the request for assistance of Virginia Yap Morales and recommending that a case for violation of Section 3 (e), R.A. No. 3019 be filed against petitioner Councilor Nenita R. Orcullo before the Office of the Deputy Ombudsman for Mindanao.

On April 17, 1998, respondent Deputy Ombudsman for Mindanao Margarito P. Gervacio, Jr. approved the recommendation.

Hence, this petition.

On July 15, 1998, we required respondents to comment on the petition within ten (10) days from notice. Notwithstanding receipt of notice of the resolution, respondents failed to file their comment without any explanation.

On July 28, 1999, we resolved to declare that respondents had waived the filing of their comment.

We now give due course to the petition.

At issue in this petition is whether or not respondent Deputy Ombudsman for Mindanao acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in ordering petitioner personally to pay back wages to respondent Morales, who was named as team leader of a study group for a project of the Sangguniang Panlungsod of Davao City, in aid of legislation.

Respondent Morales sought the assistance of the office of the Deputy Ombudsman for Mindanao to claim payment of back wages from petitioner, a councilor of Davao City. As such, the Deputy Ombudsman for Mindanao has no authority or jurisdiction over the subject matter of the claim. As a money claim against petitioner personally, the claim is within the jurisdiction of a court of proper jurisdiction (depending on the amount of the claim). If the money claim is against the City government of Davao City, the claim is within the jurisdiction of the City Council (Sangguniang Panlungsod), or other proper government agency, but not the office of the Ombudsman.

However, respondent Deputy Ombudsman for Mindanao invoked the powers vested in the Office of the Ombudsman under R.A. No. 6770,

Section 15 (5), providing as follows:

“SEC. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

“x x x

“(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;”

It is clear that the above quoted provision does not vest the Ombudsman with authority to order a public official to pay a money claim of an aggrieved party. The provision authorizes the Office of the Ombudsman to request any government agency for assistance and information necessary in the discharge of its responsibilities. It does not authorize the Ombudsman to directly order the payment of claims for wages, salaries or compensations of aggrieved parties.

What is more, respondent Deputy Ombudsman for Mindanao abused the functions of his office by approving a recommendation of a graft investigator to file with his own office an anti-graft case against petitioner for violation of Section 3 (e), R.A. No. 3019, who was just exercising the duties of her office as an elected local legislator of the City of Davao. Petitioner could not be personally liable for the payment of the wages, salary or honorarium of a "team leader" assisting her as local legislator of Davao City in crafting a piece of legislation on women's code. She was not even the one who hired respondent to undertake the project. Petitioner's refusal to pay was not in bad faith, much less evident bad faith. Hence, she could not be liable for violation of Section 3 (e) of R.A. No. 3019, as amended.[5]

"Any further prosecution then of petitioner was pure harassment."[6]

Consequently, the Deputy Ombudsman for Mindanao acted without or in excess of jurisdiction, or with grave abuse of discretion, in issuing the questioned orders. Although petitioner could have elevated the ruling of the Deputy Ombudsman for Mindanao to the Ombudsman in Manila, the threat of prosecution of petitioner before the Deputy Ombudsman's own office created an immediate urgency for judicial relief.

WHEREFORE, the Court hereby GRANTS the petition for certiorari and ANNULS the orders of the Deputy Ombudsman for Mindanao, dated February 5, 1998, and March 23, 1998, in OMB-MIN-RA-97-022 as well as the

memorandum dated April 15, 1998, of Graft Investigation Officer Marilou B. Unabia, approved by the Deputy Ombudsman for Mindanao. The Court enjoins him to desist from further acting on the case.[7]

No costs.

SO ORDERED.

Puno, Kapunan, and Ynares-Santiago, JJ., concur. Davide, Jr., C.J., (Chairman), votes to refer this case to the Court Appeals in light of Fabian vs. Ombudsman in G.R. No. 129742, 16 Sept. 1998.

[1] Hon. Margarito P. Gervacio, Jr., in OMB-MIN-RA-97-022.

[2] Petition, Rollo, pp. 7-28, at p. 10.

[3] Now Overall Deputy Ombudsman.

[4] Annex “A”, Petition, Rollo, pp. 29-31, at p. 30.

[5] Venus vs. Desierto, G. R. No. 130319, October 21, 1998.

[6] Venus vs. Desierto, *supra*

[7] Allado vs. Diokno, 232 SCRA 192 [1994].

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