

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),
PETITIONER, VS. HON. OMBUDSMAN ANIANO A. DESIERTO,
HERMINIO T. DISINI, IN HIS ...**

G.R. NO. 135123. January 22, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court to nullify the issuances of public respondent Ombudsman in OMB Case No. 093-137[4], namely:

- Resolution dated May 2, 1997 dismissing petitioner's criminal complaint against private respondents for violation of the Anti-Graft and Corrupt Practices Act; and
- Order dated May 28, 1998 denying petitioner's motion for reconsideration of the resolution.

The facts[1] as gleaned from the records are as follows:

This case refers to the complaint of the Presidential Commission on Good Government (PCGG), represented by Domingo G. Palarca, officer in charge of the Security and Investigation Department[2] of the PCGG against Herminio T. Disini, Senior Vice President and General Counsel, Herdis Group, Inc., and the following officers of Herdis Group, Inc., namely: Jesus T. Disini; Angelo V. Manahan; Dominico O. Borja; Rodolfo Jacob; Jerry Orlina, and Alfredo Velayo, for Violation of Sec. 3(b) of Republic Act (RA) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

It is alleged that, on March 11, 1982, private respondent Herminio T. Disini, a personal friend and golfing partner of the late President Ferdinand E. Marcos, gave to the former Chief Executive shares of stock of Vulcan Industrial and Mining Corporation (VIMC) and The Energy Corporation (TEC) worth P40,000,000 and P25,000,000, respectively, which shares of stock were in the name of Herdis Group, Inc. (HGI for short), a local corporation controlled by Disini. The stock certificates covering the above mentioned shares of stocks were among the documents found in Malacañang in the possession of the late President when he fled to Hawaii sometime in February 1986.

The Office of the Ombudsman, in an order dated May 4, 1994, referred to respondents the letter complaint of petitioner and directed them to submit their counter-affidavit within 10 days from receipt thereof. However, a perusal of the return of service would reveal the following:

- a) Re: Order sent to Herminio Disini -- "The addressee is unknown at the given address."
- b) Re: Order sent to Jerry Orlina -- "The addressee is unknown at the given address."
- c) Re: Order sent to Jesus T. Disini -- "The addressee is out of the country since 1986."
- d) Re: Order sent to Dominico Borja -- "No such address or addressee."

In compliance with the order, private respondent Velayo submitted an affidavit, alleging therein that, since the complaint and its annexes refer to a transaction involving the Vulcan Industrial and Mining Corporation, The Energy Corporation, the Herdis Group, Inc., Mr. Herminio Disini, and the late President Marcos, the same does not in any way concern him. Thus, he is in a quandary as to how to answer the same. He, however, reserves his right to submit a counter-affidavit, if required by circumstances.

On the other hand, private respondent Rodolfo Jacob, in a letter dated August 15, 1994 of his counsel, Atty. Mario Luza Bautista, x x x informed the Office of the Ombudsman that, on October 22, 1990, the PCGG granted him full and irrevocable immunity from any civil case and criminal prosecution x x x and enclosed with said letter a copy of the immunity letter of the PCGG x x x.

As stated earlier, public respondent dismissed the complaint and denied reconsideration of the dismissal. Thus, the resolution holds in its dispositive portion:

WHEREFORE, in view of the above considerations, it is respectfully recommended that this case be DISMISSED against all respondents, for lack of legal and factual basis to charge them of the offense charged.

SO RESOLVED.[3]

The dispositive portion of the assailed order likewise reads:

WHEREFORE, in the light of the above considerations, it is respectfully recommended that herein Motion for Reconsideration be DENIED.

SO ORDERED.[4]

Petitioner contends that:

- PUBLIC RESPONDENT OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE ONLY EVIDENCE IN SUPPORT OF PCGG'S COMPLAINT [WAS] A LETTER OF PRIVATE RESPONDENT HERMINIO DISINI TO FORMER PRESIDENT MARCOS, AS THERE WERE OTHER EVIDENCE ON RECORD WHICH WERE TOTALLY DISREGARDED BY PUBLIC RESPONDENT OMBUDSMAN.

- PUBLIC RESPONDENT OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION IN DISMISSING PREMATURELY PCGG'S COMPLAINT BY ERRONEOUSLY HOLDING THAT THE LETTER OF PRIVATE RESPONDENT HERMINIO DISINI TO FORMER PRESIDENT MARCOS HAS NO EVIDENTIARY VALUE AND IS HEARSAY.

- PUBLIC RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT THE AFFIDAVIT OF PRIVATE RESPONDENT ANGELO MANAHAN IS HEARSAY.

- PUBLIC RESPONDENT OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT FILING THE INFORMATION IN COURT, IN EFFECT REQUIRING NOT MERELY PRIMA FACIE EVIDENCE OR PROBABLE CAUSE BUT PROOF BEYOND REASONABLE DOUBT FOR THE FILING OF SAID INFORMATION.[5]

Stated differently, the issue is did the Ombudsman act without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in issuing the assailed resolution and order?

Petitioner argues that public respondent found that PCGG's complaint was supported only by a letter dated March 11, 1982 of private respondent Herminio Disini, wherein shares of stocks of VIMC and TEC, both subsidiaries of Herdis Group, Inc., were turned over by him to the late President Marcos. However, public respondent ignored the affidavit executed by private respondent Manahan, as well as the stock certificates of VIMC and TEC found in Malacañang after the late President fled the country.

These additional documents constituted probable cause for violation of Sections 3 and 4 of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act. Stated in the affidavit was a divestment plan to turn over several shares of VIMC and TEC to the former President. Moreover, the stock certificates showed that private respondents, in conspiracy with the former President, were the authors of the acts subject of the complaint.

The affidavit of private respondent Manahan relates facts that are based on personal knowledge and perception, the affiant having held important positions in Herdis Group, Inc. As one of the trusted men of private respondent Herminio Disini, he knew very well the latter's handwriting and signature. Hence, private respondents could not simply feign ignorance of the divestment plan, because all of them appear to have approved it. Private respondent Manahan himself appears to have prepared the aide memoir, with the assistance of his subordinates, prior to its submission to private respondent Herminio Disini.

The petition is meritorious.

As a rule, the filing or non-filing of the information is primarily lodged within "the full discretion"[6] of the Ombudsman who is a constitutional officer. Under the Constitution, the Ombudsman "is charged with the duty to [i]nvestigate 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."[7]

The reason for its creation "and for the grant to it of broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers." [8] Consequently, the Ombudsman "investigates or inquires into the facts concerning the commission of the crime with the end in view of determining" [9] whether the information may be prepared. If the Ombudsman finds a prima facie case against the person, "the corresponding information or informations can be filed with the Sandiganbayan." [10]

In *Presidential Commission on Good Government v. Desierto*, this Court held that:

The prosecution of offenses committed by public officers is vested primarily in the Office of the Ombudsman. It bears emphasis that the Office has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989). This discretion is all but free from legislative, executive or judicial intervention to ensure that the Office is insulated from any outside pressure and improper influence.

Indeed, the Ombudsman is empowered to determine whether there exist reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. The Ombudsman may thus conduct an investigation if the complaint filed is found to be in the proper form and substance. Conversely, the Ombudsman may also dismiss the complaint should it be found insufficient in form or substance.

Unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the preserver of the integrity of public service. [11]

Public respondent, however, in this case has ignored vital evidence submitted by petitioner consisting not only of the stock certificates of VMC and TEC found in Malacañang when the late President Marcos fled the country but also the affidavit executed by private respondent Manahan stating that there was a divestment plan to turn over those certificates to the late President. Notwithstanding these pieces of evidence, public respondent found no probable cause to charge private respondents with violation of Sections 3 and 4 of Republic Act No. 3019 in the

resolution, to wit:

x x x However, the said letter which was allegedly written by respondent Disini to President Marcos has no evidentiary value whatsoever, considering that the same has not been identified nor authenticated by a qualified person, not to mention that its contents are pure hearsay, since it has not been affirmed by respondent Disini.

x x x

There is nothing in the complaint and its annexes that could show that indeed the above named respondents members of the Board of Directors of the Herdis Group Inc. allegedly conspired with respondent Disini in giving the certificates of stocks to then President Marcos. In fact, the [c]ertificates of [s]tocks which appear to have been signed by them, could have been delivered to anyone or anybody without the knowledge nor authority of the Herdis Board of Directors.[12]

Finding that the evidence did not engender sufficient belief that the complained acts constituted violation of those sections of Republic Act No. 3019, the public respondent reasoned out in this manner:

x x x If ever mention of [Velayo's] name was made by Manahan, it was because he approved the proposed divestment plan which was made in the performance of a professional business function which cannot be a source of any cause of action, whether criminal, civil or administrative.

x x x The alleged new evidence presented by PCGG which is the affidavit of respondent Manahan, is not enough to justify a reversal of the questioned resolution. Manahan's alleged familiarity with the aide memoires among them, the questioned letter of Disini to "Sir" who is allegedly Pres. Marcos, has not been convincingly shown. In fact, according to him, it was a certain Federico E. Navera, HGI's controller who provides financial information that were written in the aforesaid aide memoires, while Pedro Padre, another HGI employee who is in charge of Corporate Affairs, prepared the aide memoire for Disini's signature. In effect, his testimony is hearsay in nature, considering that he based his knowledge of the aide memoire on the information relayed to him by his above named subordinates and that he has no participation official or otherwise in the preparation of the same.[13]

Probable cause "does not mean 'actual and positive cause'"[14] or "x x x import absolute certainty. It is merely based on opinion and reasonable belief."[15] It "has been defined x x x as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."[16] "Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge."[17]

The wide latitude in determining the existence of probable cause or the lack of it cannot be exercised arbitrarily. The Ombudsman must weigh "facts and circumstances without resorting to the calibrations of our technical rules of evidence x x x. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance."[18] "A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and, definitely not on evidence establishing absolute certainty of guilt."[19] A finding of probable cause "is not a pronouncement of guilt." [20] It is well settled that as long as substantial evidence supports it, the Ombudsman's ruling will not be overturned.[21] Courts should not interfere with the "exercise of the Ombudsman's powers based upon constitutional mandate." [22] The pragmatic basis for this rule is explained in this wise:

"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 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 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.”[23]

However, where there appears to be a grave abuse of discretion,[24] as there appears to be here, the Court will so declare and direct that the proper complaint or information be filed. The resolution of dismissal is not based on the evidence presented and is not warranted by the facts thus far available to public respondent.

WHEREFORE, the petition is GRANTED. The Resolution and Order of the public respondent Ombudsman in OMB Case No. 093-1374, dated May 2, 1997 and May 28, 1998, respectively, are hereby REVERSED, and the case is REMANDED for the filing of the proper information. Costs against private respondents.

SO ORDERED.

Puno, C.J., (Chairman), Sandoval-Gutierrez, Corona and Garcia, JJ., concur.

[1] Rollo, pp. 26-28; Ombudsman Resolution, pp. 2-3. All typographical errors eliminated.

[2] Id. at 34; Complaint, p. 1.

[3] Id. at 29, Resolution, p. 4

[4] Id. at 32; Order, p. 3. Italics and bold caps omitted.

[5]Id. at 9; Petition, p. 8.

[6]Ocampo IV v. Ombudsman, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 725, 730.

[7] Zaldivar v. Sandiganbayan, G.R. Nos. 79690-79707, April 27, 1988, 160 SCRA 843, 846, quoting the CONSTITUTION, Article XI, Sec. 13(1).

[8]Deloso v. Domingo, G.R. No. 90591, November 21, 1990, 191 SCRA 545, 550-551.

[9] Cojuangco, Jr. v. PCGG, G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226, 243.

[10] Bautista v. Salonga, G.R. No. 86439, April 13, 1989, 172 SCRA 160, 190.

[11]PCGG v. Desierto, G.R. No. 139675, July 21, 2006, pp. 8-9, citing Esquivel v. Ombudsman, G.R. No. 137237, September 17, 2002, 389 SCRA 143, 150; PCGG v. Desierto, 400 Phil. 1368, 1377 (2000); and Espinosa v. Ombudsman, 397 Phil. 829, 835-836 (2000).

[12]Rollo, p. 28, Resolution, p. 3.

[13] Rollo, pp. 31-32, Resolution, pp. 2-3.

[14]Pilapil v. Sandiganbayan, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 360.

[15] Ibid.

[16]Ibid., citing the leading case of Buchanan v. Esteban, 32 Phil. 360, 365 (1915).

[17] Ibid.

[18] Webb v. De Leon, 317 Phil. 758, 780 (1995).

[19] Id. at 789. Boldface and italics copied verbatim.

[20] Id. at 780.

[21] PCGG v. Desierto, supra at note 11, p. 9, citing Salvador v. Desierto, G.R. No. 135249, January 16, 2004, 420 SCRA 76, 83; Morong Water District v. Office of the Deputy Ombudsman, G.R. No. 116754, March 17, 2000, 328 SCRA 363, 373; Tan v. Office of the Ombudsman, G.R. Nos. 114332 & 114895, September 10, 1998, 295 SCRA 315, 323.

[22] Ocampo IV v. Ombudsman, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 725, 730.

[23] Ibid., citing Sesbreno v. Deputy Ombudsman, G.R. No. 92789, March 21, 1991.

[24] See Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 136192, August 14, 2001, 362 SCRA 730, 737.

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